

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied;
Dismissed

Appeal Number: 2206649

Decision Date: 10/20/2022

Hearing Date: 10/05/2022

Hearing Officer: Patricia Mullen

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliott, 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:	Denied Dismissed	Issue:	Personal Care Attendant services
Decision Date:		Hearing Date:	10/05/2022
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	Parent
Hearing Location:	Quincy Harbor South		

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 August 19, 2022, MassHealth modified the appellant's request for prior authorization for 15.25 hours per week in day/evening personal care attendant (PCA) services and denied the appellant's request for 14 hours a week for nighttime attendant (NTA) because MassHealth determined that the total time requested for assistance with mobility, nail care, hair care, eating, and toileting at night did not satisfy the MassHealth medical necessity/PCA regulations and some of the requested care was a parental responsibility. (130 CMR 422.403; 422.412; 450.204 and Exhibit 1). The appellant filed this appeal in a timely manner on September 6, 2022. 610.015(B) and Exhibit 2). Modification/denial of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization for PCA services and denied the appellant's request for NTA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.403; 422.412 in determining that total time requested for PCA assistance with mobility, nail care, hair care, eating and toileting at night did not satisfy the PCA and medical necessity regulations.

Summary of Evidence

The appellant is a [REDACTED] child and was represented telephonically at the hearing by her father. MassHealth was represented telephonically at the hearing by a registered nurse reviewer with Optum, MassHealth's contracted agent. The MassHealth representative testified that an initial request for PCA services was submitted by the appellant's provider, Arc of South Shore, on August 8, 2022 seeking 15.25 hours per week in day/evening services and 14 hours a week for NTA. (Exhibit 4, p. 3). MassHealth approved 11.25 hours per week in day/evening PCA services and denied NTA services. (Testimony). The appellant lives with her parents. (Testimony, exhibit 4, p. 11). The appellant is non-verbal and is diagnosed with autism spectrum disorder. (Exhibit 4, p. 11). The appellant is home schooled by her mother. (Exhibit 4, p. 11).

The appellant was evaluated by a nurse evaluator and occupational therapist (OT) from her provider, by video conference, on August 6, 2022. (Exhibit 4, p. 11, testimony). The provider's nurse evaluator noted that the appellant has significant behavioral issues, is resistive to care needs, and has no safety awareness. (Exhibit 4, p. 12). The provider's OT noted that the appellant has gross motor coordination deficits, fine motor coordination deficits, cognitive and behavior issues. (Exhibit 4, p. 8). The OT reported that the appellant is independent with mobility and transfers, but requires supervision on stairs. (Exhibit 4, pp. 9, 34). The OT noted that the appellant requires minimum assistance with eating. (Exhibit 4, p. 9).

The appellant's provider requested PCA assistance with the activities of daily living (ADLs) of mobility on stairs, showering, nail care, oral care, hair care, dressing/undressing, eating, and bladder/bowel care. (Exhibit 4). The provider also requested 5 minutes, twice a night for a total of 10 minutes a night for assistance with bladder care. (Exhibit 4, p. 21). The MassHealth representative stated that the requested 10 minutes a night becomes 2 hours a night because 2 hours a night is the minimum time for an NTA.

The MassHealth representative stated that the requested time was approved in full except for PCA assistance with mobility on stairs, nail care, hair care, and eating which were all modified. The MassHealth representative stated that the 14 hours a week requested for NTA was denied.

After the appellant's father's testimony at the hearing, the MassHealth representative agreed to approve in full the time requested for PCA assistance with eating, 15 minutes, 3 times a day. (Exhibit 4, p. 20). Because this issue resolved, the appellant withdrew the appeal regarding assistance with eating and the appeal is dismissed as to this particular issue.

Mobility: The appellant's provider requested 3 minutes, twice a day for physical assistance with stairs. (Exhibit 4, p. 13). The MassHealth representative stated that MassHealth approved 2 minutes, twice a day, for PCA assistance with stairs. The MassHealth representative referred to the

OT report which states that the appellant needs supervision to manage stairs and requires supervision for other transfers due to safety issues. (Exhibit 4, p. 34). The MassHealth representative stated that supervision and safety monitoring is not a covered PCA task and she would not have approved any time for PCA assistance with stairs. The MassHealth representative stated that there is not a lot of information regarding exactly what the PCA is doing in terms of assisting on stairs and the appellant is ambulatory.

The appellant's father stated that the home has three stories and two sets of stairs. The appellant's father testified that the appellant will not go up or down the stairs unless someone is carrying her or holding her hand. The appellant's father stated that the majority of time, the appellant is carried and about 5% of the time she will use the stairs with someone holding her hand. The appellant's father noted that the appellant can walk, but she refuses to.

The MassHealth representative stated that 2 minutes is sufficient time to carry the appellant up and down stairs.

Nail Care: Under the grooming category, the appellant's provider requested 5 minutes, once a week for PCA assistance with nail care. (Exhibit 4, p. 17). The MassHealth representative stated that there are pediatric standards of care for when a child can perform a task independently. The MassHealth representative explained that any [REDACTED] child, with or without functional limitations, should not be cutting their own nails as such would be a safety concern. The MassHealth representative stated that cutting the nails of a [REDACTED] child is a parental responsibility and a PCA should not be cutting the nails of a child as the PCA could cause harm. The MassHealth representative noted that MassHealth approved 3 minutes, once a week, for nail care and she believes such time is for cleaning the appellant's nails.

The appellant's father stated that he and his spouse have 3 disabled children and they all need supervision. The appellant's father noted that the appellant's grandmother is her PCA and she cuts the appellant's fingernails and toenails.

Hair care: Under the grooming category, the appellant's provider requested 5 minutes a day for PCA assistance with hair care and MassHealth approved 3 minutes a day for assistance with brushing/combining the appellant's hair. (Exhibit 4, p. 17). The MassHealth representative stated that it should take no more than 3 minutes to brush or comb the child's hair in the morning. The MassHealth representative noted that 5 minutes is longer than ordinarily required to brush hair, and furthermore the child would most likely not sit still for that long due to her behavioral issues.

The appellant's father stated that it takes time to set up before a shower and transfer the appellant to the shower. The MassHealth representative stated that washing and drying hair is included in time for assistance with showering, which was approved in full. The MassHealth representative noted that hair care under the grooming category is for brushing or combing hair. The appellant's father stated that the provider's nurse must have requested the time for a reason.

Nighttime attendant: The appellant's provider requested 2 hours a night for NTA assistance noting that 5 minutes, twice a night, is needed for assistance with clothing management, hygiene, and hand

washing due to cognitive deficits, behavioral issues, and resistance to care. (Exhibit 4, p. 21). The MassHealth representative stated that the time requested for a NTA was denied. The MassHealth representative stated that NTA hours are from midnight to 6:00 am and most [REDACTED] children would be asleep during these hours. The MassHealth representative noted further that nighttime care is a parental responsibility for a [REDACTED] child. The MassHealth representative stated that on occasion, MassHealth may approve a NTA for a young child, if the parent has a disability and cannot assist the child with medically necessary tasks during the overnight hours. The MassHealth representative stated that if the appellant is having bladder accidents in the night, the use of incontinence products such as Pull Ups would be a less costly alternative.

The appellant's father stated that the appellant does not wear Pull Ups to bed. The appellant's father stated that the appellant gets up in the night and goes to the bathroom but does not flush and tries to wipe herself but can't do it hygienically. The appellant's father noted that this does not happen every night and the appellant's mother gets up to help her when it does. The appellant's father noted that the appellant occasionally wets the bed.

The MassHealth representative stated that the appellant has the functional ability to get up and use the bathroom and it is a parental responsibility to get up with her and make sure she is safe.

Findings of Fact

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

1. An initial request for PCA services was submitted by the appellant's provider, Arc of South Shore, on August 8, 2022 seeking 15.25 hours per week in day/evening services and 14 hours a week for an NTA; MassHealth approved 11.25 hours per week in day/evening PCA services and denied NTA services.
2. The appellant is [REDACTED] and lives with her parents and two siblings; the appellant is non-verbal and is diagnosed with autism spectrum disorder; the appellant is home schooled by her mother.
3. The appellant was evaluated by a nurse evaluator and occupational therapist (OT) from her provider, by video conference, on August 6, 2022.
4. The appellant has significant behavioral issues, is resistive to care needs, and has no safety awareness.
5. The appellant has gross motor coordination deficits, fine motor coordination deficits, cognitive and behavior issues.
6. The appellant is independent with mobility and transfers, but requires supervision to manage stairs for safety.

7. The appellant's provider requested PCA assistance with the ADLs of mobility on stairs, showering, nail care, oral care, hair care, dressing/undressing, eating, and bladder/bowel care; the provider also requested 5 minutes, twice a night for a total of 10 minutes a night for assistance with bladder care, which becomes 2 hours a night for an NTA.
8. The requested time for PCA assistance was approved in full except for PCA assistance with mobility on stairs, nail care, hair care, and eating which were all modified; MassHealth denied the request for an NTA.
9. At the hearing, MassHealth approved in full the time requested for PCA assistance with eating.
10. The appellant's provider requested 3 minutes, twice a day for physical assistance with stairs and MassHealth approved 2 minutes, twice a day, for PCA assistance with stairs.
11. The appellant is ambulatory.
12. Most of the time, the caregiver carries the appellant up and down the stairs due to her resistive behavior.
13. The appellant's provider requested 5 minutes, once a week for PCA assistance with nail care and MassHealth approved 3 minutes a week for PCA assistance with cleaning the appellant's nails.
14. Based on pediatric standards of care for when a child can perform a task independently, a [REDACTED] should be cutting their own nails and thus it is a parental responsibility.
15. The appellant's provider requested 5 minutes a day for brushing or combing the appellant's hair and MassHealth approved 3 minutes a day.
16. Five minutes time for task is longer than ordinarily required to brush or comb hair.
17. The appellant's provider requested 5 minutes, twice a night, for assistance with clothing management, hygiene, and hand washing after toileting due to cognitive deficits, behavioral issues, and resistance to care.
18. NTA hours are from midnight to 6:00 am.
19. The appellant does not wear Pull Ups or any incontinence product to bed.
20. The appellant occasionally gets up in the night and goes to the bathroom but does not flush and does not wipe herself properly ; the appellant occasionally wets the bed.

Analysis and Conclusions of Law

MassHealth covers PCA 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 PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

(130 CMR 422.403(C)).

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

(130 CMR 450.204(A)-(C)).

Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or 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 PCA 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 PCM 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 PCA 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.

(130 CMR 422.410).

Noncovered 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.

(130 CMR 422.412).

The appellant's provider requested 3 minutes, twice a day for physical assistance with stairs and MassHealth approved 2 minutes, twice a day. The appellant is ambulatory and has the functional ability to manage stairs, but needs supervision and safety monitoring. As noted by the MassHealth representative, supervision and safety monitoring are not covered PCA tasks and MassHealth probably should not have approved any time for PCA assistance with this task. The appellant's caregiver carries her up and down the stairs most of the time, due to the appellant's refusal to go up or down the stairs. 2 minutes time for task is sufficient for PCA assistance with carrying the appellant up and down stairs. MassHealth's modification of time requested for PCA assistance with mobility on the stairs is upheld and the appeal is denied as to this issue.

The appellant's provider requested 5 minutes, once a week for PCA assistance with nail care and MassHealth approved 3 minutes for assistance with cleaning the appellant's nails. MassHealth covers personal care services provided to eligible MassHealth members when the member's disability impairs the member's functional ability to perform ADLs without physical assistance. (130 CMR 422.403(C)). In the present case, the appellant is a [REDACTED] child and her need for assistance with ADLs is due to her age and need for parental supervision, rather than solely based on the functional limitations resulting from her diagnoses. The PCA program provides hands on assistance with tasks that a MassHealth member could do for him or herself but for a disabling condition. Based on pediatric standards of care, a [REDACTED] child cannot safely and independently cut his/her/their fingernails and toenails. Such task is a parental responsibility, no matter what the functional limitation of the child. 3 minutes is sufficient time for assistance with any extra nail cleaning, in addition to the cleaning done in the shower. MassHealth's modification of time requested for PCA assistance with nail care is upheld and the appeal is denied as to this issue.

The appellant's provider requested 5 minutes a day for PCA assistance with hair care and MassHealth approved 3 minutes a day for PCA assistance with this task. It should take no more than 3 minutes to brush or comb the child's hair in the morning. No evidence was provided to support that it would take more than 3 minutes to brush/comb the appellant's hair. MassHealth's modification of the time requested for PCA assistance with hair care is upheld and the appeal is denied as to this issue.

NTA hours are from midnight to 6:00 am. As noted by the MassHealth representative, most [REDACTED] children would be asleep during these hours. The appellant's provider requested 5 minutes,

twice a night to assist with hygiene and hand washing after the appellant uses the toilet. The appellant's father noted that the appellant does not clean herself properly after using the toilet. There was no evidence provided to support a medical reason for the appellant to be using the bathroom twice between midnight and 6:00 am. The use of Pull Ups or other incontinence products would be a less costly alternative to 2 hours of NTA services every night, if the appellant has nightly incontinence issues. Furthermore, the appellant has the functional ability to get up and use the bathroom and it is a parental responsibility to get up with her and make sure she is safe. Assistance in the form of babysitting, cueing, prompting, supervision, guiding, or coaching is not covered under the MassHealth PCA program. (130 CMR 422.412). Accordingly, watching a child and supervision for safety, among other things, are not covered tasks for a PCA/NTA. MassHealth's denial of the appellant's request for 2 hours a night for NTA assistance is upheld and the appeal is denied as to this issue.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

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