

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2207072
Decision Date:	1/11/2023	Hearing Date:	10/27/2022
Hearing Officer:	Christopher Jones	Record Open to:	11/23/2022

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN

Interpreter:

David, ITI # 221242



*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 in part; Denied in part	Issue:	Prior Authorization – PCA
Decision Date:	1/11/2023	Hearing Date:	10/27/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	Pro se
Hearing Location:	Remote	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 September 6, 2022, MassHealth modified the appellant's prior authorization request for personal-care-attendant services. (Exhibit 2; 130 CMR 422.000.) The appellant's mother filed this appeal in a timely manner on September 21, 2022, and the appellant's existing benefits are protected pending the outcome of this appeal. (Exhibit 3; 130 CMR 610.015(B); 610.036.) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the record was left open until November 23, 2022 for the appellant to submit updated medical records.

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 denying any time to be allowed for feeding the appellant.

Summary of Evidence

The appellant is a child with a primary diagnosis of chromosome 22 deletion and chromosome 22Q11 duplication. Her medical history includes ventricular septal defect; velocardiofacial syndrome; imperforate anus; bilateral coronal crainosynostosis; failure to thrive; oral sensitivity and aversion; difficulty with swallowing solid foods. The appellant has a g-tube for nutrition but has been able to drink thickened fluids and eat some solid foods for nutrition.

On or around August 16, 2022, the appellant's personal-care-management ("PCM") agency requested 17 hours and 45 minutes per week of day/evening personal-care-attendant ("PCA") services for the prior authorization period of September 27, 2022 through September 26, 2023. MassHealth made one modification. The appellant had requested 20 minutes per feeding for "[p]hysical assist with drinking; Enteral tube feeding." The request sought three feedings during the five school days per week and four feedings for the two weekend days per week. This totaled 460 minutes per week for feeding. The notes section described the time as for assisting with the setup and breakdown of tube feeding. It also notes "PO food as tolerated. Receives thickened liquids through a sippy cup twice a day." (Exhibit 4, p. 15.)

MassHealth's representative testified that the appellant's medical documentation was extremely outdated. The last doctor's note they had regarding g-tube feedings was over two years old. Furthermore, there appeared to be more recent doctor's note that indicated that the appellant was gaining weight through oral nutritional intake, and the school nurse recommended ending g-tube feedings all together. Therefore, because g-tube feedings were not supported by the clinical documentation, MassHealth allowed no time for Eating.

The appellant's mother testified through an interpreter that they have had a lot of difficulty getting formula through MassHealth to feed the appellant through the g-tube. She testified that the documentation submitted by the PCM agency was years out of date, and she did not know why they did not provide updated information.¹ For instance, she now uses a different formula than was listed on the documentation, and the appellant mostly consumes food orally. However, appellant's doctor has recently ordered that she continue to use a different formula, and she did not know why the documentation submitted was so out of date. She agreed that the appellant is generally receiving calories orally, but she testified that she still receives one g-tube feeding per day depending on how well she ate otherwise.

The record was left open until November 23 for the appellant to submit updated doctor's orders regarding g-tube feeding. The appellant submitted a gastroenterology note from August 2022 confirmed that "[d]espite not having supplemental enteral nutrition, [the appellant] has actually gained some weight. ... She tends to eat four to five times a day" Nonetheless, this note goes on

¹ The PCM agency also identifies the appellant as being two years younger than she actually is. This reevaluation was conducted remotely, and it is likely that the PCM agency may need to see the appellant in person to ensure that she is receiving all the services that she needs.

to “[agree] that her formula should be reinstated initially at one can daily, to be potentially increased to two cans daily.” (Exhibit 5.)

MassHealth responded that the denial of g-tube feeding should remain because “MassHealth Operating standards allow for PCA assistance with G tube feedings when the G-tube feedings are the main nutritional source.” No page citation was provided to the Operating Standards, and the only other guidance cited were 130 CMR 422.410(A)(6) AND 130 CMR 450.204(A)(1), (2) and (B). The medical documentation shows that the appellant had gained weight through oral eating and the g-tube formula feedings are as-needed and supplemental. The medical documentation provided by the PCM agency was outdated and did not reflect the appellant’s current needs, and that updated documentation should be provided. The last order for g-tube feedings submitted by the PCM agency is from 2017. (Exhibit 6.)

Findings of Fact

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

1. The appellant is a child with a primary diagnosis of chromosome 22 deletion and chromosome 22Q11 duplication. The appellant has a g-tube for nutrition. (Exhibit 4, p. 8.)
2. On or around August 16, 2022, the appellant’s PCM agency requested 17 hours and 45 minutes per week of day/evening PCA services for the prior authorization period of September 27, 2022 through September 26, 2023. (Exhibit 4.)
3. The appellant requested 20 minutes per feeding for “[p]hysical assist with drinking; Enteral tube feeding.” The request sought three feedings per day during the five school days per week and four feedings for the two weekend days per week. This totaled 460 minutes per week for feeding. (Exhibit 4, p. 15.)
4. The last order for g-tube feedings provided was from 2017, and there was no current order for g-tube feedings submitted with the prior authorization request. The appellant was also described as able to receive food orally. (Testimony by MassHealth’s representative; Exhibits 4; 6.)
5. The record was left open for the appellant to provide updated information regarding her need for g-tube feedings. A gastroenterology note from August 2022 indicated that she has gained weight through oral food intake, but ultimately recommended a supplemental can of formula daily through the g-tube, potentially to be increased to two cans per day. (Exhibit 5.)
6. MassHealth argued that g-tube feedings may only be allowed when they are the main nutritional source for an individual, rather than supplemental per the MassHealth Operating Standards. (Exhibit 6.)

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 450.204(A); 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) (emphasis added).)

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).)

The PCA Operating Standards are non-published, sub-regulatory guidance regarding how PCM agencies should request services.² Included in this guidance is additional details as to when certain services will be allowed. The only guidance available regarding g-tube is:

The PCM Agency Nurse Evaluator evaluates non-skilled care and assesses if the task can be safely performed for the child by the PCA. The following tasks are examples that may be considered non-skilled services and can be requested if assessed to be safely performed for the child by the PCA:

- a) Gastrostomy tube (G-tube) feedings
- b) G-tube site care (as part of bathing)
- c) Oral suctioning

(PCA Operating Standards, p. 63.)

This appeal is APPROVED in part for one g-tube feeding per day. MassHealth was correct to deny the requested g-tube feedings based upon the documentation submitted with the prior authorization request. That documentation was grossly outdated and did not reflect the appellant's current condition. However, the appellant provided updated medical documentation that supports that at least one g-tube feeding per day is ordered by a medical provider. Further, I could find no support for MassHealth assertion that PCA assistance with g-tube feedings are only allowed when they are the main source of nutrition. MassHealth's regulations allow for "physically assisting the member to eat." (130 CMR 422.410(A)(6).) Nothing in the regulations or the PCA Operating Standards appears to require that g-tube feedings be the primary source of nutrition in order to allow time for them.

The appellant requested 20 minutes per feeding; this equates to 140 minutes per week. MassHealth had approved 595 minutes per week. (Exhibit 4, p. 27.) Adding back 140 minutes brings the total minutes per week to 735, which equates to 12 hours and 15 minutes per week in day/evening PCA services. To the extent that the appellant continued to request more time for g-tube feeding, this appeal is DENIED in part. As MassHealth suggested that the appellant update their documentation and provide new orders for g-tube feeds. If such orders recommend additional g-tube feedings, the appellant may submit an Adjustment Request. Finally, the appellant may separately appeal any denial by MassHealth for the coverage of prescribed formula.

² This document is not available on MassHealth's website, but it has been made available pursuant to a public records request. (Available at <https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf> (last visited December 22, 2022).)

Order for MassHealth

Restore one g-tube feeding per day, or 140 minutes per week as of the beginning of the prior authorization period, September 27, 2022. Remove Aid Pending.

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