

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2202892
Decision Date:	6/28/2022	Hearing Date:	05/31/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

 Mother

Appearance for MassHealth:

Via telephone:

Cheryl Eastman, 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:	6/28/2022	Hearing Date:	05/31/2022
MassHealth's Rep.:	Cheryl Eastman, RN	Appellant's Rep.:	Mother
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 March 30, 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 April 16, 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 mother.

The MassHealth representative testified that the documents submitted show that the appellant has a primary diagnosis of autism spectrum disorder and is nonverbal. On March 23, 2022, the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services requesting 15 hours and 0 minutes of day/evening hours per week and 2 nighttime hours per night for dates of services of April 2, 2022 through April 1, 2023. MassHealth modified the request to 9 hours and 30 minutes of day/evening hours per week 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): transfers, grooming – nail care, grooming – hair care, grooming – other (lotion, deodorant, and quick wash), dressing, eating, meal preparation, and laundry. At hearing, parties were able to resolve the dispute related to transfers¹, grooming – nail care², grooming – hair care³, dressing⁴, meal preparation⁵, and laundry⁶.

Grooming – Other (Lotion, deodorant, and quick wash)

The appellant requested 10 minutes, 1 time per day, 7 days per week for grooming – other, which consisted of PCA assistance with applying lotion, hand-over-hand assistance with deodorant, and a quick wash. MassHealth modified the request to 2 minutes, 1 time per day, 7 days per week.

The MassHealth representative testified that the time was approved for applying lotion and deodorant. She stated that time for PCA assistance with a quick wash was already approved in other healthcare needs to assist with incontinence care.

The appellant's mother testified that the appellant has eczema and dry skin and the PCA applies the lotion hand-over-hand. It takes at least 5 minutes per day to do lotion and deodorant.

The comments in the grooming section state that the quick wash requested in grooming is to wash and dry the face and hands using hand-over-hand, secondary to lack of thoroughness and developmental delays. The comments in the other healthcare needs section state that time was requested for incontinence care because the appellant has multiple accidents that require a lower

¹ The appellant accepted MassHealth's modification of 0 minutes for school van safety transfers.

² Nail care was modified to 7 minutes per week.

³ Hair care was modified to 1 minutes, 1 time per day, 7 days per week.

⁴ Dressing was fully restored as requested to 10 minutes, 1 time per day, 7 days per week.

⁵ The appellant accepted MassHealth's modification of 0 minutes per week for meal preparation because the family is expected to provide assistance with IADLs.

⁶ The appellant accepted MassHealth's modification of 0 minutes per week for laundry because the family is expected to provide assistance with IADLs.

body wash up and clothing change due to his autism spectrum disorder and developmental delays.

Eating

The appellant requested 30 minutes, 1 time per day, 7 days per week for PCA assistance with eating. MassHealth modified the request to 5 minutes, 3 times per day, 2 days per week (weekends) and 5 minutes, 2 times per day, 5 days per week (school days).

The MassHealth representative testified that the time requested is longer than ordinarily required. Additionally, some of the time requested was for services that are considered social services, such as babysitting, respite, cueing, and vocational rehabilitation, which are not covered by the PCA program. She stated that the comments indicate the appellant is independent with finger foods but requires hand-over-hand to load utensils and make target.

The appellant's mother testified that the appellant attends school from 8:00AM when he gets on the bus to 3:30/4:00PM when he gets home. On school days, the PCA assists with breakfast and dinner and on the weekends, with breakfast, lunch, and dinner. The appellant needs the PCA to prepare his plate, cut up his food very small, and tell him to slow down and take breaks. The appellant does not know if something is too big to chew, so his food must be cut very small. He can eat finger foods, but it is not possible to only feed him finger foods. He cannot scoop food or use utensils and requires to be fed hand-over-hand. Breakfast is quicker and involves more finger foods, such as fruit or cereal. But dinner and lunch are longer and he eats whatever the family eats. 5 minutes per meal is far to little for the amount of PCA assistance he requires.

MassHealth responded that such prompting, cueing, and supervision is not covered by the PCA program. Additionally, preparing his plate and cutting up his food falls under meal preparation, which as an IADL is parental responsibility.

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 spectrum disorder and is nonverbal (Testimony and Exhibit 4).
2. On March 23, 2022, the appellant's PCM agency submitted a prior authorization request for PCA services requesting 15 hours and 0 minutes of day/evening hours per week and 2 nighttime hours per night for dates of services of April 2, 2022 through April 1, 2023 (Testimony and Exhibit 4).
3. On March 30, 2022, MassHealth modified the request to 9 hours and 30 minutes of day/evening hours per week and approved the 2 nighttime hours per night (Testimony and Exhibit 1).

4. The appellant filed this appeal in a timely manner on April 16, 2022 (Exhibit 2).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with transfers, grooming – nail care, grooming – hair care, dressing, meal preparation, and laundry (Testimony).
6. The appellant seeks time for PCA assistance with grooming – other (lotion, deodorant, and quick wash) as follows: 10 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
7. MassHealth modified the request to 2 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 1).
8. The appellant has eczema and dry skin and requires hand-over-hand application for his lotion as well as deodorant. He also requires a quick wash for his face and hands due to lack of thoroughness and developmental delays (Testimony and Exhibit 4).
9. The appellant seeks time for PCA assistance with eating as follows: 30 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
10. MassHealth modified the request to 5 minutes, 3 times per day, 2 days per week (weekends) and 5 minutes, 2 times per day, 5 days per weeks (school days).
11. The appellant can feed himself finger foods, but requires hand-over-hand assistance to load utensils and reach the target (Testimony and Exhibit 4).
12. On school days, the PCA assists the appellant with breakfast and dinner. On weekends, the PCA assists the appellant with breakfast, lunch, and dinner (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 (emphasis added).

The appeal is dismissed as to the following ADLs and IADLs because at hearing the parties were able to resolve the disputes related to PCA assistance with transfers, grooming – nail care, grooming – hair care, dressing, meal preparation, and laundry.

Regarding the appellant's request for PCA assistance with grooming – other (lotion, deodorant, and quick wash), the appeal is approved as requested. The appellant's mother credibly testified that the appellant's medical conditions require hand-over-hand application of lotion and deodorant which takes at least 5 minutes per day. Additionally, the request for a quick wash in the grooming section was for a quick wash of his face and hands which he cannot do thoroughly due to his developmental delays. MassHealth denied the quick wash stating that it was approved for under incontinence care in the other healthcare needs section. The comments under the other healthcare needs state that the time was requested for incontinence care, which involves a lower body wash up and change of clothes due to autism spectrum disorder and developmental delays. The time requested under grooming is for a different activity (a quick wash of his face and hands, not lower body) and is not a duplication of services. For these reasons, the appellant has sufficiently demonstrated that PCA assistance with grooming – other (lotion, deodorant, and quick wash) is medically necessary. The appellant is approved for 10 minutes, 1 time per day, 7 days per week, as requested for grooming – other (lotion, deodorant, and quick wash).

Regarding the appellant's request for PCA assistance with eating, the appeal is approved in part and denied in part. The appellant's mother agreed that breakfast requires less time than other meals; however, her testimony and the evidence support the need for 10 minutes of hand-over-hand PCA assistance with lunch and dinner. For this reason, the appellant is approved for 15 minutes, 1 time per day, 5 days per week (school days) and 25 minutes, 1 time per day, 2 days per week (weekends).

Order for MassHealth

Approve 10 minutes, 1 time per day, 7 days for grooming – other (lotion, deodorant, and quick wash). Approve 15 minutes, 1 time per day, 5 days per week (school days) and 25 minutes, 1 time per day, 2 days per week (weekends) for eating. Implement the agreements made at hearing for transfers, grooming – nail care, grooming – hair care, dressing, meal preparation, and laundry.

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