

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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

Appeal Number: 2203293

Decision Date: 6/14/2022

Hearing Date: 06/02/2022

Hearing Officer: Sara E. McGrath

Appearances for Appellant:



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:	Approved in part; Denied in part; Dismissed in part	Issue:	Prior Authorization (PCA Services)
Decision Date:	6/14/2022	Hearing Date:	06/02/2022
MassHealth Rep:	Cheryl Eastman, RN	Appellant Rep:	Appellant's Mother
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

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 25, 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 May 2, 2022. (130 CMR 610.015(B)). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

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 telephonically to the following factual background: The appellant is a male in his early 20s whose provider, The Arc of the South Shore, submitted an initial request for PCA services on his behalf. The record reflects that the appellant has diagnoses that include autism and an intellectual disability, and has a history of poor fine motor skills and sensory issues. On April 18, 2022, MassHealth received an initial prior authorization request for PCA services. The appellant seeks PCA services in the amount of 13 hours day/evening hours per week, and 0 night hours per week. On April 25, 2022, MassHealth modified the request and authorized 11.25 hours day/evening hours per week, and 0 night hours per week.

The record includes an occupational therapy functional status report (Exhibit 3, pp. 7-11). The occupational therapist reports that the appellant's diagnosis manifests as a chronic disabling condition in that he has fine motor coordination deficits, cognition issues, and sensory sensitivities. (Exhibit 3, p. 7). The appellant's diagnosis impacts his coordination. The occupational therapist concludes that the appellant is independent with mobility (with supervision), eating and passive range of motion, needs a maximum level of assistance with toileting, grooming and dressing, and is dependent for the task of bathing (Exhibit 3, p. 35). The appellant is dependent for all instrumental activities of daily living (*Id.*).

MassHealth modified the prior authorization request in the areas of bathing and grooming (Exhibit 1). The parties were able to resolve the dispute regarding one grooming task (time for PCA assistance with hair care). The appeal is therefore dismissed as to this issue. The parties were unable to resolve disputes regarding the time for PCA assistance with bathing and another grooming task (shaving).

The appellant requested time for PCA assistance with bathing, as follows: 30 minutes, 1 time per day, 7 days per week (Exhibit 3, p. 15). Additionally, the appellant requested separate time for a quick wash, as follows: 10 minutes, 1 time per day, 7 days a week (*Id.*). MassHealth authorized the time for bathing as requested, but denied the time requested for a quick wash. The MassHealth nurse consultant testified that the time requested is longer than required for someone with the appellant's physical needs. She stated that the record does not reflect any issues with incontinence. Further, the appellant is independent getting in and out of the shower. Further, time has been authorized for PCA assistance with toileting, which includes time for assistance with hygiene and handwashing. The appellant's mother/surrogate appeared at the hearing telephonically and explained that the appellant showers at night and receives a quick wash in the morning at the same time his other grooming tasks are done (oral care, hair care, shaving, etc.). He cannot perform the quick wash task on his own because of dexterity/coordination and cognitive issues. She explained that she washes his hands, face, under arms, and private areas.

The appellant requested time for PCA assistance with the grooming task of shaving, as follows: 10 minutes, 1 time per day, 4 times per week. MassHealth modified the request to 5 minutes, 1 time per day, 4 days per week (Exhibit 3, p. 16). The MassHealth nurse consultant stated that the time

requested for PCA assistance with shaving is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth nurse conceded that the appellant is totally dependent for this task and did not dispute the requested frequency. 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 4). The appellant's mother/surrogate representative stated she uses an electric razor to shave the appellant, and that she shaves him 5 to 6 days per week. She stated that ten minutes is needed for this task because the appellant does not cooperate due to his sensory issues. She explained that she needs to move slowly. The appellant resists this task on each occasion, and he pushes the razor away. The MassHealth nurse consultant responded and stated that time for assistance with this task includes only the "hands on" time and does not include waiting time that might go along with the appellant's resistive behaviors (waiting for him to calm down or come back).

Findings of Fact

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

1. The appellant is male in his early 20s with diagnoses that include autism and an intellectual disability.
2. The appellant has a history of poor fine motor skills and sensory issues.
3. A recent occupational therapy report notes that the appellant has fine motor coordination deficits, cognition issues, and sensory sensitivities.
4. On April 18, 2022, the appellant submitted an initial request for PCA services in the amount of 13 hours day/evening hours per week and 0 night hours per week.
5. On April 25, 2022, MassHealth modified the request and authorized 11.25 day/evening hours per week and 0 night hours per week.
6. At hearing, the parties were able to resolve the dispute regarding time for PCA assistance with the grooming task of hair care.
7. The parties were unable to resolve disputes regarding the time for PCA assistance with bathing and the grooming task of shaving.
8. The appellant requested time for PCA assistance with bathing, as follows: 30 minutes, 1 time per day, 7 days per week for help with showering, and 10 minutes, 1 time per day, 7 days a week for help with a quick wash.
9. MassHealth authorized the time for bathing as requested, but denied the time requested for a quick wash.

10. The appellant showers at night and receives a quick wash in the morning.
11. The appellant does not assist with the quick wash because of dexterity/coordination and cognitive issues.
12. The quick wash includes washing the appellant's hands, face, under arms, and private areas.
13. MassHealth has authorized time for PCA assistance with toileting, which includes time for assistance with hygiene and handwashing.
14. The appellant requested time for assistance with the grooming task of shaving, as follows: 10 minutes, 1 time per day, 4 days per week; MassHealth modified the time to 5 minutes, 1 time per day, 4 days per week.
15. The appellant has sensory sensitivities.
16. The appellant's mother currently shaves the appellant 5 or 6 times per week, using an electric razor.
17. Because the appellant consistently and actively resists this activity, the appellant's caregiver must go slow and must redirect the appellant.

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.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and

(2) there is no other medical services or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to [MassHealth]. . . .

The appellant disputes MassHealth’s modification of the time requested for PCA assistance with bathing and the grooming task of shaving.

The appellant has not demonstrated that 10 minutes per day for assistance with a quick wash is medically necessary. MassHealth denied the request in full on the basis that the appellant does not have any incontinence issues, can get in and out of the shower independently, and because time has

been authorized for PCA assistance with toileting (which includes time for hygiene and handwashing). In response, the appellant's mother testified that because the appellant showers at night, he has a quick wash each morning and cannot assist due to cognitive issues. Because the quick wash is performed at the sink, the appellant's ability to get in and out of the shower without assistance is not relevant. However, MassHealth has persuasively argued that because there is no evidence in the record that the appellant has incontinence issues, he has not demonstrated the necessity of a daily quick wash (which would be in addition to the daily cleansing he receives in the shower). Furthermore, MassHealth has authorized time for assistance with toileting, which includes time for assistance with hygiene. It seems reasonable that some of the quick wash steps (*e.g.*, washing hands, private area) could be accomplished during the appellant's morning toileting routine. MassHealth has also authorized time for PCA assistance with grooming, including, for example, time for assistance with shaving and oral care. It also seems reasonable that other quick wash steps could be performed during this time (*e.g.*, washing face). On this record, this portion of the appeal is denied.

The appellant has demonstrated that 10 minutes per day for assistance with the grooming task of shaving is medically necessary. MassHealth modified the request on the basis that the time requested for this task is longer than ordinarily required for someone with the appellant's physical abilities. The MassHealth nurse conceded that the appellant is totally dependent for this task and did not dispute the requested frequency. 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. In response, the appellant's mother presented credible testimony that this task can take 10 minutes. She testified she uses an electric razor to shave the appellant more easily, but that despite this, he does not cooperate, pushes the razor away, and consistently resists. This resistance is consistent with the appellant's sensory sensitivities. The appellant's uncooperative behavior and active resistance could reasonably account for the 10 minute time frame outlined by the appellant's mother, especially considering her testimony that she needs to proceed slowly. Further, this time can reasonably be considered to be active, hands-on time, and is not the waiting time that MassHealth does not cover. This portion of the appeal is approved.

Order for MassHealth

Rescind notice on appeal, and approve time requested for PCA assistance with the grooming task of shaving.

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 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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum