

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part	Appeal Number:	2179024
Decision Date:	01/26/2022	Hearing Date:	01/05/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:




Appearance for MassHealth:

Donna Burns, RN



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Approved in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	01/26/2022	Hearing Date:	01/05/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Chelsea MassHealth Enrollment Center	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated November 12, 2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on November 23, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. She testified that the documentation submitted showed that the appellant is a minor child with primary diagnoses of malignant neoplasm of brain, gait instability, obstructive hydrocephalus with EVO replacement, and legal blindness in left eye.

The MassHealth representative testified that the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services on November 4, 2021 requesting 24 hours and 0 minutes of day/evening hours and 0 nighttime hours for dates of service of November 21, 2021 to November 20, 2022. MassHealth modified the request to 19 hours and 0 minutes of day/evening hours and 0 nighttime hours. She explained that at a pre-hearing conference with the appellant's representatives on the day prior to hearing, MassHealth fully restored the time requested for PCA assistance with the activities of daily living (ADLs) of hair washing/bathing and grooming. At hearing, the parties were able to resolve the dispute related to PCA assistance with passive range of motion (PROM), with both parties agreeing the appellant no longer needs assistance with PROM. As a result, the only modification at issue at hearing is PCA assistance with the ADL of eating.

Eating

The appellant requested 15 minutes, 3 times per day, 2 days per week and 15 minutes, 2 times per day, 5 days per week for eating. MassHealth modified the request to 10 minutes, 3 times per day, 2 days per week and 10 minutes, 2 times per day, 5 days per week.

The MassHealth representative stated that documentation shows the appellant is able to participate to some degree in eating. A lot of the documentation discussed meal preparation which is not covered under eating. Eating is considered the actual act of feeding the appellant. For these reasons, 10 minutes per meal seemed like sufficient time.

The appellant's representative explained that the appellant is legally blind in her left eye, has a significantly restricted visual field, and lacks depth perception. As a result, she cannot fully see her plate and it is difficult to feed herself or even reach her napkin. She also has left side paralysis and her left hand is practically unusable. Unlike an average 12-year-old, she cannot cut up her own food, open any packaging or condiments, or prepare any food. She needs continual help with her utensils during the meal. Since she can only use one arm while eating, she cannot hold two utensils at the same time and requires help getting food onto her fork or spoon. Food needs to be cut into appropriately sized pieces to avoid any choking while eating. She is unstable and wobbly in her chair and the PCA has to position her frequently to prevent her from falling.

MassHealth responded that if the appellant is a choke risk, the regulations do not allow for the PCA to feed her. Additionally, supervision and cueing are not covered under the PCA program. She also testified that cutting up of food is considered meal preparation, not eating.

The appellant's representatives explained that the appellant has a twin brother who can do all of this on his own and the appellant is aware of that. Even if not cutting up food, a person needs two hands when eating most foods in order to push food onto a fork or spoon. She cannot only eat finger foods, and even with finger foods, she still needs assistance to open condiments or other packaging. The appellant needs to ask for help constantly for every aspect of eating. Having to repeatedly ask for help, especially if the PCA is not with her, is dehumanizing and demoralizing. She does not feel equal and it affects her mental health. She has started seeing a mental health counselor. When her PCA is with her to help with eating and feeding at meals, her confidence grows since she is not constantly asking for assistance.

The appellant's representatives argued that cutting up food for preparation during the cooking process is one thing. The appellant's parents pre-prepare all her meals and foods, but the manipulation of food during feeding when the food is already in front of the appellant is part of the ADL of feeding, not the instrumental activity of daily living (IADL) of meal preparation. Helping her with her fork and knife and cutting up the food as she is eating is food consumption, not meal preparation. It is making the food accessible to the appellant and enabling her to pick it up with a fork or spoon.

Additionally, the appellant's representative explained that the appellant is messier than her peers during meals. The left side of her face doesn't function as well and food falls on her face, clothing, lap, and floor. When the PCA is not there, she has to ask for a lot more help and she is a lot messier.

MassHealth responded that documentation shows the appellant using cleaning wipes and the PCA opens and closes the package for the appellant, but the appellant can wipe herself. That is a transferable skill and suggests the appellant can do it herself. Additionally, that type of cleaning would not fall under eating. She stated that MassHealth use guidelines based on age and for a 12- to 15-year-old requiring moderate assistance with eating, the time allowed is ten minutes.

The appellant's mother explained that the cleanup and wipes described are separate from what occurs during meals. Those wipes are used after meals and eating are completed. But during meals, the PCA is constantly wiping drool and food off her face and helping her get proper-sized bites onto her fork or spoon. Eating and feeding take a long time for the appellant. Due to her vision loss, it is not easy for her to see the table or find her napkin. Additionally, the PCA program is individualized and those times are merely guidelines. The appellant's mother stated that 10 minutes does not cover the amount of hands-on assistance the appellant requires during a meal. It is often longer than 15 minutes. The appellant's representatives noted that the appellant requires more PCA hours overall than what was requested due to changes in her medical condition (she has gained weight, gotten taller, become a greater fall risk, and her vision loss is progressing). They plan to request an adjustment through the PCM agency.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is a minor MassHealth member with primary diagnoses of malignant neoplasm of brain, gait instability, obstructive hydrocephalus with EVO replacement, and legal blindness in left eye. (Testimony and Exhibit 4).
2. MassHealth received a prior authorization request on behalf of the appellant on November 4, 2021, requesting 24 hours and 0 minutes of day/evening hours and 0 nighttime hours for dates of service of November 21, 2021 to November 20, 2022 (Testimony and Exhibit 4).
3. MassHealth modified the request to 19 hours and 0 minutes of day/evening hours and 0 nighttime hours (Testimony and Exhibit 4).
4. As a result of a pre-hearing conference, MassHealth fully restored the time requested for PCA assistance with hair washing/bathing and grooming (Testimony).
5. At hearing, parties agreed that the appellant no longer needs PCA assistance with passive range of motion (Testimony).
6. A dispute remains regarding PCA assistance with the task of eating (Testimony and Exhibit 4).
7. The appellant seeks time for PCA assistance with eating as follows: 15 minutes, 3 times per day, 2 days per week and 15 minutes, 2 times per day, 5 days per week for eating (Testimony and Exhibit 4).
8. MassHealth modified the request to 10 minutes, 3 times per day, 2 days per week and 10 minutes, 2 times per day, 5 days per week (Testimony and Exhibit 4).
9. The appellant is legally blind in her left eye, has a significantly restricted visual field, and lacks depth perception. She also has left side paralysis and her left hand is practically unusable. (Testimony).
10. The appellant needs continual help during meals. The PCA assists with getting food onto her fork or spoon, cutting food, wiping her face, positioning her in the chair and at the table (Testimony).

Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
 - 2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make

those records, including medical records, available to the Division upon request.
(See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), activities of daily living include the following:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

Pursuant to 130 CMR 422.410(B), instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving personal care services; and
 - (c) other special needs approved by the Division as being instrumental to the health care of the member.

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412.

The appeal is dismissed as to the following tasks because the parties were able to resolve the disputes related to PCA assistance with hair washing/bathing, grooming, and PROM.

Regarding the appellant's request for PCA assistance with eating, the appeal is approved. The testimony and evidence support the need for 15 minutes of PCA assistance at every meal. The appellant can manage finger foods independently; however, her decreased vision and depth perception makes feeding and eating time consuming. She needs frequent help loading utensils and getting food to her mouth. Additionally, she requires constant cleaning during the meals due to the reduced function and feeling on her left side. Her vision loss makes seeing the table and finding her napkin difficult, requiring the assistance of her PCA. The appellant's mother's testimony that 10 minutes is insufficient is credible. For these reasons, the appeal is approved as to the request for PCA assistance with eating.

Therefore, the appeal is approved in part and dismissed in part.

Order for MassHealth

Approve the appellant for 15 minutes, 3 times per day, 2 days per week and 15 minutes, 2 times per day, 5 days per week for eating. Implement agreements made at pre-hearing and hearing for assistance with the tasks of hair washing/bathing, grooming, and passive range of motion.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215

