

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Denied-in-part; Dismissed-in-part	Appeal Number:	2200179
Decision Date:	4/07/2022	Hearing Date:	02/01/2022
Hearing Officer:	Casey Groff		

Appearance for Appellant:




Appearance for MassHealth:

Mary-Jo Elliot, R.N., 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-in-part; Denied-in-part; Dismissed-in-part	Issue:	Personal Care Attendant Services
Decision Date:	4/07/2022	Hearing Date:	02/01/2022
MassHealth's Rep.:	Mary-Jo Elliot, R.N.	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

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 May 10, 2021, MassHealth informed Appellant that it was modifying her request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1, pp. 2-5. Appellant filed this appeal in a timely manner on June 7, 2021. See 130 CMR 610.015(B); Exhibit 1, p. 6. 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 mother and an advocate from the Boston Center for Independent Living (BCIL). All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth representative presented the following information: Appellant is under the age of 21 and has a primary diagnosis of autism. See Exh. 4, p. 9. On December 3, 2021, Appellant's Personal Care Management (PCM) agency performed a re-evaluation of Appellant to determine his continued need for personal care attendant (PCA) services. Id. at 8. Notes from the re-evaluation indicate that Appellant has additional relevant medical history including pervasive developmental disorder (PDD) and cognitive deficits; he is nonverbal; he demonstrates self-stimulatory behavior, resistance to care, and impulsive behavior without any safety awareness; he smears feces and urinates on the floor; he is incontinent of bladder and bowel; has recurrent conjunctivitis, insomnia, chronic infections in the groin area, unsteady gait, and is a flight risk. Id. On December 9, 2021, Appellant, through his PCM agency, submitted a prior authorization (PA) request to MassHealth seeking approval of 37 hours and 15 minutes per-week of day/evening PCA hours for school weeks, 42 hours and 45 minutes per-week of "day/evening" services for vacation weeks; and two-hours per night (14 hours per week) of nighttime PCA services for dates of service beginning December 15, 2021 and ending December 14, 2022. See Exh. 1.

Through a letter dated December 15, 2021, MassHealth notified Appellant that it approved the requested nighttime PCA hours; however, modified his request by approving 26 hours of day/evening PCA services per-week for school weeks and 27 hours of day/evening services for vacation weeks. See Exh. 1, p. 2-6. Specifically, MassHealth modified the times requested for the following activities of daily living (ADLs) and independent activities of daily living (IADLs): (1) Transfers/mobility, (2) grooming (hair care and oral care)¹, (3) eating, (4) bladder care, (5) bowel care, (6) meal preparation, and (7) laundry. See Exh. 1.

At the hearing, the parties resolved the modifications made to transfers, grooming (oral care and hair care), bowel care, meal preparation and laundry. Specifically, MassHealth restored the requested times for transfers (5x2x5), oral care (5x1x7), bowel care (20x2x7), and laundry (90 minutes per week). Additionally, the parties came to agreed-upon times for both hair care (1x3x7) and meal preparation (60 minutes per day). At the conclusion of the hearing, the only remaining issues in dispute concerned the modifications made to "eating" and "bladder care"².

Eating

¹ The remaining grooming activities (i.e. shaving and nail care) were already approved as requested.

² As discussed below, "bladder care" was partially resolved as Appellant accepted the modification of 7 minutes per-episode; however, disagreed with MassHealth's modification to the frequency of bladder care episodes during the weekend.

Appellant, through his PCM agency, requested assistance with “eating” at 20 minutes, two-times per day during school weeks (20x2x7) and three times daily for vacation weeks (20x3x7). See Exh. 4, p. 17, 40. In support of the requested time, the PCM agency noted that Appellant requires moderate assistance with both eating and drinking; choking hazards include overstuffing his mouth, inability to stay on task, and complete lack of safety awareness. Id. Additionally, Appellant requires controlled portions; he is unable to manage utensils due to poor fine motor coordination; and demonstrates sloppy eating and often spills. Id.

MassHealth modified the requested time for eating by approving five minutes, two times per-day for school weeks (5x2x7), and three times daily for vacation weeks. (5x3x7). See id.; Exh. 1, p. 3. Thus, MassHealth did not change the frequency of requested episodes, but did reduce the requested time per-episode based on the rationale that managing portion control is under cueing and redirection. Not considering the time for the non-payable tasks of cueing and redirection, MassHealth found that five minutes was sufficient for just the hands-on aspect of assistance.

In response, Appellant’s mother argued that it takes significantly more time than five minutes to feed Appellant. Appellant requires hands-on assistance with utensils. For example, the PCA will poke the food with the fork and place it Appellant’s hand and put to his mouth. Additionally, because of sensory issues, Appellant will constantly put his hands in his food, which he then wipes on his clothes and in his hair. He attempts to get up from the table before he finishes his meals. During meals, the PCA is using one hand to feed Appellant (i.e. bringing food to mouth, helping with utensils) and the other hand to keep Appellant from putting his hands in his food or to keep him seated. The requested 20 minutes was for the hands-on activity.

In response, the MassHealth representative offered to approve 12 minutes for eating per episode; however, Appellant’s mother felt this would still be insufficient to meet his eating needs.

Bladder Care

Appellant, through his PCM agency, requested assistance with “bladder care” at 10 minutes, 6 times per-day, five days per-week (10x6x5) for school days and 10 minutes, 9 times per-day, two days per-week (10x9x2) for weekends. See Exh. 4, p. 18. In support of the requested time, the PCM agency noted that Appellant is on a toileting program which has the PCA bring him to the bathroom every 30 minutes for incontinence prevention. The PCA also performs incontinence care as needed. Id. The PCA physically assists with toilet hygiene, clothing management, and changing his absorbent product. Id.

MassHealth modified the time requested for bladder care in two respects: First, MassHealth modified the time-per-episode from 10 minutes to 7 minutes per episode. In addition, MassHealth reduced the frequency of bladder care episodes on weekends from the requested 9 episodes to 8 episodes per-day (7x8x2). The latter modification, MassHealth explained, was based on the standard of care to toilet every two hours. With only 18 day/evening hours in a day (nighttime hours are between midnight and 6am), and in consideration of the fact that Appellant was approved for two “bowel care” episodes per day, eight additional toileting episodes are appropriate to meet his bladder care needs. MassHealth also testified that toileting programs at

short intervals, such as every half-hour, are intended to be a temporary educational intervention, not a long-term solution. As the toileting program has been in effect for several years and there is no indication that it has been effective, MassHealth will not reimburse for episodes every half-hour.

In response, Appellant's mother agreed with MassHealth's modification to reduce each bladder care episode to 7 minutes. However, she disputed MassHealth's decision to reduce the weekend bladder care to eight episodes per day. She explained that despite the toileting program, Appellant is realistically brought to the bathroom every hour-and-a-half to every two-hours. Appellant is constantly drinking water throughout the day and needs more daily episodes of being brought to the bathroom. Additionally, Appellant's mother noted that her son has significantly less hours overall than what he has previously had, despite his ongoing need for care.

Findings of Fact

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

1. Appellant is under the age of 21 and has a primary diagnosis of autism, and relevant medical history including pervasive developmental disorder (PDD) and cognitive deficits; he is nonverbal; he demonstrates self-stimulatory behavior, resistance to care, and impulsive behavior without any safety awareness; he smears feces and urinates on the floor; he is incontinent of bladder and bowel; has recurrent conjunctivitis, insomnia, chronic infections in the groin area, unsteady gait, and is a flight risk.
2. On December 9, 2021, Appellant, through his PCM agency, submitted a prior authorization (PA) request to MassHealth seeking approval of 37 hours and 15 minutes per-week of day/evening PCA hours for school weeks, 42 hours and 45 minutes per-week of "day/evening" services for vacation weeks; and two-hours per night (14 hours per week) of nighttime PCA services for dates of service beginning December 15, 2021 and ending December 14, 2022.
3. Through a letter dated December 15, 2021, MassHealth notified Appellant that it approved the requested nighttime PCA hours; however, modified his request by approving 26 hours of day/evening PCA services per-week for school weeks and 27 hours of day/evening services for vacation weeks.
4. MassHealth modified the PA by reducing the times requested for the following activities of daily living (ADLs) and independent activities of daily living (IADLs): (1) Transfers/mobility, (2) grooming (hair care and oral care), (3) eating, (4) bladder care, (5) bowel care, (6) meal preparation, and (7) laundry.
5. At the hearing, MassHealth agreed to restore the time requested for transfers (5x2x5), oral care (5x1x7), bowel care (20x2x7), and laundry (90 minutes per week); and the

parties came to agreed-upon times for both hair care (1x3x7) and meal preparation (60 minutes per day).

Eating

6. Appellant, through his PCM agency, requested assistance with “eating” at 20 minutes, two-times per day during school weeks (20x2x7) and three times daily for vacation weeks (20x3x7).
7. Appellant requires moderate assistance with both eating and drinking; causes of choking hazards include overstuffing his mouth, inability to stay on task, and complete lack of safety awareness.
8. Appellant requires controlled portions; he is unable to manage utensils due to poor fine motor coordination; and demonstrates sloppy eating and often spills; will frequently put hands in food, which he then wipes on clothes and in hair.
9. MassHealth modified the requested time for eating by approving five minutes, two times per-day for school weeks (5x2x7), and three times daily for vacation weeks (5x3x7).

Bladder Care

10. Appellant, through his PCM agency, requested assistance with “bladder care” at 10 minutes, 6 times per-day, five days per-week (10x6x5) for school days and 10 minutes, 9 times per-day, two days per-week (10x9x2) for weekends.
11. The PCA physically assists with toilet hygiene, clothing management, changing his absorbent product, incontinence care as needed.
12. MassHealth made the following two modifications to Appellant’s request for bladder care: (1) MassHealth reduced the time-per-episode from 10 minutes (as requested) to 7 minutes per-episode; and (2) reduced the frequency of bladder care episodes on weekends from 9 episodes (as requested) to 8 episodes per-day (7x8x2).
13. At hearing, Appellant accepted MassHealth’s modification to 7 minutes per-episode but disputed the reduction in weekend bladder care episodes.
14. In addition to bladder care, Appellant is approved for two episodes daily of bowel care, for a total of 10 toileting episodes per day.

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:³ 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).

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 in performing his ADLs and IADLs. MassHealth regulations provide the following regarding the scope of ADLs within the PCA program:

(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;

³ 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.

- (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 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)

Based on the evidence presented at hearing, Appellant successfully demonstrated that he requires 20 minutes of hands-on assistance with eating, per episode, as requested. In its December 15th notice, MassHealth modified Appellant’s request for “eating” by approving only five minutes for each episode (5x2x7 for school weeks and 5x3x7 for vacation weeks). The evidence indicates, however, that Appellant requires significant hands-on assistance with both eating and drinking. Documentation indicates that Appellant is unable to manage utensils due to poor fine motor coordination. As explained by Appellant’s mother, the PCA will poke Appellant’s food with a fork and bring it to Appellant’s hand or mouth to eat. Additionally, Appellant has numerous behavioral and sensory tendencies which increase the time and amount of care needed to feed Appellant. As such, the PCA not only physically assists in bringing food to Appellant’s mouth to feed him, but also provides hands-on assistance to control resistant behaviors such as smearing food on his clothes and hair or attempting to leave before finishing his meal. Appellant’s mother testified that even twelve minutes – which MassHealth offered at hearing – would be insufficient for the hands-on assistance required and not including time spent waiting, verbally redirecting, or supervising. Based on the foregoing, twenty minutes for each episode of “eating” is appropriate and supported by the program regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410(A)(6).

The appeal is APPROVED-in-part as to the issue of eating.

Bladder Care

Appellant, however, did not meet his burden in demonstrating that MassHealth incorrectly modified the weekend “bladder care” episodes from the requested nine episodes per day, to eight episodes per day. The request for nine bladder care episodes was made, in part, based on a toileting program requiring toileting at half-hour intervals. MassHealth persuasively testified that the toileting program has been in effect over a year and is not recognized by MassHealth as a long-term standard of care. Rather, the industry standard-of-care for toileting is every-two hours. With only 18 day/evening hours in a day, and in consideration of the fact that Appellant is approved for two “bowel care” episodes per day, the eight additional toileting episodes are appropriate to meet his bladder care needs. Appellant did not present sufficient evidence to prove beyond a preponderance of the evidence that it is medically necessary for the PCA to toilet Appellant more frequently than what was approved by MassHealth.

The appeal is DENIED-in-part as it pertains to the modified weekend frequency of 8 episodes per day; and DISMISSED-in-part as Appellant accepted MassHealth’s modification of seven minutes per each bladder care episode.

Resolved ADLs/IADLs

Finally, the appeal is DISMISSED-in-part to the modifications that the parties agreed to during the hearing, as follows: transfers (5x2x5), oral care (5x1x7), hair care (1x3x7), bowel care (20x2x7), laundry (90 minutes per week), and meal preparation (60 minutes per day).

Order for MassHealth

In accordance with this Decision and the agreements made during hearing, implement the following times/frequencies for the modified ADLs and IADLs:

- Mobility/transfers: 5x2x5;
- Eating: 20x2x7 (school weeks); 20x3x7 (vacation weeks);
- Grooming: oral care: 5x1x7 and hair care 1x3x7;
- Bladder care: 7x6x5 (school days) and 7x8x2 (weekends);
- Bowel care: 20x2x7;
- Laundry: 90 minutes per week;
- Meal preparation: 60 minutes per day.

Changes are to be implemented retroactively to the start of the current PA period.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]

[REDACTED]