

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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

Appeal Number: 2203819

Decision Date: 8/9/2022

Hearing Date: 07/01/2022

Hearing Officer: Casey Groff

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N., Clinical Reviewer



*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; Dismissed in part	Issue:	Personal Care Attendant Services
Decision Date:	8/9/2022	Hearing Date:	07/01/2022
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	Mother; Sister/PCA
Hearing Location:	Board of Hearings (Remote)	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 May 5, 2022, MassHealth informed Appellant, a minor, that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant's mother filed a timely appeal on behalf of Appellant on May 16, 2022. See 130 CMR 610.015(B); Exhibit 2. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his mother and sister/personal care attendant (PCA). All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a minor child with diagnoses of autism spectrum disorder and global developmental delay. See Exh. 4, pp. 8-9. On March 18, 2022, Tri-Valley, Inc., Appellant's personal care management (PCM) agency, performed a re-evaluation of Appellant to determine his continued need for PCA services. Id. at 10. Based on the evaluation, Tri-Valley submitted a prior authorization (PA) request to MassHealth, on Appellant's behalf, seeking 13 hours and 30 minutes per week of day/evening PCA services and two nighttime hours per night (14 hours per week) for dates of service beginning May 15, 2022 through May 14, 2023. See Exh. 1.

Through a letter dated May 5, 2022, MassHealth notified Appellant that it modified his PA request by approving a total of 8 hours of day/evening PCA services and two nighttime hours. Id. MassHealth modified the time/frequency that was requested for the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): (1) shower, (2) bowel care, and (3) laundry.

Bathing

The parties first addressed MassHealth's modification to the time requested for shower/bathing. Under this ADL, Appellant requested 40 minutes, once per-day, seven days per-week (40x1x7) for a daily bath with transfers, and 20 minutes, once per-day, seven days per-week (20x1x7) for a quick wash. See Exh. 4, p. 13. In support of the request, the PCM agency noted the following: Appellant is dependent with daily bathing (regular and sponge bath); he requires increased hygiene because of body odor and incontinence; he does not complete any part of bathing on his own; he is dependent for all aspects of washing and drying his upper and lower body; he does not initiate or follow simple directions for bathing tasks due to his autism and developmental delays; he has begun to allow hair washing but is resistant throughout the entire bathing process; it takes increased time to prevent overstimulation during the bathing process. Id.

MassHealth modified the request by approving 25 minutes daily for shower (25x1x7) and 10 minutes daily for a quick wash/sponge bath (10x1x7). See Exh. 1. The approved time amounted to a total of 420 minutes per-week for bathing. See Exh. 4, p. 13. The MassHealth representative testified that the requested time was longer than ordinarily required for someone with Appellant's condition and noted that Appellant is ambulatory. Additionally, PCA regulations only reimburse for "hands-on" assistance and therefore MassHealth did not include any time that would be spent in the form of cueing, waiting, or re-directing. The approved times of 25 and 10 minutes per-day should be sufficient when accounting for just the act of washing his body and drying him.

At hearing, Appellant's mother testified that the process of bathing Appellant is time consuming

and takes much longer than 25 minutes as he has needs that are not typical of other children his age. Although he can physically get into the bathtub, he does not participate by cleaning himself. He is extremely sensitive to the sound of running water. They need to draw the bath before he can enter the room. Once in the bath, he tries to get out of the tub and then needs to be assisted back in. Appellant's sister, who is one of Appellant's two PCAs, testified that the entire bathing process, including re-directing activity, is hands-on. When he is in the bath, she washes his hair and body, and must do everything carefully to not overstimulate him. The entire process is very involved. The quick wash is needed because Appellant is incontinent at night and requires a sponge bath in the morning.

Prior to hearing, Appellant's mother submitted two letters into evidence. The first letter, which was signed by Appellant's mother and two PCAs, included the following relevant information regarding Appellant's bathing needs:

...[Appellant] is hyposensitive and hypersensitive and these sensory issues have to be addressed while caring for [him]. So his physical needs are not typical. A total of 420 min were put in for [his] total bath and his sponge bath. It takes more than that for bathing in the tub... Washing [his] hair is not calculated into the bath totals. It takes an additional 10 min times 7 days a week for hair wash and hair wiping of pollen when he comes in from outside. [Appellant's] primary suggested that [he] not only get his hair wiped down every time he comes in from outside, but that he also changes his clothes because of allergies.

See Exh. 5, p. 2.

The second letter, dated May 20, 2022, was signed by Appellant's primary care physician, and provided the following relevant information:

[Appellant] has a diagnosis of profound Autism Spectrum Disorder which affects his emotional and social development, day-to-day functionality, and his safety, and requires significant care needs from a PCA. He is doing very well and making good progress with his current PCA hours in place. A reduction in hours would very likely set him back and would be detrimental to his health. In my medical opinion, it is absolutely necessary for [Appellant] to continue with his current PCA regimen with no changes.

[His] autism makes his needs more complex than the average child. Routine tasks take much longer for him due to his significant sensory difficulties. For instance, bathing takes much longer than usual because he does not like the sounds of the water and he frequently jumps out and has to be physically brought back in to the tub multiple times per bathing session. ...

...This amount of time and care is needed in order to keep [him] calm and not send him into a behavioral frenzy because he is being rushed with his needs in a manner that triggers his sensory disorder.

See Exh. 5, p. 4.

Bowel Care

The parties next addressed the modification to bowel care. For the ADL of bowel care, Appellant requested 10 minutes, two times per-day, seven days per-week (10x2x7). See Exh. 4, p. 17-18. The PCM agency noted that Appellant requires total dependence with bowel and bladder care, including physical assistance with toilet hygiene, clothing management, and changing the absorbent product. Id.

MassHealth modified the time requested by approving five minutes, two-times per-day, seven days per-week (5x2x7). See Exh. 1. The MassHealth representative testified that MassHealth modified the time requested because documentation indicates that Appellant is ambulatory, and only requires assistance with hygiene. Ten minutes per bowel episode is a long time to assist with just hygiene. MassHealth also noted the time for bladder care was approved as requested.

Appellant's mother and sister testified that bowel care is an involved process. He has two bowel episodes per-day and needs to be wiped. Now that he is older, the bowel cleaning process is much more involved, it is messier, and it can get everywhere, especially if he is resisting care. Appellant does not like to be touched and so they need to make a game out of it for him to not run away. Baby wipes are insufficient to clean him; they need to use something more substantial such as a washcloth. Once he is sufficiently wiped, the PCA then assists him in washing his hands. The PCA will bring him to the sink. Due to his sensitivities, he can not be in the same room as the running water, which makes washing his hands difficult. The entire process takes at least 10 minutes of hands-on physical assistance per bowel episode.¹

Laundry

Finally, the parties addressed the modification to the IADL of laundry. In the PA request, Appellant requested 90 minutes per week for assistance with laundry. See Exh. 4, p. 24-25. MassHealth modified the request and did not allow any time for laundry. See Exh. 1. Based on a discussion at hearing, MassHealth offered to approve 60 minutes per week for laundry. Appellant agreed, thereby resolving this part of the appeal.

Findings of Fact

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

1. Appellant is a minor child with diagnoses of autism spectrum disorder and global

¹ At hearing, MassHealth offered to increase the time from 5 minutes to 7 minutes per episode, which is what he had in the last PA period. Appellant declined the offer, stating that even 7 minutes is insufficient.

developmental delay. (Testimony; Exh. 4).

2. As a result of his autism, his needs are more complex than the average child, and he has significant sensory difficulties that cause routine tasks to take much longer. (Testimony; Exh. 4; Exh. 5).
3. On March 18, 2022, Tri-Valley, Inc., Appellant's PCM agency, conducted a PCA re-evaluation of Appellant. (Exh. 4).
4. Based on the evaluation, Tri-Valley submitted a PA request to MassHealth, on Appellant's behalf, seeking 13 hours and 30 minutes per week of day/evening PCA services and two nighttime hours per night (14 hours per week) for dates of service beginning May 15, 2022 through May 14, 2023. (Testimony; Exh. 1).
5. Through a letter dated May 5, 2022, MassHealth notified Appellant that it modified his PA request by approving a total of 8 hours of day/evening PCA services and two nighttime hours. (Exh. 1).
6. MassHealth modified the time/frequency that was requested for the following ADLs and IADLs: (1) shower, (2) bowel care, and (3) laundry. (Testimony; Exh. 1).

Bathing

7. Under the ADL of bathing, Appellant requested 40 minutes, once per-day, seven days per-week (40x1x7) for showering with transfers, and 20 minutes, once per-day, seven days per-week (20x1x7) for a quick wash. (Testimony; Exh. 4, p. 13).
8. MassHealth modified the request by approving 25 minutes daily for bathing (25x1x7) and 10 minutes daily for a quick wash/sponge bath (10x1x7). (Testimony; Exh. 1).
9. Appellant is dependent with daily bathing (regular and sponge bath); he requires increased hygiene because of body odor and incontinence; he does not complete any part of bathing on his own; he is dependent for all aspects of washing and drying his upper and lower body; he does not initiate or follow simple directions for bathing tasks due to his autism and developmental delays; he has begun to allow hair washing but is resistant throughout the entire bathing process; it takes increased time to prevent overstimulation during bathing process. (Testimony; Exh. 4, p. 13).
10. The process of washing Appellant's hair during the bath takes about 10 minutes itself. (Testimony; Exh. 5).
11. Appellant is extremely sensitive to the sound of running water and this can cause him to resist care and jump out of the bathtub, creating the need for his PCA to physically assist him back into the tub. (Testimony; Exh. 4, p. 13; Exh. 5).
12. During the bathing process, Appellant's PCA washes his hair and body, and must do

everything carefully to not overstimulate him. (Testimony; Exh. 5).

13. Appellant is incontinent at night and requires a quick wash/ sponge bath in the morning. (Testimony; Exh. 4, p. 13; Exh. 5).

Bowel Care

14. Appellant requested 10 minutes, two times per-day, seven days per-week (10x2x7) for PCA assistance with bowel care. (Testimony; Exh. 4, p. 17-18).
15. MassHealth modified the request by approving five minutes, two-times per-day, seven days per-week (5x2x7). (Testimony; Exh. 1).
16. Appellant is ambulatory but requires total dependence with toileting hygiene including clothing management, changing the absorbent product, wiping, and washing hands. (Testimony; Exh. 4, p. 17-18; Exh. 5).
17. The time needed for assistance with bowel care has increased with Appellant's age as it has become messier and he is more resistant to care.

Laundry

18. In the PA request, Appellant requested 90 minutes per-week for assistance with laundry. (Testimony; Exh. 4, p. 24-25).
19. MassHealth modified the request by not allowing any time for laundry. (Exh. 1).
20. At hearing, the parties agreed that 60 minutes per week for laundry was appropriate for Appellant's needs. (Testimony).

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:² First, the

² PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410."

services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair the member’s functional ability to perform [at least two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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.

See 130 CMR 450.204(A).

Medically necessary services must also “be of a quality that meets professionally recognized standards of health care and must be substantiated by the record including evidence of such medical necessity and quality.” 130 CMR 450.204(B).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive assistance with his activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs) to meet his health care needs. MassHealth regulations provide the following description of ADLs under the PCA program:

(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;

See 130 CMR 422.002.

- (3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (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.

See 130 CMR 422.410.

In addition, MassHealth reimburses for PCA assistance with certain IADLs, which include tasks that are “instrumental to the care of the member’s health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services.” 130 CMR 422.402. Specifically, MassHealth pays for transportation for the purposes of “accompanying the member to medical providers.” See 130 CMR 422.410(B)(3). In determining the amount of time it takes the PCA to physically assist a member with an IADL, MassHealth requires the PCM agency to consider the presence of live-in family member’s responsible for tasks they would perform themselves and would include the member, such as laundry, meal preparation, and shopping. See 130 CMR 422.410(C). MassHealth will also consider individual circumstances when determining the amount of physical assistance a member requires for IADLs. Id.

With respect to both ADLs and IADLs, MassHealth will cover the “activity time performed by a PCA in providing assistance with the [tasks].” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Bathing

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that the requested time for bathing (40x1x7) and quick wash (20x1x7) is appropriate and consistent with the regulatory standards above. According to Appellant’s primary care physician, Appellant has a diagnosis of profound autism spectrum disorder with significant sensory difficulties, which cause routine tasks to become much more complex and longer to undertake. See Exh. 5 p. 4. For example, Appellant’s sensitivity to the sound of water causes him to jump out of the tub while being bathed. His PCA, therefore, has to physically bring him back to the tub multiple times per bathing episode. Id. The evidence also indicates Appellant is entirely dependent with all bathing activity, such as washing his body and hair. His sister/PCA testified that all aspects of bathing, including re-directing and bringing him back into the tub are hands-on tasks, and thus far more

involved than the “cueing and supervision” assistance that is not covered under the PCA program. For these same reasons, the daily quick takes longer than ordinary, and due to incontinence, is a required intervention in addition to his daily bath. MassHealth’s reduction of bathing/quick wash time to 25 minutes and 10 minutes, respectively, would be insufficient to accommodate these specialized care needs. For these reasons, the appeal is APPROVED-in-part with respect to bathing.

Bowel Care

Appellant successfully demonstrated that he requires the time requested for bowel care at 10 minutes, twice daily (10x2x7). MassHealth reduced the time requested to 5x2x7 based on the rationale that Appellant only required assistance with hygiene related tasks. However, based on the same evidence discussed above, Appellant’s autism and sensory disorder impact the complexity of assistance required for daily activities, as well as the time it takes to complete each activity. Appellant’s PCA and mother testified that as Appellant gets older, the messier bowel cleanup can get; specifically because there is more to clean and Appellant is more capable of resisting care. The evidence further indicates that, like bathing, the extra assistance Appellant requires for bowel care is hands-on, as opposed to supervisory or coaching assistance, which is not covered under the PCA program. Accordingly, MassHealth’s reduction of time for bowel care from 10 minutes to 5 minutes would be insufficient to accommodate Appellant’s needs.

For these reasons, the appeal is APPROVED-in-part with respect to bowel care.

Laundry

The appeal is DISMISSED-in-part with respect to laundry as Appellant and MassHealth agreed at hearing to 60 minutes per-week for assistance with laundry (60x1).

Order for MassHealth

Remove aid pending. For the PA period beginning May 15, 2022 through May 14, 2023, approve the requested time for bathing (40x1x7 and 20x1x7) and bowel care (10x2x7) and implement the agreed-upon time of 60x1 for laundry.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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