

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2179044
Decision Date:	03/31/2022	Hearing Date:	01/11/2022
Hearing Officer:	Casey Groff		

Appearance for Appellant:



Appearance for MassHealth:

Cheryl Eastman, R.N., Clinical Appeals
Reviewer, Optum



*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	Issue:	Personal Care Attendant Services
Decision Date:	03/31/2022	Hearing Date:	01/11/2022
MassHealth's Rep.:	Cheryl Eastman, R.N.	Appellant's Rep.:	██████████
Hearing Location:	Remote	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 October 18, 2021, MassHealth informed Appellant that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. On November 22, 2021, the Board of Hearings (BOH) received a timely appeal of the October 18th notice. See 130 CMR 610.015(B); Exhibit 2. On December 1, 2021, BOH dismissed the appeal for failure to demonstrate proper authority to challenge the action. See Exhibit 3; 130 CMR 610.015(G). BOH vacated the dismissal upon receiving a properly signed fair hearing request by the Appellant and a hearing was scheduled for January 11, 2022. See Exhibit 4-5. Modification of a request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At the hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his former foster mother/caregiver.¹ All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth representative presented the following information: Appellant is an adult over the age of 18 and has diagnoses of shaken baby syndrome, right hemiparesis, global developmental delay, legal blindness, seizures, right-hip dysplasia. See Exh. 6, p. 8. Appellant is non-ambulatory and is limited in his communication abilities. Id. at 7-8. His medications consist of five oral medications, two inhaler medications, as well as a prescription for one can of Pediasure combined equally with water, taken by mouth four-times per-day. Id. at 7.

On September 18, 2021, Appellant's personal care management (PCM) agency conducted a re-evaluation of Appellant to determine his continued need for personal care attendant (PCA) services. Id. at 7. On October 4, 2021, following the re-evaluation, the PCM agency submitted a prior authorization (PA) request to MassHealth on Appellant's behalf, seeking approval for 57-hours and 45 minutes of "day/evening hours" per week² and two nighttime hours per night (14 hours per week) of PCA services for the time period beginning December 3, 2021 through December 2, 2022. See Exh. 1; Exh. 6.

On October 18, 2021, MassHealth notified Appellant that it was modifying his PA request by approving a total of 45 hours per week of day/evening PCA services.³ See Exh. 1. MassHealth approved the nighttime PCA hours, as requested. Id. Specifically, MassHealth modified four activities of daily living (ADLs). Specifically, MassHealth reduced the requested times for three grooming tasks: (1) shaving, (2) hair care, and (3) nail care. The fourth modification was made to the time requested for "other healthcare needs" (i.e. supplemental Pediasure feedings).

Grooming

Under the "Grooming" section of the PA request, Appellant requested time for PCA assistance with nail care, oral care, hair care, and shaving. See Exh. 6, p. 13. In support of its request, the PCM agency noted that Appellant requires "hand-over-hand" assistance as he is physically unable to perform any grooming tasks and concepts are not fully developed. See id. MassHealth approved the time requested for oral care at 5x2x7, however modified the remaining three

¹ Appellant's Representative explained that she was Appellant's foster mother until he turned 18 years of age and was also appointed temporary legal guardian which has since expired. Appellant continues to live in the foster home, which she operates. Although she is his caregiver, she is not Appellant's personal care attendant (PCA).

² The request for 57 hours per week was specifically for 43.14 school-weeks. Appellant requested 64 hours of PCA services for the remaining 9 vacation weeks per year. For clarity, this decision refers to the time requested for school weeks. Any adjustments should be applied to both vacation and school weeks accordingly.

³ MassHealth also modified the allowed time for vacation weeks to 51 hours and 15 minutes of day/evening hours per week.

grooming tasks based on its determination that the times/frequencies requested were longer than ordinarily required for someone with Appellant's needs.

Shaving

For shaving, Appellant requested 10 minutes, once per day, four days per week (10x1x4). See Exh. 6, p. 13. MassHealth modified the time requested for shaving and approved five minutes, once per day, four days per week (5x1x4). See Exh. 1.

Appellant's representative testified that despite the request for four-times per week, they shave his face daily. Given his level of need it takes 10 minutes to perform this task. In addition, Appellant requires shaving of his genital area as a rash prevention measure. He uses adult diapers and previously was getting frequent rashes and skin irritation due to bowel movements, which became more difficult and time-consuming to clean as he got older. The decision to shave his diaper area was specifically recommended by Appellant's primary care provider (PCP) over two years ago as a rash prevention measure. Ever since they started this intervention it has eliminated his rashes. Cleaning the genital area after bowel movements has become much easier and less time consuming.

Appellant submitted a letter dated November 18, 2021, from Appellant's PCP explaining that Appellant requires shaving of his diaper area, along with shaving his face with an electric razor. See Exh. 2, p. 2.

In response, the MassHealth representative testified that shaving of the peri-area is not a generally recognized standard of care, as pubic hair is intended to protect the skin. Given that the time approved is only meant to reimburse for shaving of his face, five minutes per-episode was appropriate.

Hair Care

Next, the parties addressed the modification made to the grooming task of hair care. For this task, Appellant's PCM requested five minutes once per-day, seven days per-week (5x1x7). MassHealth modified the requested time to one minute, once per-day, seven days per-week (1x1x7). The MassHealth representative stated that one minute should be sufficient to comb his hair each day.

Appellant's representative testified that it takes at least 5 minutes daily for the PCA to provide hair care for Appellant. Appellant has short, cropped hair because he is prone to dandruff and acne in and around his hair line. They use an acne medication and over-the-counter dandruff product, which they scrub in with a comb daily. They comb his hair morning and afternoon, typically after a change.

Nail Care

Next, Appellant requested five minutes per day, four days per week (5x1x4) for assistance with nail care. MassHealth reduced the frequency of episodes from four episodes per-week to once per-week (5x1x1). The MassHealth representative testified that this task only needs to be performed once per week based on the average growth of nails.

Appellant's representative testified that the PCA needs to break up the nail care into multiple sessions because of the process involved. Appellant has contractions in his hands, particularly his right hand, so that his fingers are clenched inward and inaccessible. He is unable to open or loosen his hand on command. Each attempt to trim his nails involves applying a warm pack to Appellant's hand to loosen the contractions. When the PCA applies the warm pack, Appellant will pull back and resist. The PCA will then bring his hand back until the hand is opened to access the nails. They can get his left hand to open completely, but his right hand remains contracted and the PCA must manually take one finger at a time. Additionally, it is necessary for his nails to be kept shorter than normal. Appellant is prone to scratching himself with his nails in his sleep. Because of the numerous steps involved, this task cannot be completed in one sitting, but rather at least four times per week to maintain his nails and the desired length.

Additionally, Appellant's PCP letter dated November 18, 2021 states that Appellant's "right hand [is] contracted therefore [it] takes longer to do his nails" and "he is prone to scratching legs and thighs and must require keeping them short to maintain skin integrity." Exh. 2, p. 2.

The MassHealth representative responded that regardless of the need to keep his nails short, nails do not grow at such a rate that they need to be trimmed more than once per-week. In addition, MassHealth only reimburses for hands-on activity. Thus, the time approved does not include waiting for the time it takes Appellant's hands to warm-up or his resistance.

Other Healthcare Needs

Finally, the parties addressed the modification to the ADL of "other healthcare needs." Under this ADL, Appellant requested 30 minutes, four times per-day, seven days per-week (30x4x7) for the PCA to provide hand-over-hand assistance with Pediasure feedings to meet his nutritional needs. See Exh. 6. At 18-19. MassHealth approved five minutes per-episode, four times per-day, seven days per-week because the time requested was longer than ordinarily required for someone with Appellant's needs. The MassHealth representative also noted that MassHealth approved in full the time requested for eating solid foods as well.

According to the November 18th letter, Appellant's PCP wrote the following regarding this task:

[Appellant] consumes up to 8 cans of Pediasure – each can is mixed with 8 oz of water. This consistency is well tolerated. It is given in his preferred sipping cup...with modified cap, one sip at a time. Miralax and other medications are mixed in as needed. This provides 80%-100% of his calories and 100% hydration

daily. Each drink takes 25 to 40 minutes with daily breaks and more slowly when congestion (upper respiratory or constipation) is present.

Exh. 2, p. 2.

Appellants' representative testified that although the PCM agency requested assistance at four episodes per day, Appellant consumes between six and eight cans per day. Appellant has intense gag reflexes, he consumes each serving one sip at a time, separate and apart from meals. Appellant will also have involuntary tongue-thrusts throughout these feedings. It is a long and difficult process for the PCA to provide these feedings which take at least 30 to 40 minutes per can/serving of PediaSure. Because he can only take it one sip at a time, his PCA is constantly feeding him throughout the day. Appellant is unable to self-feed or participate in any aspect of this process; therefore, the PCA is doing all hands-on work, continuously putting the cup to his mouth to drink. These frequent feedings by sippy cup are difficult and time consuming but have been the only way they have been able to get him to consume the water and nutrients he needs. Lack of hydration and nutrients will lead to constipation and digestion problems, which then quickly lead to other health problems. Now he is consuming the PediaSure/water combination at sufficient levels. As such, they have seen a positive change in his health; it helps his constipation and asthma. His weight and digestion are at a good level.

Findings of Fact

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

1. Appellant is an adult over the age of 18 and has diagnoses of shaken baby syndrome, right hemiparesis, global developmental delay, legal blindness, seizures, and right-hip dysplasia.
2. Appellant is non-ambulatory and is limited in his communication abilities.
3. His medications consist of five oral medications, two inhaler medications, as well as a prescription for one can of PediaSure combined equally with water, four-times per day.
4. On September 18, 2021, Appellant's PCM agency conducted a re-evaluation of Appellant to determine his continued need for PCA services.
5. On October 4, 2021, following the re-evaluation, the PCM agency submitted a PA request to MassHealth on Appellant's behalf, seeking approval for 57-hours and 45 minutes of "day/evening hours" per week and two nighttime hours per night (14 hours per week) of PCA services for the time period beginning December 3, 2021 through December 2, 2022.
6. On October 18, 2021, MassHealth notified Appellant that it was modifying his PA request by approving a total of 45 hours per week of day/evening PCA services.

7. MassHealth reduced the requested times/frequencies for three grooming tasks: (1) shaving, (2) hair care, and (3) nail care, as well as the time requested for (4) “other healthcare needs” (i.e. Pediasure feedings).
8. MassHealth made all four modifications on the basis that the time/frequency requested was longer than ordinarily required for someone with Appellant’s needs.
9. Appellant requires “hand-over-hand” assistance with all grooming tasks as he is physically unable to participate in conducting the activity and his concepts are not fully developed.
10. Under the grooming task of “shaving,” Appellant requested 10 minutes, once per day, four days per week (10x1x4).
11. MassHealth modified the time requested for shaving and approved five minutes, once per day, four days per week (5x1x4).
12. Appellant’s face is shaved daily.
13. Due to Appellant’s history of rashes and skin irritation at the diaper area, Appellant’s PCP recommended shaving of the hair around the diaper area as a rash prevention measure.
14. Shaving the hair around the genital area has helped reduce the rashes and skin irritation Appellant previously would get as a result of bowel movements.
15. For the grooming task of “hair care,” Appellant’s PCM requested five minutes once per day, seven days per week (5x1x7).
16. MassHealth modified the request for hair care to one minute, once per day, seven days per week (1x1x7).
17. In addition to general combing of hair, Appellant’s PCA applies dandruff product that is combed into his hair; and his hair is typically combed in the morning and afternoon after a change.
18. For the grooming task of “nail care” Appellant requested five minutes per day, four days per week (5x1x4).
19. MassHealth reduced the requested frequency of nail-care episodes from four episodes per-week to once per-week (5x1x1).

20. Appellant's PCA breaks the task of nail care into multiple sessions per week because of Appellant's hand contractures, the need to apply a warm compress to access his fingers, and Appellant's tendency to resist or pull away from care.
21. Appellant's right hand will not open entirely and the PCA must manually take one finger out at a time to access his nails.
22. Appellant's fingernails and toenails are kept short due to his behavior of scratching himself with his nails in his sleep and the need to maintain skin integrity.
23. Under the ADL of "other healthcare needs," Appellant requested 30 minutes, four times per-day, seven days per-week (30x4x7) for the PCA to provide hand-over-hand assistance with Pediasure feedings to meet his nutritional needs.
24. MassHealth modified this request and approved Pediasure feedings at five minutes per-episode, four times per-day, seven days per-week
25. Appellant consumes up to 8 cans of Pediasure per day – each can is mixed with 8 oz of water, put into his sipping cup, which he consumes one sip at a time and separate from meals.
26. The Pediasure feedings provide 80%-100% of his calories and 100% hydration daily.
27. Appellant has intense gag reflexes and involuntary tongue-thrusts throughout these feedings; he cannot drink quickly.
28. Appellant is unable to self-feed or participate in any aspect of the feeding/drinking process.
29. During each feeding the PCA provides hands-on assistance by continuously holding the cup and bringing it to Appellant's mouth for each sip.
30. Appellant's consumption of the desired amount of Pediasure and water feedings, have improved his digestion, constipation, asthma, weight, and other health considerations.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:⁴ First, the services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair[] the member’s functional ability to perform [at least two] ADLs ... without physical assistance. See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). A service is “medically necessary” if:

(1) it is reasonably calculated to prevent, diagnose, prevent the 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 MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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.

See 130 CMR 450.204(A).

Additionally, medically necessary services must “be of a quality that meets professionally recognized standards of health care and must be substantiated by the record including evidence of such medical necessity and quality.” 130 CMR 450.204(B).

When medically necessary, MassHealth covers PCA assistance for the following ADLs:

(A) Activities of Daily Living (ADLs). 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

⁴ PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.002.

self-administered;

(3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;

(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.

See 130 CMR 422.410

MassHealth will reimburse for the “activity time performed by a PCA in providing assistance with the ADL.” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C)

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive PCA assistance with the ADLs of grooming (i.e. shaving, nail care, and hair care) and other healthcare needs (i.e. Pediasure feedings).

Grooming

Hair care and Shaving

Based on the evidence presented at hearing, Appellant demonstrated that he requires the full amount of time requested for assistance with the modified grooming tasks, specifically, nail care, hair care and shaving. First, MassHealth determined that the times requested for hair care (5 minutes per episode) and shaving (10 minutes per episode) were longer than ordinarily required and therefore reduced the times allowed to 1 minute per-episode for hair care and 5 minutes per-episode for shaving. At hearing, Appellant provided credible evidence in support of his need for additional time in these tasks. Appellant is totally dependent in all grooming activities. In addition to basic daily hair combing, Appellant’s PCA applies a topical over-the-counter substance for his dandruff, which she scrubs in with a comb. For shaving, Appellant explained that request for 10 minutes, 4 days per-week includes shaving of hair around his diaper area, in addition to the time required to shave his face. Although MassHealth noted that shaving in the perineal area is not within generally recognized standards of care, Appellant’s PCP recommended this intervention as a rash prevention measure. Appellant’s representative further testified that this grooming task has eliminated the diaper rashes Appellant would frequently get because of the difficulties involved in cleaning Appellant’s bowel movements.

Nail Care

Additionally, Appellant provided detailed testimony and evidence to support his need for multiple episodes per-week for Appellant's PCA to trim his nails. Specifically, Appellant requested nail care at 5 minutes, four times per-week (5x1x4). MassHealth did not take issue with the time requested per-episode but reduced the overall frequency to one-time per week (5x1x1). Given the presence of contractures in Appellant's hand, the difficulty in accessing Appellant's nails, the need for the PCA to apply a warm compress to loosen his contractures, Appellant's behavioral resistance to this task in pulling away, the PCA cannot complete nail care in one setting. Such evidence demonstrates that the PCA has to approach Appellant multiple times per week to access each fingernail and toenail. Accordingly, the requested frequency of four times per week for nail care is appropriate.

Other Healthcare Needs

Finally, Appellant successfully demonstrated that his request for Pediasure feedings under "other healthcare needs" at 30 minutes, four times per day, seven days per-week is medically necessary. MassHealth modified this ADL by approving only 5 minutes for each episode (5x4x7). The evidence indicates, however, that Appellant requires maximum physical assistance with eating and drinking; he is incapable of participating in feeding in any way; requires hand-over-hand assistance at meals and consuming liquids. According to Appellant's PCP, these feedings comprise most of his nutritional intake and 100% of his hydration. Appellant is unable to drink quickly. He has a strong gag reflex and frequent involuntary tongue thrusts throughout each feeding. As a result, each feeding is consumed one sip at a time. For each sip, the PCA uses hand-on assistance by holding and bringing the sippy cup to Appellant's mouth. Not accounting for waiting, cueing, or supervision, it takes the PCA 30 minutes of physical assistance to ensure Appellant obtains the prescribed amount of Pediasure and water combination. Such evidence demonstrates that the request for 30 minutes, four times per day, seven days per week for the PCA to assist with these feedings is appropriate and supported by the aforementioned program regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410(A)(6).

The appeal is APPROVED.

Order for MassHealth

Rescind notice dated October 18, 2021. Approve full amount of time requested per Appellant's prior authorization request.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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