

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2200815
Decision Date:	4/12/2022	Hearing Date:	03/04/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearance for MassHealth:

Via telephone:
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; Denied in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	4/12/2022	Hearing Date:	03/04/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Parent/Guardian/ Surrogate
Hearing Location:	Quincy Harbor South	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 January 4, 2022, 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 February 2, 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. The appellant was represented at hearing via telephone by his mother, who is also his surrogate and legal guardian.

The MassHealth representative testified that the documentation submitted shows that the appellant is a MassHealth member under the age of 65 with primary diagnoses of autism, cognitive disability, limited speech, obsessive compulsive disorder (OCD), pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections (PANDAS) (exacerbating autism), significant increase in OCD symptoms related to PANDAS, pica, and medium-chain acyl-CoA dehydrogenase (MCAD).

The MassHealth representative testified that the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services on December 29, 2021 requesting 53 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per night for dates of service of January 12, 2022 through January 11, 2023. MassHealth modified the request to 32 hours and 15 minutes of day/evening hours per week and 2 nighttime hours per night.

At hearings, parties were able to resolve disputes related to PCA assistance with the following activities of daily living (ADLs): mobility¹, transfers², repositioning³, bathing⁴, grooming: oral care⁵, and grooming: hair⁶. PCA assistance with the ADLs of passive range of motion, dressing/undressing, and eating remain at issue.

Passive Range of Motion

The appellant requested 5 minutes, 2 times per day, 7 days per week each for the upper left extremity, upper right extremity, lower left extremity, and lower right extremity. MassHealth did not approve the request because the appellant has the functional ability to move his limbs.

The appellant's representative testified that the appellant has poor range of motion and has gotten more contractures. She explained that the exercises help him a lot, are critical to his well-being, and make his range of motion possible. The appellant does not know how to do or count the exercises on his own and the PCA has to hold his limbs and move them. The program was created by a physical therapist who instructed the appellant's mother and PCA on how to do them. The appellant's mother also described his morning routine where he walks to the kitchen (with hands-on guidance) and then opens up the refrigerator and cabinets.

¹ Mobility was modified to 5 minutes, 6 times per day, 7 days per week.

² Transfers were modified 3 minutes, 6 times per day, 7 days per week.

³ Repositioning was fully restored as requested to 3 minutes, 4 times per day, 7 days per week.

⁴ Bathing was modified to 40 minutes, 1 time per day, 7 days per week for a shower/bath and 15 minutes, 1 time per day, 7 days per week for a quick wash. The time requested for a separate hair wash was not approved.

⁵ Grooming: oral care was fully restored as requested to 3 minutes, 3 times per day, 7 days per week.

⁶ Grooming: hair was fully restored as requested to 3 minutes, 1 time per day, 7 days per week.

The MassHealth representative explained that passive range of motion exercises are generally for someone who cannot independently perform active range of motions. Based on testimony, the appellant ambulates and can open the refrigerator which shows that he has the upper and lower body ability to move on his own. The exercises the appellant's representative described are active range of motion or physical therapy, which are not part of the PCA program. She also noted that the appellant was not approved for any PCA time with passive range of motion in last year's prior authorization.

Dressing and Undressing

The appellant requested 20 minutes, 2 times per day, 7 days per week for dressing and 16 minutes 2 times per day for undressing. MassHealth approved 20 minutes, 1 time per day for dressing and 15 minutes, 1 time per day for undressing.

The MassHealth representative explained that usually dressing (consisting of getting out of pajamas and into clothes) is considered the morning activity and undressing (consisting of getting out clothes and into pajamas) is considered the evening activity. The standard of care is usually once in the morning (dressing) and once in the evening (undressing).

The appellant's representative explained that the appellant does not go to a day program and is not really a candidate for one, but he will go out during the day if he can. She testified that the appellant gets dressed in the morning after his bathroom routine. Then at around 5:30PM, he goes to the bathroom, gets undressed, and has a shower. After his shower, he gets put in lounge- or pajama-type clothes. He then has dinner and an evening activity. After the evening activity, he goes up to bed and changes into a sleep shirt. The appellant needs a shower at night and while this timing works well for the PCA's schedule, it has to be done early in the evening otherwise, he is not stable enough to do it. He would not be stable enough to do it at 8:00PM, after dinner and the evening activity. Additionally, dinner is messy, so he cannot sleep in the clothes he has on at dinner.

The MassHealth representative noted that the appellant was only approved one time per day for dressing and undressing in last year's prior authorization. Additionally, MassHealth would not approve extra time to accommodate the PCA's schedule. She was willing to approve 20 minutes, 1 time per day, 7 days per week for dressing and 20 minutes, 1 time per day, 7 days per week for undressing (or 15 minutes, 1 time per day, 7 days per week plus 5 minutes, 1 time per day, 7 days per week). The additional time for undressing would be for getting into the nightshirt before bed.

Eating

The appellant requested 20 minutes, 4 times per day, 7 days per week and 5 minutes, 2 times per day, 7 days per week (for a snack) for eating. MassHealth modified the request to 15 minutes, 4 times per day, 7 days per week and did not approve the time requested for snacks because the time requested was longer than ordinarily required.

The MassHealth representative explained that based on the documentation submitted, some of the time was for supervision which is not covered by the PCA program. She asked the appellant's representative if the appellant is able to feed himself.

The appellant's representative responded that the appellant has some ability to feed himself. Because of the appellant's digestive issues and to keep him from inhaling his food, the PCA has to get the food ready, break it down into small servings, and then give the appellant each serving separately so he can only eat a certain amount at a time. There are usually three to four minutes between servings. They use a timer and monitor the speed at which he eats. The appellant puts the food in his mouth himself, although sometimes they have to take away his utensils if he is shoving food in his mouth.

The MassHealth representative explained that time for supervision, cueing, or waiting is not covered by the PCA program. Additionally, time for eating or feeding is considered putting the food into the patient's mouth. What the appellant described fits more into the category of meal preparation. The MassHealth representative stated that meal preparation is an instrumental activity of daily living (IADL) which is considered the responsibility of the legal guardian if they live in the same household.

The appellant's representative testified that she cannot be home for every meal for meal preparation as she also takes care of her elderly mother three times per week.

MassHealth responded that there was no time requested for meal preparation; however, the appellant could request an adjustment through the PCM agency if she needs to be out of the house for some meal preparation.

Findings of Fact

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

1. The appellant is a MassHealth member under the age of 65 with primary diagnoses of autism, cognitive disability, limited speech, OCD, PANDAS (exacerbating autism), significant increase in OCD symptoms related to PANDAS, pica, and MCAD (Testimony and Exhibit 5).
2. MassHealth received a prior authorization request for PCA services on December 29, 2021 requesting 53 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per night for dates of service of January 12, 2022 through January 11, 2023 (Testimony and Exhibit 5).
3. MassHealth modified the request to 32 hours and 15 minutes of day/evening hours per week and 2 nighttime hours per night (Testimony and Exhibit 5).
4. At hearing, the parties were able to resolve disputes related to PCA assistance with the following ADLs: mobility, transfers, repositioning, bathing, grooming: oral care, and

grooming: hair (Testimony).

5. The appellant seeks time for PCA assistance with passive range of motion as follows: 5 minutes, 2 times per day, 7 days per week each for the upper left extremity, upper right extremity, lower left extremity, and lower right extremity (Testimony and Exhibit 5).
6. MassHealth denied the request and did not approve any time for passive range of motion (Testimony and Exhibit 5).
7. The appellant has the functional ability to move his limbs (Testimony).
8. The appellant seeks time for PCA assistance with dressing and undressing as follows: 20 minutes, 2 times per day, 7 days per week for dressing and 16 minutes 2 times per day for undressing (Testimony and Exhibit 5).
9. MassHealth approved 20 minutes, 1 time per day for dressing and 15 minutes, 1 time per day for undressing (Testimony and Exhibit 5).
10. The appellant gets dressed in the morning after his bathroom routine. Then at around 5:30PM, he gets undressed and has a shower. After his shower, he gets put in lounge- or pajama-type clothes. He then has dinner and an evening activity. After the evening activity, he goes up to bed and changes into a sleep shirt (Testimony).
11. The appellant seeks time for PCA assistance with eating as follows: 20 minutes, 4 times per day, 7 days per week and 5 minutes, 2 times per day, 7 days per week (for a snack) for eating (Testimony and Exhibit 5).
12. MassHealth modified the request to 15 minutes, 4 times per day, 7 days per week and did not approve the time requested for snacks (Testimony and Exhibit 5).
13. The appellant can feed himself, but the PCA has to get the food ready, break it into small servings, and then give the appellant each serving separately to aid with his digestive issues and keep him from eating too fast. There are three to four minutes between servings and the PCA uses a timer and monitors the speed at which the appellant eats (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 because at hearing the parties were able to resolve the disputes related to PCA assistance with mobility, transfers, repositioning, bathing, grooming: oral care, and grooming: hair.

Regarding the appellant's request for passive range of motion, the appeal is denied. The appellant has the functional ability to move all of his limbs. The actions described by the appellant's representative fall under active range of motion, which is not covered by the PCA program. For this reason, the appellant has not shown that PCA assistance with passive range of motion is medically necessary.

Regarding the appellant's request for dressing and undressing, the appeal is approved in part and denied in part. The appellant gets dressed in the morning then undressed, showered, and put into pajama-like clothes in the early evening. After dinner and an evening activity, the appellant gets put into a nightshirt. Based on the appellant's testimony, at hearing MassHealth agreed to approve 20 minutes, 1 time per day, 7 days per week for dressing. To account for the change into the nightshirt in the evening, for undressing MassHealth agreed to approve 20 minutes, 1 time per day, 7 days per week (or 15 minutes, 1 time per day, 7 days per week and 5 minutes, 1 time per day, 7 days per week). The appellant has not shown that any further PCA assistance with dressing or undressing is medically necessary and the appellant is approved for 20 minutes, 1 time per day, 7 days per week for dressing and 20 minutes, 1 time per day, 7 days per week for undressing.

Regarding the appellant's request for eating, the appeal is denied. The appellant has not demonstrated that PCA assistance with eating takes longer than the time approved. The appellant can feed himself and requires the PCA to get the food ready, break it down into multiple servings, and give him the servings with three to four minutes in between servings. They use a timer and monitor the speed at which he eats. Eating involves the hands-on activity of feeding and putting the food into the appellant's mouth. The tasks described by the appellant fall mostly under the IADL of meal preparation or involve cueing, supervision, or wait time, which is not covered by

the PCA program. For these reasons, the appellant has not shown that any further PCA assistance with eating is medically necessary.

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

Order for MassHealth

Approve the appellant for 20 minutes, 1 time per day, 7 days per week for dressing and 20 minutes, 1 time per day, 7 days per week for undressing. Implement the agreements made at hearing for mobility, transfers, repositioning, bathing, grooming: oral care, and grooming: hair.

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