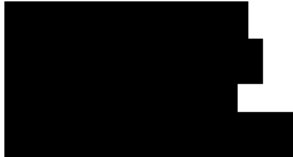


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: APPROVED

Appeal Number: 2204717

Decision Date: 9/15/2022

Hearing Date: 07/27/2022

Hearing Officer: Kenneth Brodzinski

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, 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	Issue:	PCA
Decision Date:	9/15/2022	Hearing Date:	07/27/2022
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Mother
Hearing Location:	Quincy		

Authority

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

Jurisdiction

Through notice dated June 10, 2022, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed this appeal in a timely manner on June 24, 2022 seeking approval for some of the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

MassHealth was represented by a registered nurse who submitted a packet consisting of a copy of Appellant's prior authorization (PA) request and a re-evaluation for PCA services (Exhibit B). Appellant was represented by his mother who did not file any additional documentation. Both parties appeared by telephone.

MassHealth modified two areas of assistance – mobility and overnight toileting. Appellant's mother indicted that she was not disputing the modification to time to assist with mobility, only the overnight toileting.

MassHealth denied a request for 10 minutes per night, seven days per week, to assist with overnight toileting. The MassHealth representative testified that according to agency records, Appellant is approved for "pull-ups". To qualify for pull-ups, the child must be in a toilet training program; therefore, Appellant should not need a PCA to perform a toileting change in the middle of the night.

In response, Appellant's mother testified that the matter goes beyond toilet training insofar as Appellant has a diagnosed sleep disorder which keeps him up for hours every night.

The MassHealth representative testified that PCA time cannot be approved for respite care or babysitting during the night. She distinguished between being awoken at night because of the need for a toileting change rather than being awake because of a sleep disorder. MassHealth reiterated that a toileting change should not be needed where the Appellant is using pull-ups and is engaged in the toilet training program. She explained that toilet training is not part of the PCA program and would instead be part of vocational services. MassHealth also maintains that toileting is a parental responsibility for a [REDACTED] such as Appellant.

The Hearing Officer asked the MassHealth representative if it would be significant if Appellant were older. The MassHealth representative replied that it would insofar as at the age of five, toileting would be considered less of a parental responsibility. She added, however, that there would still need to be a reason for why Appellant requires a nighttime change other than the fact that he is awake due to a sleep disorder; there needs to be a medical reason why he needs to be changed.

In response, Appellant's mother stated he is getting up because he has a dirty diaper. She explained that he is not waking due to his sleep disorder. He is waking because he senses the dirty diaper. Then, because of his sleep disorder, he is unable to go back to sleep until he has a lengthy period to wind down which often lasts for hours.

Appellant's mother also testified that because of Appellant autism, his immediate reaction to sensing that his diaper is dirty is to reach into the diaper and begin to smear.

The mother explained that she needs to react as quickly as possible and get Appellant to the bathroom and changed before he starts smearing. She explained that she uses monitors at night and she will get up and check on Appellant at the first sound of any noise or movement. Otherwise, if she waits and merely relies on the pull-ups, she will be facing a huge mess.

The MassHealth representative stated that the need appeared to be anticipatory.

Appellant's mother testified that this happens every night between the hours of midnight and 6:00 a.m. She testified that on a good night, Appellant will not need a change until four o'clock or five o'clock in the morning which allows her to get some sleep. On other occasions, it happens earlier and then Appellant cannot fall back to sleep for several hours.

The MassHealth representative reiterated that it appears that the need is anticipatory and that a four-year-old without any sort of limitations would need assistance to toilet; therefore, this would remain a parental responsibility.

Appellant's mother noted that Appellant will be [REDACTED] in October 2022.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. MassHealth denied Appellant's request for 10 minutes, once per day, seven days per week to assist with overnight toileting.
2. Appellant is approved for "pull-ups".
3. To qualify for pull-ups, the child must be in a toilet training program.
4. Appellant has a diagnosed sleep disorder which keeps him up for hours every night once he is awoken.
5. Appellant awakens when he senses his diaper is soiled.
6. MassHealth denied the time to assist with toileting on the grounds that PCA time cannot be approved for respite care or babysitting during the night, to assist with toilet training and that toileting is a parental responsibility for a [REDACTED] such as Appellant.
7. Toileting would be less of a parental responsibility for a child [REDACTED].
8. Appellant will be [REDACTED] in October 2022.

9. Appellant his autism.
10. Appellant's autism causes him to react to having a soiled diaper by reaching into the diaper and smearing.
11. PCA time is being requested to assist with toileting Appellant once he awakens because of his soiled diaper.
12. PCA time is not being requested to assist Appellant during the time he remains awake after being toileted.
13. Appellant soils his diaper (pull ups) on nightly basis.

Analysis and Conclusions of Law

MassHealth maintained that there needs to be a reason why Appellant needs to be changed during the overnight other than the fact that he is awake due to his sleeping disorder. Otherwise, the need would be akin to babysitting or respite care which are not part of the PCA program.

This conclusion does not comport with the testimony offered by Appellant's mother. She did not describe a scenario where the PCA was needed to tend to Appellant while he was awake due to his sleep disorder. Rather, she explained that Appellant is awake due to sensing his dirty diaper (pull-up) and thereafter because of his sleep disorder he would remain awake for an extended period of time. The PCA time is being requested to facilitate the toileting caused by the dirty diaper. PCA time is not being requested to assist Appellant after he is toileted during the time that he is unable to go back to sleep because of his sleep disorder.

Appellant's mother explained why she could not simply rely on the pull-ups which would normally allow her to wait until the waking morning to change Appellant. Because of Appellant's autism, when he senses that his diaper needs to be changed, he reaches into the diaper and begins to smear. This is the reason a toileting change is needed during the overnight. Not because of a sleep disorder, but because Appellant is autistic and will smear his feces as soon as he detects his pull-up has been soiled. This is a behavior and result brought on by Appellant's medical condition; therefore, it satisfies medical necessity (130 CMR 450.204(A)).

MassHealth also maintained that at four years old, toileting would be a parental responsibility. MassHealth also acknowledged, however, that it would less likely be a parental responsibility for a five-year-old. Appellant will be turning five years old about one month after this decision issues. The majority of the PCA approval period; therefore, is going to cover the time when Appellant is five years old, and his toileting would not necessarily be a parental responsibility. This serves as an adequate factual

basis for not applying the parental responsibility restriction.

For the foregoing reasons, the appeal is approved.

Order for MassHealth

Restore time for overnight toileting per request.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your MEC office. If the MEC office gives you any problems with implementing this decision, you should report this in writing to the Director of the Board of Hearings, MassHealth of Medical Assistance, at the address on the first page of this decision.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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