

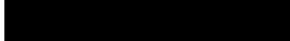
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2179104
Decision Date:	01/26/2022	Hearing Date:	01/04/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:




Appearance for MassHealth:

Mary-Jo Elliott, 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; Denied in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	01/26/2022	Hearing Date:	01/04/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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 1, 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 30, 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 showed that the appellant is an adult MassHealth member under the age of 65 with a primary diagnosis of down syndrome and a history of seizures.

The MassHealth representative testified that the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services on October 21, 2021 requesting 17 hours and 30 minutes per week of day/evening hours and 2 nighttime hours per night, 7 nights per week for dates of service of December 30, 2021 through December 29, 2022. MassHealth modified the request to 13 hours and 30 minutes per week and did not approve the nighttime hours. She noted that in the past, the appellant has not been approved for nighttime hours. The appellant is in aid pending during the appeals process.

At hearing, the parties were able to resolve the disputes related to PCA assistance with the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): oral care¹, toileting (bladder)², other healthcare needs (menses care)³, laundry⁴, and nighttime hours⁵. PCA assistance with the ADLs and IADLs of grooming (nail care), grooming (shaving), and meal preparation remain at issue.

Grooming: Nail Care

The appellant requested 10 minutes, 1 time per day, 1 day per week for nail care. MassHealth modified the request to 4 minutes, 1 time per day, 1 day per week.

The appellant's representative explained that the appellant cannot do any of this ADL by herself. Her nails need to be trimmed and filed every week because she will scratch herself if they are not well-kept. There cannot be any rough edges left. It is done at home every Friday. It takes about 5 minutes when the appellant is cooperative, but she is not always cooperative and it can take up to 10 minutes.

¹ Oral care was fully restored as requested to 5 minutes, 1 time per day, 7 days per week. The appellant's representative noted that oral care takes at least 5 minutes, **2 times per day**; however, as that amount of time was not requested, the MassHealth nurse suggested the appellant request an adjustment through her PCM agency.

² Toileting for bladder was modified to 3 minutes, 4 times per day, 5 days per week and 3 minutes, 6 times per day, 2 days per week.

³ Other health care needs (menses care) was modified to 60 minutes per month (or 15 minutes per week) because documentation showed that the appellant gets injections which reduces her periods and results in only occasional spotting.

⁴ Laundry was modified to 45 minutes per week.

⁵ Nighttime hours were approved for 2 nights per week. The appellant's father testified that the waking at night is a new behavior since the appellant's last evaluation and it does not occur every night, but two to three nights per week. He agreed that two nights per week would be sufficient for now to trial it and it was explained that if the appellant's condition changed, she could request and adjustment through her PCM agency.

MassHealth explained that time was allowed primarily for trimming and filing and offered to approve 8 minutes, 1 time per day, 1 day per week.

Grooming: Shaving

The appellant requested 18 minutes, 1 time per week for shaving. MassHealth modified it to 10 minutes, 1 time per week.

The appellant's representative testified that the appellant does not like shaving and does not cooperate, making it take longer. Shaving involves that of the legs, under arm, and chin. He testified that 18 minutes seemed accurate to him.

MassHealth offered to increase the time to 15 minutes, 1 time per week, which she explained could be looked at as 5 minutes, 3 times per week.

Meal Preparation

The appellant requested assistance with meal preparation for breakfast at 15 minutes, 1 time per day, 5 days per week and lunch at 30 minutes, 1 time per day, 5 days per week. MassHealth approved the time as requested for breakfast but did not approve any time for lunch.

The appellant's representative stated that she goes to her day program from 8AM to 3PM five days per week, but they do not serve lunch there. The appellant brings her lunch from home every day and it takes about 10 minutes to prepare her lunch. The appellant's representative clarified that he is not the appellant's legal guardian. He also stated that the PCA prepares the appellant's dinner.

The MassHealth representative offered to increase the time approved for lunch to 10 minutes, 5 times per day. Since there was no time requested for dinner preparation, she could not approve additional time, but the appellant could request and adjustment through the PCM agency.

Findings of Fact

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

1. The appellant is an adult MassHealth member under the age of 65 with a primary diagnosis of down syndrome and a history of seizures (Testimony and Exhibit 4).
2. MassHealth received a prior authorization request for PCA services on October 21, 2021 requesting 17 hours and 30 minutes per week of day/evening hours and 2 nighttime hours per night, 7 nights per week for dates of service of December 30, 2021 through December 29, 2022 (Testimony and Exhibit 4).
3. MassHealth modified the request to 13 hours and 30 minutes per week and did not approve the nighttime hours. The appellant has not received nighttime hours in the past. (Testimony and

Exhibit 4).

4. At hearing, the parties were able to resolve disputes related to PCA assistance with the following ADLs and IADLs: oral care, toileting (bladder care), other healthcare needs (menses care), laundry, and nighttime hours (Testimony).
5. The appellant seeks time for PCA assistance with nail care as follows: 10 minutes, 1 time per day, 1 day per week (Testimony and Exhibit 4).
6. MassHealth modified the request to 4 minutes, 1 time per day, 1 day per week (Testimony and Exhibit 4).
7. The appellant's nails need to be trimmed and file every week because she will scratch herself if they are not well-kept. It takes about 5 minutes when the appellant is cooperative, but she is not always cooperative and it can take up to 10 minutes. (Testimony).
8. At hearing, MassHealth offered to increase the amount of time for assistance with nail care to 8 minutes, 1 time per day, 1 day per week (Testimony).
9. The appellant seeks time for PCA assistance with shaving as follows: 18 minutes, 1 time per week (Testimony and Exhibit 4).
10. MassHealth modified it 10 minutes, 1 time per week (Testimony and Exhibit 4).
11. The appellant does not like being shaved and does not cooperate. It takes about 18 minutes per week to shave her legs, arm, and chin. (Testimony).
12. At hearing, MassHealth offered to increase the amount of time for assistance with shaving to 15 minutes, 1 time per week (Testimony).
13. The appellant seeks time for PCA assistance with meal preparation for lunch as follows: 30 minutes, 1 time per day, 5 days per week (Testimony and Exhibit 4).
14. MassHealth did not approve any time for meal preparation for lunch (Testimony and Exhibit 4).
15. The appellant attends a day program 5 days per week, but it does not offer lunch and she brings her lunch from home every day. It takes 10 minutes to prepare her lunch. (Testimony).
16. At hearing, MassHealth offered to increase the time for meal preparation for lunch to 10 minutes, 1 time per day, 5 days per week (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 of 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 ADLs and IADLs because at hearing the parties were able to resolve the disputes related to PCA assistance with: oral care, toileting (bladder), other healthcare needs (menses care), laundry, and nighttime hours.

Regarding the appellant's request for nail care, the appeal is approved in part and denied in part. At hearing, MassHealth offered to increase the time approved to 8 minutes, 1 time per day, 1 day per week. The appellant has not demonstrated that nail care regularly takes more than 8 minutes. He testified that it takes 5 minutes when the appellant is cooperative, but she is not always cooperative and it can take up to 10 minutes. For these reasons, the appellant is approved for 8 minutes, 1 time per day, 1 day per week for nail care.

Regarding the appellant's request for shaving, the appeal is approved. The appellant's testimony and evidence support the need for 18 minutes per week for shaving. She is an adult woman that requires shaving of legs, underarms, and chin; however, she is not cooperative during shaving which increases the time it takes for the PCA to complete the task. For this reason, the appellant is approved for 18 minutes, 1 time per week for shaving.

Regarding the appellant's request for meal preparation, the appeal is approved in part and denied in part. At hearing, MassHealth offered to increase the time approved for meal preparation for lunch to 10 minutes, 5 days per week. The appellant testified that it takes about 10 minutes to prepare the

appellant's lunch. The PCA also prepares the appellant's dinner; however, the PCM agency did not request time for meal preparation for dinner and MassHealth cannot grant more hours than requested. If she so chooses, the appellant can request adjustments through her PCM agency. As such, the appellant is approved for 10 minutes, 5 days per week for meal preparation for lunch.

For these reasons, the appeal is approved in part, denied in part, and dismissed in part.

Order for MassHealth

Approve 8 minutes, 1 time per day, 1 day per week for nail care; approve 18 minutes, 1 time per day, 1 day per week for shaving; and approve 10 minutes, 1 time per day, 5 days per week for lunch meal preparation. Implement agreements made at hearing for oral care, toileting (bladder), other healthcare needs (menses care), laundry, and nighttime hours.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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