

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in Part;
Dismissed in Part;
Denied in Part

Appeal Number: 2202125

Decision Date: 5/31/2022

Hearing Date: 04/26/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliott, RN, Optum

Interpreter:

Spanish



*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; Dismissed in Part; Denied in Part	Issue:	Personal Care Attendant Services
Decision Date:	5/31/2022	Hearing Date:	04/26/2022
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	Parents of Minor Appellant
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.

Jurisdiction¹

Through a notice dated 03/16/2022, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 16 hours and 15 minutes (16:15) of day/evening hours per week plus 2 daily night time attendant hours to 14:30 day/evening hours per week plus 0 daily night time attendant hours for the dates of service from 05/05/2022 to 05/04/2023 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 12/20/2021 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA provider, Stavros, Inc. ("provider"), and is a re-evaluation request for the dates of service of 05/05/2022 to 05/04/2023. The appellant's PCA time is protected at 16:00 and 2 hours of nighttime attendant services pending this appeal. In the PA request for PCA services, the provider requested 16:15 day/evening hours per week plus 2 daily nighttime attendant hours. The appellant is [REDACTED] years of age and his primary diagnoses affecting his ability to function independently are autism and developmental delays (Exhibit 4).

The Optum representative testified that on 03/16/2022 MassHealth modified the PCA request to 14:30 day/evening hours per week. Nighttime attendant hours were denied. Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) tasks of grooming, toileting (bladder and bowel care), nighttime bladder care and in the instrumental activity of daily living (IADL) task of laundry.

Grooming

The appellant's provider requested on the appellant's behalf 4 minutes, 2 times per day, 7 days per week (4 X 2 X 7²) for assistance with brushing his teeth, 10 X 1 X 7 for assistance with nail care and 3 X 2 X 7 for assistance with applying lotion. MassHealth testified that the time requested was more than is normally required for someone with the appellant's needs.

The appellant's mother provided information about the appellant's grooming needs. She agreed that 1 X 2 X 7 was adequate for assistance applying lotion. After hearing

² PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

testimony from the appellant's mother at the fair hearing, MassHealth restored all time as requested for assistance with oral and nail care.

Toileting

The appellant's PCA provider requested 6 X 8 X 5 (weekdays) and 6 X 6 X 2 (weekends) for assistance with bladder care. The provider noted that the appellant is dependent for hygiene, change of absorbent product, and clothing readjustment/change if wet or soiled. The appellant's provider also requested 10 X 3 X 7 for assistance with bowel care, noting that he needs additional assistance with hygiene after a bowel movement.

MassHealth modified the time requested for bladder care to 5 X 6 X 5 (weekdays) and 5 X 6 X 2 (weekends) and the time requested for bowel care to 10 X 2 X 7. The MassHealth representative testified that the time requested exceeds the normal time necessary for someone with the appellant's needs.

The appellant's mother testified that the appellant needs assistance 4 times per day on school days and 8 times per day on the weekends. Each instance takes 5 to 6 minutes, explaining that sometimes the appellant leaves the bathroom naked and needs to be redirected and redressed. Also, the appellant has accidents and needs his clothing changed. This takes place daily, sometimes more than once per day.

Nighttime Attendant Hours

The appellant's PCA provider requested time each night for assistance with bladder care. The MassHealth representative testified that if any time is approved for nighttime assistance, the minimum of 2 hours per night is approved. The provider noted that the appellant needs assistance at night to change his diaper. "He will get out of bed and wake family to change or pull off, doesn't like urine/feces on skin, and he makes a mess. He has irregular sleep patterns. He needs to be taken by hand and led back to bed after diaper change. The appellant's father works, and his mother has care of active toddler and infant."

MassHealth denied the time requested for assistance during the nighttime with bladder care. The MassHealth representative first testified that bladder care for a 12 year old is a "parental responsibility," however after questioning from the hearing officer, she stated it was not a parental responsibility.

The appellant's mother testified that the appellant needs assistance with bladder care at night. He gets up at night and gets "dirty." He also spreads his feces on the walls and on the sheets. The PCA must change the sheets.

Laundry

The appellant's provider requested 30 X 1 X 1 for assistance with laundry. The provider noted that the requested assistance is for incontinence laundry which is done separately from family: wash, dry, fold and put away.

MassHealth denied the time requested for assistance with laundry. The MassHealth representative testified that assistance with laundry is a parental responsibility.

The appellant's mother testified that the appellant is incontinent and, as a result, there is more laundry that must be done for the appellant separately from the family's laundry.

Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, Stavros, Inc. ("provider"). It is a re-evaluation request for the dates of service of 05/05/2022 to 05/04/2023 (Testimony; Exhibit 4).
2. In the PA request for PCA services, the provider requested 16:15 day/evening hours per week plus 2 daily nighttime attendant hours (Testimony; Exhibit 4).
3. The appellant's PCA time is protected at 16:00 day/evening hours per week plus 2 daily nighttime attendant hours pending this appeal (Testimony).
4. The appellant is ■ years of age and his primary diagnoses affecting his ability to function independently are autism and developmental delays (Testimony; Exhibit 4).
5. On 03/16/2022 MassHealth modified the PCA request to 14:30 day/evening hours per week. MassHealth denied the nighttime attendant hours (Testimony; Exhibits 1 and 4).
6. The appellant's provider requested on the appellant's behalf 4 minutes, 2 times per day, 7 days per week (4 X 2 X 7) for assistance with brushing his teeth, 10 X 1 X 7 for assistance with nail care and 3 X 2 X 7 for assistance with applying lotion (Testimony; Exhibits 1 and 4).
7. At the fair hearing, MassHealth restored all time as requested for assistance with oral and nail care (Testimony; Exhibit 4).
8. At the fair hearing, the appellant's mother testified that 1 X 2 X 7 is enough time for assistance with applying lotion (Testimony).

9. The appellant's PCA provider requested 6 X 8 X 5 (weekdays) and 6 X 6 X 2 (weekends) for assistance with bladder care. The provider noted that the appellant is dependent for hygiene, change of absorbent product, clothing readjustment/change if wet or soiled (Testimony; Exhibit 4).
10. The appellant's provider requested 10 X 3 X 7 for assistance with bowel care, noting that he needs additional assistance with hygiene after a bowel movement (Testimony; Exhibit 4).
11. MassHealth modified the time requested for bladder care to 5 X 6 X 5 (weekdays) and 5 X 6 X 2 (weekends) and the time requested for bowel care to 10 X 2 X 7 (Testimony; Exhibit 4).
12. The appellant's mother testified that the time for assistance with toileting is necessary because the appellant "has accidents," sometimes at school, and frequently leaves the bathroom while undressed (Testimony).
13. The appellant's PCA provider requested time each night for assistance with bladder care. The provider noted that the appellant needs assistance at night to change his diaper. "He will get out of bed and wake family to change or pull off, doesn't like urine/feces on skin, and he makes a mess. He has irregular sleep patterns. He needs to be taken by hand and led back to bed after diaper change. The appellant's father works, and his mother has care of active toddler and infant" (Testimony; Exhibit 4).
14. MassHealth denied the request for PCA assistance during the nighttime hours (Testimony; Exhibit 4).
15. The appellant's provider requested 30 X 1 X 1 for assistance with laundry. The Provider noted that the requested assistance is for incontinence laundry which is done separately from family: wash, dry, fold and put away (Testimony; Exhibit 4).
16. MassHealth denied the request for assistance with laundry (Testimony; Exhibit 4).
17. The appellant's representative testified that the modified time for laundry is adequate (Testimony; Exhibit 4).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

- (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/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 the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth modified the appellant's request for PCA time. In the area of grooming (oral and nail care), MassHealth restored all time, as requested, at the fair hearing. Thus, this portion of the appeal is dismissed.

In the areas of grooming (skin care – lotion) and laundry, the appellant's mother agreed that the modified time would be adequate. Accordingly, this portion of the appeal is denied.

In the area of toileting – bladder care, the provider requested 6 X 8 X 5 (weekdays) and 6 X 6 X 2 (weekends). MassHealth modified the request to 5 X 6 X 5 and 5 X 6 X 2, respectively. In terms of the amount of time required for assistance with the task, the appellant argued that it takes 5-6 minutes. The mother testified that on weekdays, the appellant needs assistance 4 times per day and on weekends, 8 times per day. MassHealth's modifications are supported by the testimony and documentary evidence. The appellant's representative did not explain the need for assistance in a manner

consistent with the time required for the task and the frequency. This portion of the appeal is denied.

In the area of toileting – bowel care, the provider requested 10 X 3 X 7. MassHealth modified the request to 10 X 2 X 7. The appellant's mother testified that the appellant does not wear diapers during the day and he frequently has "accidents." She testified that the appellant needs assistance with bowel care "2, 3, or 4 times per day," sometimes at school. Because the appellant's representative was unable to explain why he needs assistance more than 2 times per day while at home, MassHealth's modification is supported by the facts in the hearing record as well as the regulations. This portion of the appeal is denied.

Nighttime attendant hours were requested by the provider, as justified by the request for assistance with bladder care. MassHealth first denied the time based on the justification that bladder care for a 12-year old is a parental responsibility. At the fair hearing, the MassHealth representative testified that bladder care for a 12-year old is not a parental responsibility. The appellant's mother testified that the appellant needs assistance with toileting during the nighttime hours and frequently requires that his bedding is changed. The appellant's representative has shown that MassHealth's decision to deny nighttime attendant hours is incorrect. Thus, this portion of the appeal is approved.

For the foregoing reasons, this appeal is dismissed in part; approved in part; and denied in part.

Order for MassHealth

Release aid pending. Restore all time, as requested, in the areas of nighttime attendant hours (2 hours per night), grooming – oral care (4 X 2 X 7) and nail care (10 X 1 X 1). With regard to other modifications, none.

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, Division of Medical Assistance, 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

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