

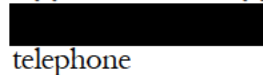
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Remanded	Appeal Number:	2202802
Decision Date:	6/28/2022	Hearing Date:	05/20/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



(the appellant's father) *via* telephone

Appearance for MassHealth:

Cheryl Eastman RN *via* telephone



*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; Remanded	Issue:	Personal Care Attendant (PCA)
Decision Date:	6/28/2022	Hearing Date:	05/20/2022
MassHealth's Rep.:	Cheryl Eastman RN	Appellant's Rep.:	
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 April 4, 2022, MassHealth modified the appellant's prior authorization (PA) request for MassHealth PCA services. (See 130 CMR 450.204; 422.000 *et seq* and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on April 7, 2022. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request for PCA services is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204 and 422.000 *et seq*, in determining that the PA request for PCA services should be modified.

Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The appellant is an individual under the age of 25 with a primary diagnosis of autism spectrum disorder. (Ex. 4, pp. 8-9). The appellant's prior medical history further states the appellant "speaks few words - perseverates, short attention span, incontinence of bowel and bladder. Global Developmental Delays, Congenital Hip Dysplasia, expressive/receptive Aphasia, Echolalia. Obesity,

Sleep Apnea. ER via ambulance approximately 5x (2020) d/t seizure activity.” (Ex. 4, p. 9). On March 9, 2022, the appellant’s guardian requested and verbally consented to the personal care management agency’s (PCM) reevaluation to be completed by telehealth rather than in-person.¹ (Ex. 4, p. 9). The appellant’s guardian reported the appellant had frequent falls because of seizure activities. (*Id.*). The appellant’s guardian is following up with a psychiatrist because of an increase in behaviors, such as sneaking out of the house without clothes, risk for injury, and throwing things. (*Id.*). The guardian reported the appellant requires total care, 24/7 supervision and redirection. (*Id.*). The appellant’s father added that the appellant has been diagnosed with obsessive compulsive disorder (OCD). (*Id.*). The evaluator stated that the appellant attends a day program from Monday through Friday. (*Id.*). The guardian was requesting more PCA time because of an increase in the appellant’s behaviors and her worsening physical condition. (*Id.*).

On March 24, 2022, the PCM submitted a PCA reevaluation request for 36 hours of day and evening services and two hours of service per night for one year. (Ex. 1; Ex. 4, pp. 6, 8-34). In a notice dated April 4, 2022, MassHealth approved 29 hours, 15 minutes of day and evening services and two hours of service per night from April 19, 2022 through April 18, 2023. (Ex. 1; Ex. 4, p. 6). MassHealth made modifications to the time requested for three activities of daily living (ADLs) and one instrumental ADL (IADL). (*Id.*).

1. Dressing and Undressing

The PCM requested five minutes, six times a day, seven days per week for dressing, and five minutes, one time per day, seven days a week for undressing. (Ex. 4, p. 16). The PCM described dressing activities for the appellant as “Physical assist upper extremity dressing; Physical assist lower extremity dressing; Physical assist with donning footwear.” (*Id.*). The PCM described undressing activities for the appellant as “Physical assist upper extremity undressing; Physical assist lower extremity undressing; Physical assist with removing footwear.” (Ex. 4, p. 17). The PCM included the following comments in its submission:

Dressing/Undressing: Max (A)[ssist] with U[pper] B[ody]/L[ower] B dressing/undressing including footwear. Consumer is more resistant and difficult to dress. She refuses to try most dressing tasks. If the dressing routine is not as she wants, she clutches her arms across her chest, and shakes hands while screaming/shrieking until PCA has complied. Consumer does not request with words in sentences - "it is" and PCA/family know what the gestures mean. If they can not [sic] understand, she will scream/shake until someone figures out what she wants. She requires frequent (A) with dressing, refuses to wear underwear/diaper at home. Will wear long T-shirt or nightgown but takes it off frequently and must be (A) to redress. Undressing; See Dressing: to keep habitual routine once a day. But consumer could not keep up with the routine. (*Id.*).

MassHealth modified this to five minutes, three times per day, seven days per week for both dressing and undressing. (Ex. 1; Ex. 4, p. 6). The MassHealth representative explained that the

¹ The PCM noted that it had discussed its use of personal protective equipment and its COVID-19 protocols, but the appellant’s guardian still requested a telehealth reevaluation. (Ex. 4, p. 9).

reason MassHealth modified these ADLs was that some of the time requested here was for social services such as respite care or babysitting and therefore not covered by the PCA program. (Id.).

The appellant's father stated that dressing and undressing are a real problem with the appellant. It is a battle to keep the appellant clothed. The appellant may stay in her clothes for an hour or two but that is very rare at this time. The appellant generally will take her clothes off as soon as she is dressed. The appellant will refuse to get dressed for two to three hours even though she will be freezing. The appellant will kick off her shoes within five minutes of the PCA getting them on her feet and will run outside in her bare feet even in the winter. The PCA will often have to assist with dressing 25 times per day, but the PCM is simply asking for six times per day.

The appellant's father added at this point that the appellant had been terminated from her day program that week. The appellant's father said the appellant was sweet but a handful. The day program informed them that she was hitting people constantly. The appellant will therefore be home during the week.

The MassHealth representative stated that MassHealth took into consideration part of what the appellant's father was saying. To qualify for PCA services at the frequency requested, medical necessity must be demonstrated. The MassHealth representative also emphasized that PCA services are for hands-on assistance and not for coaching. MassHealth understood that the appellant's taking her clothes off was behavioral and this was given extra consideration, which was why MassHealth approved a frequency of three times per day. The appellant's father stated that last year MassHealth approved 30.45 hours overall. At that time the appellant was still attending a day program with professionals and was behaving better. The appellant is now not in a day program and her behaviors have worsened. The MassHealth representative stated that MassHealth had more leniency and flexibilities last year, and there was a different reviewer. In the year previous to that, the appellant was not approved assistance with dressing and undressing. The standard of care was to allow only one time a day for dressing and one for undressing. MassHealth has already recognized that the appellant requires more frequency for this activity.

2. Bladder Care and Bowel Care

The PCM requested 10 minutes, six times a day, seven days a week for bladder care. (Ex. 4, p. 19). The PCM requested 20 minutes, four times per day, seven days per week for bowel care. (Id.). The PCM describes both bladder and bowel care as involving "Physical assist with toilet hygiene; Physical assist with clothing management; Physical assist with changing absorbant [sic] product." (Id.). In the comments, the PCM noted "PA with regular transfer. (D) for toilet hygiene/hand wash, clothing management and with changing absorbent product. PA to sit with her while she is on toilet and encourage her to void. She will hold urine as long as possible - approx 10 min." (Id.). For bowel care, the PCM stated that the appellant needed "...additional time for hygiene." (Id.). The PCM further commented: "Bowel training, usually has BM's at home refusing to wear diapers, incont in clothes and takes clothes off defecates on floor, when on toilet she acts as if she's holding back, stools formed and sometimes large balls, takes time to clean/attempt on toilet, hygiene and redress. Toileting program is 20 mins4x/day." (Id.).

MassHealth modified bladder care to 10 minutes, four times per day, for five days of the week; and ten minutes, six times per day, for two days of the week. (Ex. 1; Ex. 4, p. 6). MassHealth modified

bowel care to 20 minutes, three times per day, five days per week; and 20 minutes, four times per day, two days per week. (Id.).

The MassHealth representative stated that because the appellant was in a day program five days a week, the frequency for this was greater than ordinarily required for those five days. It is presumed that the appellant will receive a certain frequency bladder care at the time she is away from the home in the day program during the week. The frequency during the weekends when the appellant is at home remains what was requested. The appellant's father stated that since the appellant is no longer attending the day program there will need to be an adjustment and he will contact the PCM concerning this.

3. Meal Preparation

The PCM requested 10 minutes for breakfast, 20 minutes for lunch, and 30 minutes for dinner for five days per week. (Ex. 4, p. 24). The PCM commented that the appellant was "(D)[ependent] for all prep/clean up 5x weekly requested. Parents self-employed, need to work extended time period." MassHealth modified this to 45 minutes per day, five days per week. (Ex. 1; Ex. 4, p. 6).

The MassHealth representative stated that MassHealth approved the majority of the time for meal preparation, acknowledging that the appellant's parent worked, and she was dependent on others for meal preparation. The MassHealth representative stated that generally when a member lives with family, MassHealth expects that the family will assist with IADLs such as meal preparation.

The appellant's father stated that his and his wife's work schedules kept them out of the house frequently during the week. The appellant's father stated that he manages 20 properties and is on call 24 hours a day, seven days a week. Frequently he works from 7:30 a.m. until 7 p.m. or later. The appellant's wife is a realtor who minds phone from 9 a.m. to 5 p.m. and has added hours in the evening for showings.

Findings of Fact

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

1. The appellant is an individual under the age of 25. (Ex. 4, p. 8)
2. The appellant has a primary diagnosis of autism spectrum disorder and "speaks few words - perseverates, [has] [a] short attention span, incontinence of bowel and bladder. Global Developmental Delays, Congenital Hip Dysplasia, expressive/receptive Aphasia, Echolalia. Obesity, Sleep Apnea. ER via ambulance approximately 5x (2020) d/t seizure activity." (Ex. 4, p. 9). (Ex. 4, pp. 8-9).
3. On March 9, 2022, the PCM performed the reevaluation of the appellant's PCA's services by telephone and learned the following from the appellant's guardian and father:
 - a. The appellant has had frequent falls because of seizure activities.

- b. The appellant's guardian is following up with a psychiatrist because of an increase in behaviors, such as sneaking out of the house without clothes, putting her at risk for injury, and throwing things.
 - c. The appellant requires total care, 24/7 supervision and redirection.
 - d. The appellant has been diagnosed with OCD.
 - e. The guardian was requesting more PCA time because of an increase in the appellant's behaviors and her worsening physical condition. (Ex. 4, p. 9).
4. At the time of the reevaluation the appellant attended a day program from Monday through Friday but had been terminated as of the date of the hearing. (Ex. 4, p. 9; Testimony of the appellant's father).
 5. On March 24, 2022, the PCM submitted the PCA reevaluation request for 36 hours of day and evening services and two hours of service per night for one year. (Ex. 1; Ex. 4, pp. 6, 8-34).
 6. In a notice dated April 4, 2022, MassHealth approved 29 hours, 15 minutes of day and evening services and two hours of service per night from April 19, 2022 through April 18, 2023. (Ex. 1; Ex. 4, p. 6).
 7. MassHealth made modifications to the time requested for four ADLs and one IADL: dressing, undressing, bladder care, bowel care, and meal preparation. (Ex. 1; Ex. 4, p. 6).
 8. Dressing and Undressing
 - a. The PCM requested five minutes, six times a day, seven days per week for dressing, and five minutes, one time per day, seven days a week for undressing. (Ex. 4, p. 16).
 - b. The PCM described dressing activities for the appellant as "Physical assist upper extremity dressing; Physical assist lower extremity dressing; Physical assist with donning footwear." (Ex. 4, p. 16).
 - c. The PCM described undressing activities for the appellant as "Physical assist upper extremity undressing; Physical assist lower extremity undressing; Physical assist with removing footwear." (Ex. 4, p. 17).
 - d. The PCM included the following comments concerning dressing and undressing:

Dressing/Undressing: Max (A) with UB/LB dressing/undressing including footwear. Consumer is more resistant and difficult to dress. She refuses to try most dressing tasks. If the dressing routine is not as she wants, she clutches her arms across her chest, and shakes hands while screaming/shrieking until PCA has complied. Consumer does not request with words in sentences - "it is" and PCA/family know what the gestures mean. If they can not [sic]

understand, she will scream/shake until someone figures out what she wants. She requires frequent (A) with dressing, refuses to wear underwear/diaper at home. Will wear long T-shirt or nightgown but takes it off frequently and must be (A) to redress. Undressing; See Dressing; to keep habitual routine once a day. But consumer could not keep up with the routine. (Ex. 4, p. 17).

- e. The appellant's father confirmed that the appellant frequently undresses during the day, and it is a struggle to keep her clothed. (Testimony of the appellant's father).
- f. MassHealth modified these to five minutes, three times per day, seven days per week for both dressing and undressing. (Ex. 1; Ex. 4, p. 6).
- g. MassHealth modified these ADLs because some of the time requested was for social services such as respite care or babysitting and therefore not covered by the PCA program. (Ex. 1; Ex. 4, p. 6; Testimony of the MassHealth representative).

9. Bladder Care and Bowel Care

- a. The PCM requested 10 minutes, six times a day, seven days a week for bladder care. (Ex. 4, p. 19).
- b. The PCM requested 20 minutes, four times per day, seven days per week for bowel care. (Ex. 4, p. 19).
- c. MassHealth modified bladder care to 10 minutes, four times per day, for five days of the week; and ten minutes, six times per day, for two days of the week. (Ex. 1; Ex. 4, p. 6).
- d. MassHealth modified bowel care to 20 minutes, three times per day, five days per week; and 20 minutes, four times per day, two days per week. (Ex. 1; Ex. 4, p. 6).
- e. MassHealth modified the frequency of both bowel and bladder care based on the fact the appellant was attending a day program five days per week. (Testimony of the MassHealth representative).

10. Meal Preparation

- a. The PCM requested 10 minutes for breakfast, 20 minutes for lunch, and 30 minutes for dinner for five days per week. (Ex. 4, p. 24).
- b. The PCM commented that the appellant was "(D) for all prep/clean up 5x weekly requested. Parents self-employed, need to work extended time period." (Ex. 4, p. 24).
- c. Both the appellant's parents work long and irregular hours during the week. (Testimony of the appellant's father).

- d. MassHealth modified this to 45 minutes per day, five days per week. (Ex. 1; Ex. 4, p. 6).

Analysis and Conclusions of Law

The provider must request prior authorization reevaluation from the MassHealth agency as a prerequisite to continued payment for ongoing PCA services. (130 CMR 422.416). This must be done at least 21 calendar days before the expiration date of the current prior-authorization period to ensure continuation of PCA services. (130 CMR 422.416(C)). Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care (see 130 CMR 503.007 and 517.008). (130 CMR 422.416). MassHealth responds to reevaluation requests for prior authorization within 21 calendar days after a request for services. (130 CMR 422.416; 130 CMR 450.303(A)(5)).

Reevaluations must be conducted at least annually, accurately represent the member's need for physical assistance with ADLs and IADLs and consider the member's physical and cognitive conditions and resulting functional limitations to determine ability to benefit from PCA services. (130 CMR 422.422(D)). MassHealth covers activity time performed by a PCA in aiding with the ADLs and IADLs specified in the reevaluation, and as authorized by MassHealth. (130 CMR 422.411(A)).

ADLs include assistance with mobility, taking medications, bathing or grooming, dressing, passive range of motion exercises, eating, and toileting. (130 CMR 422.402; 130 CMR 422.410(A)). IADLs are specific activities that are instrumental to the care of the member's health and are performed by a PCA. (130 CMR 422.402). The regulations list several specific listed activities as IADLs, which include (relevantly) physically assisting a member to prepare meals and then clean-up afterwards. (130 CMR 422.410(B)). In determining the number of hours of physical assistance that a member requires for IADLs, the PCM must assume that when a member is living with family members, the family members will assist with most IADLs and that MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs. (130 CMR 422.410(C)(1), (3)).

A preponderance of the evidence shows that the appellant requires assistance with dressing six times a day. The PCM comments that the appellant is resistant and difficult to dress. The process of dressing the appellant does seem to involve quite a bit of cajoling, which MassHealth correctly noted is not compensable under the regulations. Both the PCM and the appellant's father state, however, that part of this process is that the appellant frequently removes her clothes, which then requires the PCA to assist with dressing the appellant again. This is compensable activity and the frequency of assistance should not have resulted in a reduction. Although the frequency of dressing requested is, as MassHealth stated, more than ordinarily required, there was sufficient evidence presented to support the conclusion that this was not an ordinary situation. The appellant requires assistance with dressing at the level requested, which was six times per day. The frequency for undressing should also revert to the one time per day the PCM requested.

The appellant's father did not demonstrate that the appellant required the requested frequency for assistance with bladder and bowel care, at least during the period that the appellant was attending a

day program for five days a week. MassHealth correctly pointed out that if the appellant was not in the home for part of the day for five days a week, the PCA would not need to assist the appellant during that time. MassHealth reasonably reduced the frequency for bladder and care to four times per day and bowel care to three times per day during the weekdays. Since, however, the appellant appears to no longer be attending a day program, MassHealth should revisit and redetermine the frequency for each of these activities moving forward.

As for meal preparation, the record shows that the appellant does have a need for the amount of time the PCM requested. The PCM commented that the appellant was dependent for all meal preparation and clean up five times per week because her parents were self-employed and needed to work extended hours. The appellant's father testified credibly and in detail concerning both the number of hours he and his wife work during the week. It appears that both are out of the house from the morning until the evening. Therefore, the sixty minutes (total) of assistance with meal preparation does not seem unreasonable under the individually described circumstances.

For the above stated reasons, regarding assistance with dressing, undressing, and meal preparation, the appeal is APPROVED.

Regarding bowel and bladder care, the appeal is DENIED but REMANDED to address the fact that the appellant is no longer attending a day program five days per week.

Order for MassHealth

Restore the frequency of assistance for dressing and undressing to what was requested. Restore the time requested for meal preparation. For bowel and bladder care, the appeal is remanded for MassHealth to determine the appropriate frequency given the appellant's circumstances.

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 on this decision, or if you otherwise 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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