

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part;
Dismissed in part

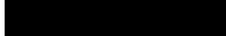
Appeal Numbers: 2203133

Decision Date: 6/9/2022

Hearing Date: 06/02/2022

Hearing Officer: Sara E. McGrath

Appearance for Appellant:

 Appellant's Mother

Appearances for MassHealth:

Cheryl Eastman, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied in part; Dismissed in part	Issue:	Prior Authorization for PCA Services
Decision Date:	6/9/2022	Hearing Date:	06/02/2022
MassHealth Rep:	Cheryl Eastman, RN	Appellant's Rep:	Appellant's Mother
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated April 22, 2022, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410; Exhibit 1). The appellant filed a timely appeal on April 26, 2022 (130 CMR 610.015(B)). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified by phone. She testified that the appellant is a teen male whose provider, The Arc of the South Shore, submitted a request for PCA services on his behalf. The appellant, who lives with his family, has diagnoses that include Cobb syndrome and congenital disorders of glycosylation (CDG), with symptoms including cognitive impairment, poor vision, poor balance/coordination, and muscle weakness (Exhibit 2, p. 9). The appellant is also non-verbal (Exhibit 2, p. 8). MassHealth received a prior authorization re-evaluation request for the appellant on April 18, 2022. The appellant seeks PCA services in the amount of 26 day/evening hours per week during school weeks, 24.25 day/evening hours per week during vacation weeks, and 14 night hours per week. MassHealth modified the request and authorized 22.50 day/evening hours per week during school weeks, 23.75 day/evening hours per week during vacation weeks, and 14 night hours per week.

The appellant seeks time for assistance with various activities of daily living (ADLs) and instrumental activities of daily living (IADLs). At hearing, the parties were able to resolve the dispute regarding time for assistance with meal preparation. The appellant's appeal as to this issue is therefore dismissed. The parties, however, were unable to resolve the dispute regarding time for assistance with grooming.

The appellant requested time for assistance with the grooming activity of shaving as follows: 10 minutes, 1 time per day, 7 days per week (Exhibit 2, p. 14). The nurse evaluator writes that the appellant is dependent for nail care, oral care, hair and shaving related to cognitive deficits, poor fine motor skills, and poor coordination (Exhibit 2, p. 15). MassHealth modified the request and authorized 5 minutes, 1 time per day, 7 days per week. The MassHealth nurse testified that the time requested is longer than ordinarily required for someone with the appellant's functional abilities. The MassHealth nurse conceded that the appellant is totally dependent for this task, and did not dispute the requested frequency (daily). Rather, the MassHealth nurse stated that in accordance with its sub-regulatory guidelines, 5 minutes per day should be sufficient time to complete the task of shaving (Exhibit 3). The MassHealth nurse also stated that no time was requested last year for PCA assistance with this task.

The appellant's mother testified telephonically on the appellant's behalf. She stated that the appellant has been shaving for 4 years, and she's not sure why time for PCA assistance with this task has not been requested before. She explained that the appellant has a ton of hair, and needs to shave daily. He cares about his appearance and likes to be clean shaven. She explained that the appellant does not use an electric razor because it does not result in a close enough shave. She therefore uses a disposable razor. She explained that she needs to massage his lip and hold it down flat to make sure she does not cut him. She also has to make sure his head doesn't bob down. Although she has never timed it, she estimated that it takes between 10 and 12 minutes to complete the task.

Findings of Fact

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

1. The appellant is a teen male who lives with family and has diagnoses that include Cobb syndrome and congenital disorders of glycosylation (CDG), with symptoms including cognitive impairment, poor vision, poor balance/coordination, and muscle weakness.
2. The appellant is non-verbal.
3. On April 18, 2022, the appellant submitted a PCA prior authorization re-evaluation request to MassHealth.
4. The appellant seeks PCA services in the amount of 26 day/evening hours per week during school weeks, 24.25 day/evening hours per week during vacation weeks, and 14 night hours per week.
5. MassHealth modified the request and authorized 22.50 day/evening hours per week during school weeks, 23.75 day/evening hours per week during vacation weeks, and 14 night hours per week.
6. At hearing, the parties were able to resolve the dispute regarding time for assistance with meal preparation.
7. The parties were unable to resolve the dispute regarding time for assistance with the grooming task of shaving.
8. The appellant requested time for assistance with shaving as follows: 10 minutes, 1 time per day, 7 days per week; MassHealth modified the appellant's request and authorized 5 minutes, 1 time per day, 7 days per week.
9. The appellant shaves daily and his caregivers use a disposable razor to complete this task.
10. The appellant's mother consistently massages the appellant's upper lip and holds it down to make sure she does not cut him while shaving.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 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.

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

(C) 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

As set forth above, MassHealth modified the time requested for assistance with the grooming task of shaving. After considering the evidence in the record, I find that the appellant has not demonstrated the necessity for additional PCA assistance with this activity.

MassHealth modified the time requested for assistance with shaving on the basis that the time requested is longer than ordinarily required and exceeds the time for task set forth in MassHealth's guidelines. Specifically, MassHealth modified the requested 10 minutes per day and authorized 5 minutes per day. The appellant's mother disputed this modification with credible testimony that this task can take between 10 to 12 minutes each time. She explained that the process involves the use of a disposable razor (as opposed to an electric one), the need to keep the appellant's head steady, and the need to frequently flatten his lip to ensure that he is not injured during this process. All of these factors seem to reasonably account for the 10 to 12 minute time frame outlined by the appellant's mother. The issue, however, is that the mother's testimony focused on the fact that she is performing this task on a regular basis. MassHealth's authorization of time, however, is based on the length of time it takes for the PCA to assist, not the parent. Since the mother is performing the shaving task at least some of the time, the appellant has not demonstrated that additional PCA time is needed. On these facts, this portion of the appeal is denied.

The appeal is dismissed in part and denied in part.

Order for MassHealth

Stop aid pending.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum