

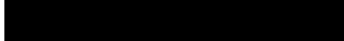
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part; Denied in part	Appeal Number:	2206765
Decision Date:	1/3/2023	Hearing Date:	11/21/2022
Hearing Officer:	Christopher Jones		

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:	Dismissed in part; Approved in part; Denied in part	Issue:	Prior Authorization – Pediatric PCA
Decision Date:	1/3/2023	Hearing Date:	11/21/2022
MassHealth’s Rep.:	Donna Burns, RN	Appellant’s Rep.:	Mother
Hearing Location:	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 July 28, 2022, MassHealth modified the appellant’s prior authorization request for personal-care-attendant services. (Exhibit 4; 130 CMR 422.000.) The appellant’s mother filed this appeal in a timely manner on September 12, 2022.¹ (Exhibit 3; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal-care-attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in allowing fewer hours of personal-care-attendant services than were requested.

¹ The appellant did not submit a copy of the MassHealth notice with their hearing request. The Board of Hearings scheduled a hearing on October 14, 2022 to address a request for services on behalf of the appellant’s mother. This hearing was rescheduled once this miscommunication was understood. (Exhibit 3.)

Summary of Evidence

The appellant is a ■-year-old child with a primary diagnosis of autism, with attendant cognition and behavioral issues. He also has muscle atrophy and fine motor coordination deficits. The request for services identified that the appellant requires assistance with most activities of daily living (“ADLs”) due to significant task avoidance that requires hands-on assistance to redirect. On or around July 20, 2022, the appellant’s PCM agency requested 24 hours per week of day/evening personal-care-attendant (“PCA”) services for the prior authorization period of July 28, 2022 through July 27, 2023. MassHealth made modifications to nine categories of assistance and allowed only 11 hours and 45 minutes of assistance per week.

The appellant resides with a single parent and two minor siblings, all of whom are disabled. The eldest child is in middle school, and the two youngest are in elementary school. The appellant’s mother testified that she has arthritis and has been approved for her own PCA services, but has difficulty finding staff. She testified part of this difficulty is coordinating which PCA may provide assistance to her children, as any PCA who works for her may not provide any services to her children. The appellant’s siblings have sickle-cell disease, which means that they are often sick and miss school, but they do not get PCA services themselves, as much of their care requirement is skilled.

The first modification MassHealth made was to Mobility. The request was for five minutes, twice per day, five days per week to help the appellant to and from school. MassHealth’s representative explained that the PCA program only allows time that a child needs because of their disability. MassHealth did not allow time for the appellant because any child the same age as the appellant would need supervision to walk to school or board a school bus. As he ages, if he continues to require assistance beyond what an age-peer would require, he may become eligible for assistance in this category.

The appellant’s mother testified that they live across the street from school, but he cannot safely travel back and forth on his own due to his disability. She testified that the appellant can be very uncooperative, and he needs to be physically moved and guided to prevent him from running off. She has had to call the police to help her get him back because her arthritis makes it impossible for her to keep up with him, as she uses a cane and sometimes a walker. Some days when her oldest child is feeling well, he is able to help, but he is often in a wheelchair himself due to his own condition. The appellant’s siblings stay home from school for weeks at a time due to their own illnesses. Without assistance, the appellant’s mother often keeps him home as well because it is too difficult to manage getting him to school while the other children remain home.

The second and third modifications made by MassHealth were to Dressing and Undressing. The appellant requested 20 minutes per day for Dressing and 15 minutes per day for Undressing. MassHealth reduced these times to 15 and 10 minutes, respectively, because this is the most amount of time typically allowed for these categories given the appellant’s physical restrictions. The appellant’s mother agreed that the appellant needed the most amount of time possible but disagreed with the way the time was allowed. She explained that the appellant is resistive to getting dressed and undressed, and he will not participate in the process. He also continues to wear diapers, and his

diapers regularly leak because they are not meant for a child as large as him. These leaks necessitate multiple clothing changes throughout the day. The appellant's mother believed that much more time per day should have been requested to get the appellant dressed and undressed due to all of these separate changing instances. He also needs to be washed up during these diaper and clothing changes. MassHealth's representative responded that these extra clothing changes and quick washes need to be requested under the category of Toileting or Bathing by the PCM agency. The PCM agency described the appellant as requiring "maximum" assistance for Dressing and "Total Dependence" for Undressing.

The fourth modification was to allow no time for Eating. The appellant had requested 15 minutes, twice per day for five school days, and 15 minutes, three times per day for the two weekend days. MassHealth argued that no time should be allowed for this task because the appellant is physically capable of feeding himself. Any time requested would be for supervision or redirection back to eating a meal, which are not compensable services for a PCA. The appellant's mother testified that much of the requested time is for getting the food into his mouth. She felt that 15 minutes per meal was vastly insufficient because he requires a great deal of redirection and supervision, but she also explained that he needs someone to help him hold a utensil the correct way. She testified that the appellant receives Occupational Therapy ("OT"), but she did not recall if there was a specific order for eating. He needs to have swallow studies done because he sometimes vomits while eating, and she said she would raise this with his medical care team. Based upon this testimony, MassHealth agreed to allow 10 minutes per meal, but because the appellant eats breakfast at school, time was allowed only once per school day. The appellant's mother argued that this is insufficient because of the number of days the appellant missed school due to illnesses in his family.

The fifth and sixth modification were to Bladder and Bowel Care. The appellant requested seven minutes, four times per day, three days per week and seven minutes, six times per day, two days per week. This totals 168 minutes of Bladder Care per week. MassHealth modified the time per Bladder Care to five minutes for each visit, but also increased the weekend care up to four days per week. MassHealth's representative explained that there was clearly an error in the number of school days requested by the PCM agency, as the request only sought assistance four times per day, three days per week. However, instead of increasing this number of days to five, MassHealth's modification erroneously increased the weekend assistance to four days a week to total seven days of assistance per week. This modification actually increased the amount of time for Bladder Care to 180 minutes per week. MassHealth's representative agreed to allow this modification to stand as it benefited the appellant.

The appellant's mother responded that this was still not enough time. Each instance of Bladder Care required a complete diaper change. Furthermore, as discussed with the Dressing/Undressing modifications, the appellant often requires a full clothing change and a quick wash. This is not considering the fact that you have to chase the appellant and redirect him to the task, often by providing him distraction. He also will run away during the change, and then pees without a diaper on, which requires additional cleanup as well. The appellant's mother testified that she tries to check him periodically to bring him to the toilet, but that she usually does not catch him while he is dry, and often does not catch him until he has leaked onto his clothing.

For Bowel Care, MassHealth allowed seven minutes, twice per day, instead of the requested 10 minutes, twice per day. MassHealth's representative explained that diaper changing should actually reduce the amount of needed time because a diaper change is brought to the appellant, so there is no need to transfer him to the toilet. It should just be a matter of laying the appellant down, changing the diaper, and wiping him down with wipes. The appellant's mother testified that it is never this simple. The appellant's feces are almost always smeared, meaning that a great deal of wiping and clean up is required. There are almost always feces on the floor or furniture that needs to be cleaned up afterward, or his clothing needs to be changed. Because of this explanation, MassHealth restored all of the time requested for Bowel Care.

The seventh modification was to allow no time for medication assistance because a PCA is not allowed to give medication to a minor. The appellant's mother understood this restriction and accepted this reduction of five minutes, twice per day.

The final two modifications were to Instrumental Activities of Daily Living ("IADLs"), Laundry and Housekeeping. The appellant had requested 60 minutes and 45 minutes per week respectively, but MassHealth allowed no time for these tasks because IADLs are generally expected to be provided by the parent of a minor child. The appellant's mother argued that she needs a PCA herself, and that the appellant generates more laundry than the rest of her household combined. She testified that his laundry needs to be done separately from everyone else because it is soiled.

The appellant also leaves a constant wake of chaos and mess behind him wherever he goes. She testified that she pays \$180 a week for a private housekeeper because of the health and safety problems caused by the appellant's causing messes. In addition to his biological waste that needs to be cleaned up, he will regularly create extremely time-consuming messes. For instance, he has taken a powdered beverage mix carton and shaken it across the entire home. She testified that her other kids' care is too medically intensive to be handled by a PCA, but that they do not qualify for other services because they would not qualify for institutionalization. She also testified that she is authorized for 14 hours per week of personal assistance, but that person would not be allowed to provide any "pediatric" services so it is very difficult to staff and delineate what should be attributed to the mother's needs and what services should be attributed to the appellant.

Based upon the testimony regarding the quantity of laundry the appellant creates due to soiled clothing, MassHealth's representative allowed 45 minutes per week for Laundry, but did not allow any time for Housekeeping. The appellant accepted the time allowed for Laundry but asked that the same amount of time be allowed for Housekeeping. MassHealth's testimony relied heavily upon the PCA Operating Standards and Time for Task Guidelines that MassHealth has developed. Because these standards are not published on MassHealth's website, they were shared and entered into the administrative record as Exhibits 5 and 6.

Findings of Fact

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

1. The appellant is a ■-year-old child with a primary diagnosis of autism, with attendant cognitive and behavioral issues. He also has muscle atrophy and fine motor coordination deficits. (Exhibit 4, pp. 8, 13; testimony by MassHealth's representative.)
2. On or around July 20, 2022, the appellant's PCM agency requested 24 hours per week of day/evening PCA services for the prior authorization period of July 28, 2022 through July 27, 2023. MassHealth allowed only 11 hours and 45 minutes of assistance per week. (Exhibit 4, p. 6.)
3. MassHealth made modifications to the request for services in nine categories of assistance: Mobility, Dressing, Undressing, Eating, Bladder, Bowel, Medications, Laundry, and Housekeeping. (Exhibit 4, p. 6).
4. For Mobility, the appellant requested five minutes, twice per day, five days per week for assistance crossing the street to school. (Exhibit 4, p. 16.)
 - a. MassHealth allowed no time because any child the appellant's age would require assistance getting to school or boarding a school bus. (Testimony by MassHealth's representative.)
 - b. The appellant requires physical assistance to safely cross the street to school. Without intervention, he will run away. He has gotten loose and required police assistance to be recovered. (Testimony by the appellant's representative.)
5. The appellant requested 20 minutes per day for Dressing and 15 minutes per day for Undressing. (Exhibit 4, p. 20.)
 - a. MassHealth modified these tasks to 15 minutes for Dressing and 10 minutes for Undressing because it was considered to be the maximum amount of time typically allowed based upon the appellant's described needs. (Exhibit 4, p. 6; testimony by MassHealth's representative.)
 - b. The appellant is described as requiring "Maximum" assistance for Dressing and "Total Dependence" for undressing. (Exhibit 4, p. 20.)
 - c. Much of the appellant's need for assistance arises from his resistance to the task, and the fact that he must be changed multiple times per day due to soiled clothing. (Testimony by the appellant's representative.)
6. MassHealth initially modified the time for Eating from 15 minutes, twice a day, five days per week down to nothing. At the hearing, MassHealth restored 10 minutes per meal, once per school day and three times per day on weekends. (Exhibit 4, p. 6; testimony by MassHealth's representative.)
 - a. The appellant requires redirection to complete a meal. He also requires hands-on assistance to correctly use a utensil. (Testimony by the appellant's mother.)

7. Bladder Care was requested at seven minutes, four times per day, three days per week and seven minutes, six times per day, two days per week. This totals 168 minutes per week. (Exhibit 4, p. 22.)
 - a. MassHealth reduced the time per incident of Bladder Care to five minutes but increased the second number of days to four days per week to total seven days a week of assistance. This increased the time for Bladder care to 180 minutes per week. (Exhibit 4, p. 6.)
 - b. Because the time requested was clearly a typographical error, and because MassHealth's correction erroneously exceeded the time requested, MassHealth's representative agreed to honor the erroneous increase to Bladder Care. (Testimony by MassHealth's representative.)
8. Bowel Care was requested at 10 minutes, twice per day. MassHealth initially reduced this to seven minutes per incident, but all Bowel Care time was restored at the hearing. (Exhibit 4, pp. 6, 22; testimony by MassHealth's representative.)
9. The appellant requested five minutes, twice per day for Medication Assistance. No time was allowed because providing medications to a child is prohibited by the PCA Guidelines. The appellant's mother understood this restriction. (Testimony by MassHealth's representative and the appellant's representative.)
10. The appellant requested 60 minutes for each Laundry and Housekeeping per week. MassHealth allowed no time because family members living with a PCA recipient are expected to provide IADL assistance. (Exhibit 4, pp. 6, 27-28; testimony by MassHealth's representative.)
 - a. The appellant generates a great deal of laundry and housekeeping due his medical and behavioral conditions. Much of his laundry is soiled with bodily fluids and needs to be washed separately. The appellant often smears bodily fluids around the house, which must be cleaned and sanitized. (Testimony by the appellant's representative.)
 - b. MassHealth restored 45 minutes per week for Laundry but no time for Housekeeping. (Testimony by MassHealth's representative.)
 - c. The appellant's representative accepted the time allowed for Laundry. (Testimony by the appellant's representative.)

Analysis and Conclusions of Law

MassHealth generally covers personal care attendant ("PCA") services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"),

but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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.

(130 CMR 422.410(A).)

IADLs include:

- (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.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) There are also certain services that MassHealth will not cover:

- (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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412.)

The Pediatric PCA Evaluation Section of the PCA Operating Standards make clear that “[s]pecial consideration may be given to behavioral needs that demonstrate a safety risk for the child or others (i.e. removing a child from a dangerous situation), but documentation must support the request. Please Note: PCA time is not allowed when requested for purposes of restraint.”² This section goes on to explain that special “consideration may be given for IADL’s if the documentation supports the reason(s) the parent(s) or legal guardian(s) cannot perform the task(s) or if they task(s) is/are above and beyond what would be expected of a non-disabled child of the same age. This section also clarifies that a PCA should not provide skilled assistance, such as administering medications or feeding a child with a high aspiration risk. (Exhibit 5, pp. 62-63.)

This appeal is DISMISSED in part with regards to Bladder Care, Bowel Care, Medication Administration, and Laundry. MassHealth erroneously allowed more time than was requested for Bladder Care in its modification and restored all of the time requested for Bowel Care (42 minutes per week). If the appellant seeks more time for Toileting, they must do so through an adjustment

² “Restraint” is not defined, but it is clear that removing a child from a dangerous situation cannot be the same as restraining them.

request from the PCM agency.³ The appellant accepted that Medication Administration is not an appropriate task for a PCA to provide to a child and also accepted the restoration of 45 minutes per week for Laundry.

This appeal is APPROVED in part with regards to Mobility, Dressing, Undressing, and Housekeeping. Regarding Mobility, MassHealth's representative's opinion is that any child would require assistance getting to school at the appellant's age. Often, when making this argument, MassHealth points to the PCA Operating Standards, which include age ranges at which non-disabled children master functional tasks. (See Exhibit 5, pp. 81-95.) However, none of these age ranges describe mobility outside of the home. None of the functional tasks listed for Mobility expect a child the appellant's age to require assistance. It is reasonable to expect that a child the appellant's age would require supervision in getting to school or the school bus, but the appellant's mother described him requiring an entirely different level of assistance. The appellant requires hands-on physical guidance from door to door to prevent bolting and endangering himself. This falls outside the realm of mere "cueing, prompting, supervision, guiding, and/or coaching," and it arises from "behavioral needs that demonstrate a safety risk for the child" (Exhibit 5, p. 62.)

For Dressing and Undressing, MassHealth argued that it already allowed the maximum time for people with the appellant's need for assistance. The average time estimate in the Time for Task Guidelines, however, allow 23 minutes per instance of Dressing for a person who requires "Maximum" assistance, and 20 minutes per instance of Undressing for someone who totally depends on their caregiver. MassHealth could have reasonably disputed these categorizations of the appellant's degree of need but did not. While the appellant's need for assistance is not well described in the request, the appellant's mother explained that the appellant does not participate in dressing and also requires multiple clothing changes due to incontinence and making messes in general. This time could have been requested more clearly, either by requesting multiple instances of Dressing and Undressing, or by breaking out additional time in Toileting. The appellant would need to seek an adjustment request through the PCM agency if they continue to believe even more time is appropriate.

Regarding Eating, the appellant's need for assistance in this category was described as supervision and redirection. There was some hand-over-hand assistance described, but the appellant's mother was not aware of an OT plan to provide this assistance. Further, MassHealth allowed 10 minutes per meal that the appellant is expected to be home. The appellant's representative argued that he is often at home on school days because the appellant's mother cannot get him to school when his siblings are sick. However, this rationale is obviated by the allowance of time for Mobility for the PCA to walk the appellant across the street to school.

³ A fair hearing may only review the agency's "action to suspend, reduce, terminate, or restrict a member's assistance ... [or] individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations)" (130 CMR 610.032(A)(3), (5).) Were this decision to approve the appellant's request for Bladder Care, it would actually reduce the amount of time the appellant is allowed back to the amount requested.

MassHealth shall recalculate the appellant's PCA hours in accordance with this decision and allow the time retroactively as of the start of the Prior Authorization period, July 20, 2022. MassHealth restored 42 minutes per week for Bowel Care, 110 minutes for Eating, and 45 minutes per week for Laundry at the hearing. This decision restores 50 minutes per week for Mobility, 35 minutes per week for Dressing, 35 minutes per week for Undressing, 45 minutes per week for Housekeeping. MassHealth's original modification allowed 705 minutes per week. This decision adds back 362 minutes per week; the resulting 1,076 minutes equals 17.78 hours per week. MassHealth's PCA Operating Standards instruct that time that does "not equal to an exact 15 minute increment" should be rounded "**up to the next 15 minute increment.**" (Exhibit 5, p. 33.) MassHealth shall allow 18 hours of day/evening PCA hours per week.

Order for MassHealth

MassHealth shall allow 18 hours of day/evening PCA hours per week as of July 20, 2022. The appellant may discuss with their PCM agency the best way to apply the accrued increased time.

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.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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