

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2205210
Decision Date:	8/16/2022	Hearing Date:	08/10/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:


Via telephone:

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:	Denied	Issue:	Prior Authorization – PCA
Decision Date:	8/16/2022	Hearing Date:	08/10/2022
MassHealth’s Rep.:	Donna Burns, RN	Appellant’s Rep.:	
Hearing Location:	Quincy Harbor South Remote	Aid Pending:	No

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 June 13, 2022, MassHealth modified the appellant’s prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on July 6, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant’s prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant’s prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant was represented at hearing via telephone by his mother and an advocate from Boston Center for Independent Living.

The MassHealth representative testified that the documentation submitted shows that the appellant is a minor MassHealth member with a primary diagnosis of autism. The appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services on June 6, 2022, requesting 6 hours and 30 minutes of day/evening hours per week for dates of service of June 13, 2022 through June 12, 2023. No nighttime hours were requested. MassHealth modified the request to 5 hours and 45 minutes of day/evening hours per week. MassHealth made one modification addressing PCA assistance with bowel care, under toileting.

Toileting: Bowel Care

The appellant requested 8 minutes, 2 times per day, 7 days per week for PCA assistance with bowel care. MassHealth modified the request to 5 minutes, 2 times per day, 7 days per week.

The MassHealth representative testified that the time requested was longer than ordinarily requested. Based on documentation, the appellant only requires minimum level of assistance for bowel care, which was noted by the occupational therapist. According to the documentation, he is independent with bladder care.

The appellant's mother testified that the appellant can pee on his own but he cannot follow the necessary steps on his own, such as closing the door for privacy, turning on and off the light, flushing, and washing and drying his hands. He makes it to the toilet for bowel movements 80% of the time. He cannot wipe himself and he needs reminders to flush, wash his hands, and shut the door. They are trying to teach him how to wipe on his own. He needs at least 8 minutes of time per bowel movement because it takes time to wait for him to go. Someone needs to be present to watch him and prevent him from sticking his hands in his pants, otherwise he will get feces on his hands and then on the walls and his clothing. He can do most of the clothing management on his own, but he is not independent with it. He can pull down his pants by himself but needs help tying or buttoning anything. Often when he pulls up his pants, he does not pull up his underwear and then needs help to re-do it all.

The MassHealth representative responded that assistance in the form of cueing, prompting, supervision, and coaching are not covered by the PCA program, which covers hands-on tasks only. For the hands-on tasks of hygiene and clothing management, 5 minutes seems accurate. Waiting time and teaching are not considered hands-on tasks. She noted that the PCM agency did not request any time for assistance with bladder care.

Findings of Fact

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

1. The appellant is a minor MassHealth member with a primary diagnosis of autism (Testimony and Exhibit 4).
2. On June 6, 2022, MassHealth received a prior authorization request for PCA services requesting 6 hours and 30 minutes of day/evening hours per week and zero nighttime hours for dates of service of June 13, 2022 through June 12, 2023 (Testimony and Exhibit 4).
3. On June 13, 2022, MassHealth modified the request to 5 hours and 45 minutes of day/evening hours per week (Testimony and Exhibit 4).
4. The appellant seeks time for PCA assistance with bowel care as follows: 8 minutes, 2 times per day, 7 days per week (Testimony and Exhibit 4).
5. MassHealth modified the request and approved 5 minutes, 2 times per day, 7 days per week for bowel care (Testimony and Exhibit 4).
6. The appellant cannot wipe himself and needs assistance with hygiene and clothing management (Testimony and Exhibit 4).
7. The appellant needs supervision while making a bowel movement and cueing and reminders to close the door, turn on and off the lights, flush, and wash and dry his hands (Testimony).

Analysis and Conclusions of Law

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 or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;

- (f) eating; and
- (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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.

See 130 CMR 422.412 (emphasis added).

The appeal is denied. The appellant has not demonstrated that hands-on PCA assistance with bowel

care takes longer than the time approved. The appellant needs hands-on assistance with wiping, hygiene, and clothing management. He needs supervision while sitting on the toilet and cueing and reminders to close the door, turn on and off the lights, flush, and wash and dry his hands. Cueing, supervision, and wait time are not covered by the PCA program, which only approves time for hands-on tasks. For these reasons, the appellant has not shown that any further PCA assistance with bowel care is medically necessary.

Therefore, the appeal is denied.

Order for MassHealth

None.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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