

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2206653

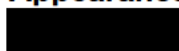
Decision Date: 11/22/2022

Hearing Date: 10/06/2022

Hearing Officer: Thomas Doyle

Record Open to:

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N.

Heather Adams, Optum Reviewer
(observing)

Interpreter:



*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:	PA-PCA services
Decision Date:	11/22/2022	Hearing Date:	10/06/2022
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (telephone)	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 August 23, 2022, MassHealth denied the appellant's application for PCA services. (Ex. 1). The appellant filed this appeal in a timely manner on September 1, 2022. (130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

By written authorization of appellant, he was represented by his PCA, who appeared via telephone. MassHealth was represented by an R.N. who testified that MassHealth modified appellant's PCA services. Appellant is a male in his late 20's with a primary diagnosis of an autistic disorder and multiple personality disorder. Currently there is aid pending. On August 12, 2022, the provider, ADLIB, submitted a reevaluation request for 11 hours and 15 minutes of day/evening hours per week and 2 nighttime hours. On August 23, 2022, MassHealth modified the request because

appellant did not meet program requirements, specifically appellant did not require physical assistance with two or more activities of daily living.

There were multiple modifications. MassHealth modified bathing from 20 minutes, 1 time a day, 7 days a week to zero because it was noted that appellant needs to be led to the shower and this falls under the category of cuing, prompting, supervision, guiding and coaching. Those are not part of the PCA program. MassHealth also noted appellant was independent with mobility, grooming, eating, dressing and undressing. Toileting was modified from a request of 10 minutes an episode, 2 episodes a night to MassHealth approving zero time for this task. MassHealth testified that appellant could ambulate to the bathroom during the day on his own as his mobility was evaluated as independent. As to any seizures, MassHealth noted you could not predict when these could occur. MassHealth reviewed appellant's medication list and did not see any medication that would add to confusion at night so leading appellant to the bathroom would be considered cuing, prompting, supervision, guiding and coaching. MassHealth modified physical assist with medication from 3 minutes an episode, 2 times a day, 7 days a week to zero. After hearing testimony, MassHealth rescinded the modification and agreed to the requested time for physical assist with medication for preparation of cannabis.

Appellant and his appeal representative, who is his PCA, both testified. They believed their PCM, ADLIB, did a poor job of evaluating appellant. They testified that his dissociative disorder requires hands on help with a shower and the feeling of the shower water may cause seizures due to his disorder. Regarding toileting, the appeal representative said appellant awakens her during the night to use the bathroom. This does not happen every night and she estimated maybe three to five times a week. She testified that she does not always have hands on appellant because sometimes this could be a detriment affecting appellant's balance.

Findings of Fact

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

1. The appellant is a male MassHealth member in his late 20's who lives in the community. (Testimony; Ex. 4, p. 1, 8). Appellant has a surrogate. (Ex. 4, p. 29).
2. The appellant's medical diagnoses include autistic disorder and multiple personalities. (Ex. 4, p. 9).
3. ADLIB, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf on or about August 12, 2022, seeking 11 hours, 15 minutes of PCA assistance per week (day/evening hours), and 2 nighttime hours per night. (Testimony; Ex. 7, p. 8-41).
4. By notice dated August 23, 2022, MassHealth modified the requested time to 0 hours, 0 minutes of day/evening PCA assistance per week, and 0 nighttime hours every night for services for one year. (Testimony; Ex. 1; Ex. 7, p. 8-41).

5. There is aid pending. (Ex. 2; Ex. 7).
6. MassHealth modified bathing, toileting, and physical assist with medications. (Testimony; Ex. 7).
7. MassHealth rescinded its modification on physical assist with medications for cannabis and the parties agreed to 3 minutes an episode, 2 times a day, 7 days a week. (Testimony).
8. Appellant is independent in his level of assistance with mobility, grooming, dressing, undressing and eating. (Ex. 4, pp. 10, 14, 15 and 16).

Analysis and Conclusions of Law

Appellant disagreed with the medically necessary decision of MassHealth in modifying his hours for PCA services. The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

(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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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. (**Emphasis added**).

(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. (**Emphasis added**).

422.403: Eligible Members

...

(C) 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)**. (**Emphasis added**).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

422.412: Non-covered Services

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

...

(C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.

MassHealth made modifications to appellant's prior authorization requests for the IADL's of bathing, toileting and assistance with medications. (Ex. 4, p. 12, 16 and 17; Testimony).

Bathing:

MassHealth modified bathing from 20 minutes, 1 time a day, 7 days a week to zero because appellant did not meet program requirements because he did not meet the need for physical assistance with two or more ADL's. Appellant needs to be "led" to the shower (Ex. 4, p. 13) and this falls under the category of cuing, prompting, supervision, guiding and coaching. This is not part of the PCA program. (130 CMR 422.412 (C)). Additionally, appellant is independent for mobility. (Ex. 4, pl. 10). He is independent for grooming activities. (Ex. 4, p. 14). He is independent, needing no device, for dressing and undressing. (Ex. 4, p. 15). He is independent, needing no device, for eating. (Ex. 4, p. 16). Appellant was asked why he cannot bath himself if he can dress, undress and feed himself. He testified showering could trigger his dissociative disorder where he could stand in the shower until the water ran cold and then he could have a seizure. He stated he needed someone to "stand there" to stop him from disassociating. (Testimony). To have an activity of daily living apply for PCA services, the member must require physical assistance. Assistance provided in the form of cueing, prompting, supervision, guiding, or coaching is not covered. Appellant is independent for mobility, dressing, undressing, eating and grooming himself. In the regulation, bathing and grooming are cited together at 130 CMR 422.410 (A) (3). Appellant is led to the shower. I find this to be guiding the appellant because he is mobile and ambulatory, therefore, PCA regulations do cover this activity of daily living. Appellant said he needs someone to "stand there" as he showers. (Testimony). I find this to be supervision and is not covered by the regulations. Being ambulatory and independent in the tasks of mobility, grooming, eating, dressing and undressing, appellant has not met his burden on his request for hours for bathing.

Toileting:

Toileting was modified from a request of 10 minutes an episode, 2 episodes a night to MassHealth approving zero time for this task. (Ex. 4, p. 16-17; Testimony). MassHealth denied this request because appellant could ambulate to the bathroom during the day on his own as his mobility was evaluated as independent. (Testimony; Ex. 4, p. 10). As to any claim by appellant that seizures could occur, MassHealth noted you could not predict seizures as these are anticipatory events. (Testimony). The nurse clinical reviewer testified for MassHealth that, while it was noted appellant needed hands on assist, (Ex. 4, p. 17), nothing in appellant's medications list (Ex. 4, p. 40) showed anything that would add to appellant's confusion at night.¹ MassHealth testified since appellant was ambulatory and could go to the bathroom during the day independently, the night time request for toileting was a matter of cueing, prompting, supervision, guiding, or coaching, which are non-covered PCA services, so they denied this request for PCA services for toileting. Appeal

¹ This medication list is handwritten. The place to note medications in typewritten form in the evaluation is empty. (Ex. 4, p. 9).

representative testified that the cannabis appellant uses could cause confusion, depending on the strain. She testified appellant may tap her on the shoulder at night, as she sleeps in the same room, and she would go to the bathroom with appellant. She said appellant's gate could be unstable, but not every night. She was asked if appellant gets up every night. She replied maybe three times a week. She also testified that she does not always have hands on appellant.

Appellant is ambulatory in the daytime and his level of assist for mobility is independent. (Ex. 4, p. 10). The appeal representative testified that she does not have hands on appellant every night he goes to the bathroom. The appeal representative's testimony as to possible confusion at night due to use of cannabis is equivocal. She testified it depends on the strain of cannabis and did not say he uses cannabis every night. Appellant's possible seizures at night are anticipatory. There was no evidence seizures occur during the day when appellant is ambulatory. It is clear the appeal representative is supervising and guiding appellant to the bathroom at night and these are non-covered for PCA services. (130 CMR 422.412 (C)). Appellant has not met his burden for PCA services for toileting at night.

Assistance with Medications:

MassHealth modified physical assist with medication from 3 minutes an episode, 2 times a day, 7 days a week to zero for the PCA to apply Nystatin powder. (Testimony; Ex. 4, p. 17-18). After hearing testimony from the appeal representative, MassHealth stood by their denial for PCA assistance with the application of Nystatin because it was not applied everyday and appellant had the physical capability to apply the powder himself. MassHealth did approve time for the PCA to prepare and grind cannabis for use by the appellant. MassHealth agreed to the requested time of 3 minutes a day, 2 times a day, 7 days a week for physical assist with medication for cannabis because it is an everyday use and helps with appellant's digestion.

Activities of daily living are applicable when a person requires physical assistance. Appellant's level of assist for mobility, grooming, dressing, undressing and eating is independent. The evidence does not reflect appellant needs physical assistance with bathing or toileting at night. The evidence shows the assistance provided for those two activities is in the form of cueing, prompting, supervision, guiding, or coaching. These are non-covered services. 130 CMR 422.412 (C). MassHealth's denial of the ADL of assistance with medications for the application of the powder form of Nystatin was correct. Appellant's level of assist with eating is independent. It is reasonable to assume he has dexterity of his fingers because he can feed himself and therefore could apply the Nystatin on his own. MassHealth did approve assistance with medication regarding the PCA to prepare and grind cannabis for appellant's use. I have reviewed the letter from John Struth at Exhibit 10 and the sign off by Michelle Sansky, DO, on pages 30-31 in Exhibit 11. I have considered their statements but they did not have the plethora of evidence that I had in front of me, especially the testimony regarding appellant's abilities and circumstances surrounding the activities of daily living of bathing and toileting.

Appellant has not met his burden and does not require physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A). Therefore, it is unnecessary to analyze the incidental activities of daily living because appellant does not qualify for PCA services.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]