

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part;
Dismissed in part

Appeal Number: 2179183

Decision Date: 02/03/2022

Hearing Date: 01/13/2022

Hearing Officer: Rebecca Brochstein

Appearances for Appellant:



Appearances for MassHealth:

Mary-Jo Elliott, R.N.



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

APPEAL DECISION

Appeal Decision:	Denied in part; Dismissed in part	Issue:	Prior Approval (PCA Services)
Decision Date:	02/03/2022	Hearing Date:	01/13/2022
MassHealth's Rep.:	Mary-Jo Elliott, R.N.	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	Yes

Authority

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

Jurisdiction

Through a notice dated November 2, 2021, MassHealth modified the appellant's request for prior authorization for Personal Care Attendant (PCA) services by denying some of the time requested (Exhibit 1). The appellant filed this appeal in a timely manner on December 6, 2021, seeking approval of the denied time (130 CMR 610.015(B) and Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services by reducing or denying the time requested for several tasks.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

Summary of Evidence

The MassHealth representative, who is a registered nurse, appeared at the hearing telephonically. She testified that the appellant, who is a teenage girl, has a diagnosis of Ehlers-Danlos syndrome, with a history of apraxia, postural tachycardia, and neuropathy. She was previously approved for PCA services of 33.25 day/evening hours per week and two hours per night. On October 25, 2021, the appellant's PCA provider submitted a prior authorization (PA) request and re-evaluation for PCA services. The provider requested PCA services in the amount of 33.25 day/evening hours per week, along with two hours per night, for the prior authorization period of January 2, 2022, to January 1, 2023. On November 2, 2021, MassHealth modified the request by allowing a total of 30 day/evening hours per week in addition to the two hours per night that were requested.

MassHealth modified the time requested for six tasks but reversed the modifications to grooming tasks (nail care, oral care, shaving, and deodorant/ear care) and other health care needs (assistance with snacks) after testimony at hearing. The only modification remaining in dispute is the request for PCA time for mobility.

The appellant requested assistance with mobility in the amount of five minutes, twelve times per day, seven days per week, plus fifteen minutes, once per day. The MassHealth representative testified that based on the comments in the PCA evaluation, it appears the first part of the request is for assistance with sit-to-stand and room-to-room transfers throughout the day, and the second part is for application of AFO braces in preparation for the transfers. MassHealth approved the time for the transfers, but denied the request for the AFOs. The MassHealth representative stated that the reason for the denial is this aspect of the request is a duplication of time requested under the dressing portion of the evaluation. She pointed out that the comments under the request for dressing state "time includes AFOs." See Exhibit 4 at 10, 16.

The appellant was represented at hearing by her mother, who appeared telephonically. The mother stated that she was not aware of the duplication in the evaluation. She went on to testify that the appellant needs even more time than was indicated in the evaluation, as her health has deteriorated. She stated that the appellant has full episodes of paralysis, and when this happens the mobility time she needs goes beyond assistance with transfers and AFOs. In addition, the mother stated that the appellant has dysautonomia, which requires that her vital signs be checked when she is moved. The mother argued that the agency incorrectly documented her daughter's mobility needs.

Findings of Fact

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

1. The appellant is a teenage girl with a diagnosis of Ehlers-Danlos syndrome, with a history of apraxia, postural tachycardia, and neuropathy.
2. The appellant was previously approved for PCA services of 33.25 day/evening hours per week and two hours per night.

3. On October 25, 2021, the appellant's PCA provider submitted a prior authorization request and re-evaluation for PCA services. The provider requested PCA services in the amount of 33.25 day/evening hours per week, along with two hours per night, for the PA period of January 2, 2022, through January 1, 2023.
4. On November 2, 2021, MassHealth modified the request by allowing a total of 30 day/evening hours per week in addition to the two hours per night that was requested.
5. On December 6, 2021, the appellant filed a timely appeal of the modification notice.
6. At hearing, MassHealth restored the time requested for grooming tasks (nail care, oral care, shaving, and deodorant/ear care), and other health care needs (assistance with snacks).
7. The appellant requested PCA time for assistance with mobility in the amount of five minutes, twelve times per day, seven days per week (for sit-to-stand and room-to-room transfers), plus fifteen minutes, once per day (for application of AFOs in preparation for transfers).
8. MassHealth approved the time requested for transfers but denied the 15 minutes per day requested for application of AFOs.
9. The time requested for dressing, which was approved in full, includes time for AFOs.

Analysis and Conclusions of Law

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 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.

(B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following:

(1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The only issue remaining in dispute in this case is MassHealth's modification to the request for PCA time for mobility—specifically, the time requested for application of AFOs in preparation for transfers. The record supports this modification. As MassHealth pointed out, the time requested for dressing expressly includes time for AFOs. The request for the same task under mobility was therefore a duplication and is not medically necessary. If the appellant has additional mobility (or other) needs that are not adequately accounted for in this PA request and evaluation, she may seek an adjustment with the PCA agency.

As to the modification for mobility, the appeal is denied. As to the modifications that were resolved at hearing (nail care, oral care, shaving, deodorant/ear care, and snacks), the appeal is dismissed.

Order for MassHealth

As agreed at hearing, restore the time requested for nail care, oral care, shaving, deodorant/ear care, and snacks.

Implementation of this Decision

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

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum