

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2202320
Decision Date:	6/14/2022	Hearing Date:	05/06/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

 Father

Appearance for MassHealth:

Via telephone:

Mary-Jo Elliott, RN

Interpreter: Arunthati, ID# 264741, Bengali



*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:	6/14/2022	Hearing Date:	05/06/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	Father
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 March 22, 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 March 28, 2022 (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 is a minor who was represented at hearing via telephone by his father, who was assisted by an interpreter.

The MassHealth representative testified that the documents submitted show that the appellant has a primary diagnosis of autism with increased behavioral issues. On March 10, 2022, the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services requesting 17.5 day/evening hours per week during school weeks and 19.25 day/evening hours per week during vacation weeks and 2 nighttime hours per night for dates of services of April 27, 2022 through April 26, 2023. MassHealth modified the request to 13.0 day/evening hours per week during school weeks and 14.25 day/evening hours per week for vacation weeks and approved the 2 nighttime hours per night.

MassHealth made modifications to the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): mobility, grooming – nail care, grooming – hair, eating, other healthcare needs – snacks, and special needs –linen change related to incontinence. At hearing, parties were able to resolve the disputes related to mobility¹ and grooming – nail care².

Grooming – Hair

The appellant requested 5 minutes, 1 time per day, 7 days per week for hair care for both school and vacation weeks. MassHealth modified the request to 1 minute, 1 time per day, 7 days per week.

The MassHealth representative explained that this part of hair care is only for combing and brushing. Washing the hair was approved as part of the time included in bathing. As such, 5 minutes per day is longer than ordinarily required.

The appellant's father testified that it is not possible to do his hair in 1 minute and it takes 5 minutes. The appellant wants it done a certain way, with brushing and hair spray. But the father does not like how the appellant wants to do his hair and cannot let him leave the house that way. The appellant's hair is not long, but not too short. The father stated that he needs more time than last year and instead, the hours were decreased. He explained that his son is bigger than last year, and it takes longer to get him ready.

MassHealth offered to increase the time to 2 minutes, 1 time per day, 7 days per week.

¹ Mobility (school van safety transfers) was fully restored as requested to 5 minutes, 2 times per day, 5 days per week during school weeks.

² Nail care was modified to 15 minutes per week for both school and vacation weeks.

Eating

The appellant requested 15 minutes per meal at various frequencies depending on whether it is a school or vacation week. MassHealth modified it to 10 minutes per meal.

MassHealth testified that the comments state the appellant is fed all meals and snacks to ensure adequate nutritional intake. She asked the appellant's father if the appellant can feed himself and able to use utensils.

The appellant's father testified that the appellant needs to constantly be reminded to eat, otherwise he will play games and not eat anything. They want him to learn how to use a spoon. He can eat something like a cookie by himself, but with lunch or dinner he needs help. If it is a meal such as fish, rice, or chicken, the appellant will not touch it with his hands and he will scream. The PCA has to feed the appellant the entire meal while coaxing him to eat.

Other Healthcare Needs – Snacks

The appellant requested 5 minutes for snacks at various frequency depending on whether it is a school or vacation week. MassHealth denied the request and did not approve any time for snacks.

The MassHealth representative testified that the time was denied because the appellant has the ability to feed himself a snack.

The appellant's father testified that a snack usually consists of a fruit or cookie. The appellant takes one at a time and needs to be reminded to take it and eat it. If he is not reminded, he will not pay attention and he will not eat it.

The MassHealth representative responded that time for reminders, coaching, and supervision are not approved under the PCA program.

Other Special Needs

Under the IADL of "Other Special Needs," the appellant requested 15 minutes per week for PCA assistance with linen changes related to incontinence. MassHealth denied the request and did not approve any time for it.

The MassHealth representative testified that incontinence care was approved under toileting for both day/evening and nighttime hours and it would be considered a duplication of services. Additionally, IADLs such as laundry are the responsibility of the parent or legal guardian.

The appellant's father stated that the appellant has accidents. There is only one bathroom in their home and the appellant will not wait for it.

Findings of Fact

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

1. The appellant is a minor MassHealth member with a primary diagnosis of autism with increased behavioral issues (Testimony and Exhibit 4).
2. On March 10, 2022, MassHealth received a prior authorization request for PCA services requesting 17.5 day/evening hours per week during school weeks and 19.25 day/evening hours per week during vacation weeks and 2 nighttime hours per night for dates of services of April 27, 2022 through April 26, 2023 (Testimony and Exhibit 4).
3. On March 22, 2022, MassHealth modified the request to 13.0 day/evening hours per week during school weeks and 14.25 day/evening hours per week for vacation weeks and approved the 2 nighttime hours per night (Testimony and Exhibit 1).
4. The appellant filed this appeal in a timely manner on March 28, 2022 (Exhibit 2).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with mobility and grooming – nail care (Testimony).
6. The appellant seeks time for PCA assistance with grooming – hair care as follows: 5 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
7. MassHealth modified the request to 1 minutes, 1 time per day, 7 days per week, but at hearing agreed to increase the time to 2-minutes, 1 time per day, 7 days per week (Testimony and Exhibits 1 and 4).
8. The appellant does not have long hair. His hair requires brushing and hair spray (Testimony).
9. The appellant seeks time for PCA assistance with eating as follows: 15 minutes per meal (Testimony and Exhibit 4).
10. The appellant can eat some finger foods with cueing and prompting but the PCA needs to feed him most meals (Testimony).
11. The appellant seeks time for PCA assistance with other healthcare needs – snacks as follows: 5 minutes at various frequencies depending on whether it was a school or vacation week (Testimony and Exhibit 4).
12. MassHealth denied the request because the appellant has the ability to feed himself a snack (Testimony and Exhibit 4).
13. The appellant seeks time for PCA assistance with other special needs as follows: 15 minutes

per week for linen changes related to incontinence (Testimony and Exhibit 4).

14. The appellant was approved for PCA assistance with incontinence care under toileting for both day/evening and nighttime hours (Testimony and Exhibit 4).

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 (emphasis added).

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 and grooming – nail care.

Regarding the appellant's request for PCA assistance with grooming – hair care, the appeal is approved in part and denied in part. At hearing, MassHealth agreed to increase the approved time for hair care to 2 minutes, 1 time per day, 7 days per week. The appellant has not demonstrated that PCA assistance with hair care takes longer than the additional time approved. The appellant does not have long hair. Hair care involves time for brushing and combing. Even with the hair spray involved in styling the appellant's hair, the appellant has not shown that it takes longer than 2 minutes. For this reason, the appellant has not shown that additional PCA assistance with grooming – hair care is necessary. The appellant is approved for 2 minutes, 1 time per day, 7 days per week for grooming – hair care.

Regarding the appellant's request for PCA assistance with eating, the appeal is approved. While the appellant can feed himself some finger foods, he must be fed most of the meal by the PCA otherwise he does not eat. The appellant's father wants him to learn how to use a spoon, but he is

not able to currently. The PCA must physically assist with eating and drinking. For this reason, the appellant is approved for 15 minutes per meal at the frequency requested for school and vacation weeks.

Regarding the appellant's request for PCA assistance with other healthcare needs – snacks, the appeal is denied. As the appellant's father testified, the appellant can feed himself a cookie or fruit, but needs to be prompted and reminded to eat. Time for cueing, prompting, supervision, guiding, or coaching are not included under the PCA program. For this reason, the appellant has not shown that PCA assistance with other healthcare needs – snacks is medically necessary.

Regarding the appellant's request for PCA assistance with linen changes related to incontinence (under the IADL of other special needs), the appeal is denied. The appellant was already approved for incontinence care under toileting for both day/evening and nighttime hours. Additionally, IADLs such as laundry are the responsibility of the parent or legal guardian. The appellant has not shown why this additional time is medically necessary.

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

Order for MassHealth

Approve the appellant for 2 minutes, 1 time per day, 7 days per week for grooming – hair care. Approve the appellant for 15 minutes per meal as requested for eating during vacation and school weeks. Implement the agreements made at hearing for mobility and grooming – nail care.

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