

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2203490

Decision Date: 8/1/2022

Hearing Date: 06/07/2022

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:

, Guardian

Appearance for MassHealth:

Donna Burns, RN, Optum



*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:	Dismissed in part; Denied in part	Issue:	Personal Care Attendant Services
Decision Date:	8/1/2022	Hearing Date:	06/07/2022
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Guardian
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.

Jurisdiction¹

Through a notice dated 04/18/2022, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 20 hours and 00 minutes (20:00) of day/evening hours per week plus 0 daily night time attendant hours to 14:45 day/evening hours per week plus 0 daily night time attendant hours for the dates of service from 06/08/2022 to 06/07/2023 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 05/05/2022 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth plans to modify appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA provider, Lifepath, Inc. ("provider"), and is a re-evaluation request for the dates of service of 06/08/2022 to 06/07/2023. The appellant's PCA time is protected at 20:00 and 0 hours of nighttime attendant services pending this appeal. In the PA request for PCA services, the provider requested 20:00 day/evening hours per week plus 0 daily nighttime attendant hours. The appellant is [REDACTED] and her primary diagnoses are autism, Tourette's Syndrome, decreased cognition, obsessive compulsive disorder, and kyphosis (Exhibit 5).

The Optum representative testified that on 04/18/2022 MassHealth modified the PCA request to 14:45 day/evening hours per week. Nighttime attendant hours were not requested. Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) tasks of grooming – nail care, oral care, hair care, shaving, "other"; passive range of motion assistance; and eating.

Passive Range of Motion (PROM)

The appellant's provider requested on the appellant's behalf 5 minutes, 2 times per day, 7 days per week (5 X 2 X 7²) for assistance with passive range of motion exercises for each upper extremity. The provider noted that the PCA uses PROM and stretches to promote circulation, diagnosis of kyphosis, and poor range of motion in the shoulders and back. MassHealth testified that the request for assistance with PROM does not meet professional standards because the appellant has independent movement of her upper extremities. MassHealth initially denied the request for PCA time for PROM; however, at the fair hearing, the MassHealth representative modified the time to 5 X 1 X 7, for once per

² PCA time designated in this manner, (i.e., 5 X 2 X 7) means five minutes, 2 times per day, 7 times per week.

day.

The appellant's guardian appeared at the fair hearing and testified telephonically that the appellant has Kyfosis, which requires that she work with a physical therapist to prevent a hump or hunch to form. The PCA assists the appellant to do exercises twice every day to stretch and strengthen. She can move her arms independently. She requires assistance with this task 2 times per day.

Grooming

The appellant's PCA provider requested 6 X 1 X 7 and 10 X 1 X 1 for assistance with nail care, 3 X 3 X 7 for assistance with oral care, 6 X 1 X 7 for assistance with hair care, and 8 X 1 X 1 for assistance with "other" - shaving. The provider noted that the appellant requires physical assistance with nail care due to inability to sequence events, to safety awareness, Tourette's Syndrome, autism, impaired ability to bend or reach due to kyphosis, increase behavioral episodes, self-injury behaviors, aggression, OCD and impulsiveness.

MassHealth modified the request for grooming as follows: 5 X 1 X 7 for all nail care, 5 X 1 X 7 for hair care, and 2 X 1 X 1 for "other" - shaving. At hearing, the MassHealth representative restored the time requested for oral care (3 X 3 X 7) and for shaving (8 X 1 X 7). The representative testified that five minutes per day for nail care should be enough to cut and file the nails. For hair care, the MassHealth representative testified that 5 minutes per day should be enough time to comb the appellant's hair after a daily shower.

The appellant's guardian testified that the appellant's nail and hair grow "really fast." She has a scratching behavior and needs to have her nails "quickly clipped" daily to prevent sharp edges. Also this sometimes takes longer due to the appellant's behavior – up to 10 minutes per day.

The appellant's guardian understood and agreed that 5 minutes per day would be adequate for the appellant's hair care.

Eating

The appellant's PCA provider requested on the appellant's behalf 10 X 3 X 2 and 10 X 1 X 7 for assistance with eating (regular weeks and school weeks). The provider noted that the appellant requires physical assistance with meal set up, cutting food, and using knife and spoons (can use fork) due to impaired FMC, unable to sequence events, no safety awareness Tourette's syndrome, autism, impaired ability to bend or reach due to kyphosis, increased behavioral episodes, self-injury behaviors, aggression, OCD and impulsiveness.

MassHealth modified the request to 5 X 3 X 2 and 5 X 1 X 7. The MassHealth representative testified that the assistance required is for cueing and supervision. MassHealth pays for hand-on-hand assistance, but not for cueing or supervision.

The appellant's guardian responded that the time is necessary when the appellant has behavior issues and it takes the PCA more time to perform the task.

Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, Lifepath Inc. ("provider"). It is a re-evaluation request for the dates of service of 06/08/2022 to 06/07/2023 (Testimony; Exhibit 5).
2. In the PA request for PCA services, the provider requested 20:00 day/evening hours per week
3. No nighttime attendant hours were requested (Testimony; Exhibit 5).
4. The appellant's PCA time is protected pending this appeal (Testimony).
5. The appellant is [REDACTED] and her primary diagnoses are autism, Tourette's Syndrome, decreased cognition, obsessive compulsive disorder, and kyphosis (Testimony; Exhibit 5).
6. On 04/18/2022 MassHealth modified the PCA request to 14:45 day/evening hours per week (Testimony; Exhibits 1 and 5).
7. The appellant's provider requested on the appellant's behalf 5 X 2 X 7 for assistance with passive range of motion exercises for each upper extremity. The provider noted that the PCA uses PROM and stretches to promote circulation, diagnosis of kyphosis, and poor range of motion in the shoulders and back (Testimony; Exhibit 5).
8. MassHealth testified that the request for assistance with PROM does not meet professional standards because the appellant has independent movement of her upper extremities (Testimony).
9. MassHealth initially denied the request for PCA time for PROM; however, at the fair hearing, the MassHealth representative modified the time to 5 X 1 X 7, for once per day (Testimony; Exhibits 1 and 5).
10. In the area of grooming, the appellant's PCA provider requested 6 X 1 X 7 and 10 X 1 X 1 for assistance with nail care, 3 X 3 X 7 for assistance with oral care, 6 X 1 X 7 for assistance with hair care, and 8 X 1 X 1 for assistance with "other" - shaving.

The provider noted that the appellant requires physical assistance with nail care due to inability to sequence events, to safety awareness, Tourette's Syndrome, autism, impaired ability to bend or reach due to kyphosis, increase behavioral episodes, self-injury behaviors, aggression, OCD and impulsiveness (Testimony; Exhibit 5).

11. MassHealth modified the request for grooming as follows: 5 X 1 X 7 for all nail care, 5 X 1 X 7 for hair care, and 2 X 1 X 1 for "other" – shaving (Testimony; Exhibit 5).
12. At hearing, the MassHealth representative restored the time requested for oral care (3 X 3 X 7) and for shaving (8 X 1 X 7) (Testimony; Exhibit 5).
13. At hearing, the appellant's representative testified that 5 minutes per day was sufficient for assistance with hair care (Testimony).
14. The appellant's PCA provider requested on the appellant's behalf 10 X 3 X 2 and 10 X 1 X 7 for assistance with eating (regular weeks and school weeks). The provider noted that the appellant requires physician assistance with meal set up, cutting food, and using knife and spoons (can use fork) due to impaired FMC, unable to sequence events, no safety awareness Tourette's syndrome, autism, impaired ability to bend or reach due to kyphosis, increased behavioral episodes, self-injury behaviors, aggression, OCD and impulsiveness (Testimony; Exhibit 5).
15. MassHealth modified the request to 5 X 3 X 2 and 5 X 1 X 7 (Testimony).
16. Some of the PCA time requested for assistance with eating is for cueing and supervision due to the appellant's behavior issues (Testimony; Exhibit 5).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) A service is "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 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 MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

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

(C) Determining the Number of Hours of Physical Assistance. 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

MassHealth modified the appellant's request for PCA time. In the area of grooming (oral care and shaving), MassHealth restored all time, as requested, at the fair hearing. Thus, this portion of the appeal is dismissed.

In the areas of grooming-hair care, the appellant's guardian agreed that the modified time would be adequate. Accordingly, this portion of the appeal is denied.

The appellant's provider requested on the appellant's behalf 5 X 2 X 7 for assistance with passive range of motion exercises for each upper extremity. The provider noted that the PCA uses PROM and stretches to promote circulation, diagnosis of kyphosis, and poor range of motion in the shoulders and back. MassHealth initially denied the time requested for assistance with this task because it did not meet professional standards. MassHealth based its decision on the appellant's ability to move her own limbs. However, at the fair hearing, MassHealth agreed to approve 5 X 1 X 7, once per day, instead of the requested twice. The appellant's guardian testified that the PCA assists the appellant with PROM twice per day; to prevent a hump or hunch to form. No documentary evidence was presented to support the need for twice a day PROM. Accordingly, MassHealth's decision to modify the request for time for PROM is supported by the evidence and this portion of the appeal is denied.

The appellant's PCA provider requested on the appellant's behalf 10 X 3 X 2 and 10 X 1 X 7 for assistance with eating (regular weeks and school weeks). The provider noted that

the appellant requires physical assistance with meal set up, cutting food, and using knife and spoons (can use fork) due to impaired FMC, unable to sequence events, no safety awareness Tourette's syndrome, autism, impaired ability to bend or reach due to kyphosis, increased behavioral episodes, self-injury behaviors, aggression, OCD and impulsiveness. MassHealth modified the request to 5 X 3 X 2 and 5 X 1 X 7, based on its determination that some of the time requested is for supervision and cueing, which is not a covered PCA task. The appellant's guardian testified that the appellant's behaviors cause the PCA to require more time for this task. Her testimony supports MassHealth's modification. Therefore, this portion of the appeal is denied.

For the foregoing reasons, this appeal is dismissed in part; and denied in part.

Order for MassHealth

Release aid pending. Restore all time as requested in the areas of grooming – oral care (3 X 3 X 7), and grooming – shaving (8 X 1 X 7). Pursuant to the hearing testimony, MassHealth will restore 5 X 1 X 7 for assistance with PROM. With regard to other modifications, none.

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, Division of Medical Assistance, at the address on the first page of this decision.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

Appellant Guardian: [REDACTED]