

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2207321
Decision Date:	11/23/2022	Hearing Date:	11/04/2022
Hearing Officer:	Christine Therrien		

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; Denied in part	Issue:	PCA
Decision Date:	11/23/2022	Hearing Date:	11/04/2022
MassHealth's Rep.:	Donna Burns	Appellant's Rep.:	
Hearing Location:	Telephonic		

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 9/20/22 MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 44.75 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 53 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks to 30 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 34 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks. (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 10/3/22. (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are 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, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative testified that a prior authorization request for PCA services was received on the appellant's behalf on 8/30/22 from her PCA provider, TriValley Inc., and is a re-evaluation request for the dates of service of 9/13/22 to 9/12/23. In the prior authorization request for PCA services, the provider requested 45.75 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 53 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks. The appellant is [REDACTED] and she lives with her parents and siblings. The primary diagnoses are Autism; Type 1 Diabetes; developmental delay; immunocompromise; removal of pancreas, gall bladder, and spleen; failure to thrive; and use of a G- tube.

The MassHealth representative testified that MassHealth modified the PCA request to 30 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 34 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks. Modifications were made to the request for PCA services that include modifications in the activity of daily living (ADL) tasks of mobility, bathing, dressing, eating, and G-tube feeding. Modifications were also made in the instrumental activities of daily living (IADL) tasks of assistance with laundry. (Exhibits 1 and 4).

The MassHealth representative agreed to restore the requested time for all mobility, bathing, dressing, eating and laundry. The MassHealth representative testified that the prior authorization requested 10 minutes, 1 time per day, 7 days a week for assistance with the G-tube feeding set up in the evening. The provider noted that the appellant requires overnight feeding from 7:00 pm to 7:00 am. The prior authorization requested 10 minutes, 1 time per day, 7 days a week for assistance with the G-tube feeding in the morning. Time requested is to taper down in the morning from 6:00 am until G-tube is removed at 7:00 am.

MassHealth denied the time for assistance with the G-tube. The MassHealth representative testified that MassHealth will pay for a PCA to perform the tasks associated with the appellant's primary source of nutrition and all requested time for eating was provided. Additionally, the MassHealth representative testified that this task is outside the scope of a PCA and is parental responsibility because the G-tube feeding includes medication.

Findings of Fact

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

1. A prior authorization request for PCA services was received on the appellant's behalf on 8/30/22 from her PCA provider, TriValley Inc.,
2. The prior authorization was a re-evaluation request for the dates of service of 9/13/22 to 9/12/23.
3. The prior authorization request for PCA services was for 45.75 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 53 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks.

4. The appellant is [REDACTED] and she lives with her parents and siblings.
5. The appellant's primary diagnoses are Autism; Type 1 Diabetes; developmental delay; immunocompromise; removal of pancreas, gall bladder, and spleen; failure to thrive; and use of a G- tube.
6. MassHealth modified the PCA request to 30 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 34 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks.
7. Modifications were made to the request for PCA services that include the ADL tasks of mobility, bathing, dressing, eating, and G-tube feeding. Modifications were also made in IADL tasks of assistance with laundry. (Exhibits 1 and 4).
8. At hearing MassHealth agreed to restore the requested time for mobility, bathing, dressing, eating and laundry.
9. The appellant requires overnight feeding from 7:00 pm to 7:00 am. The prior authorization requested 10 minutes, 1 time per day, 7 days a week for assistance with the G-tube feeding set up in the evening and 10 minutes, 1 time per day, 7 days a week for assistance with the G-tube feeding in the morning. The morning time requested is to taper down in the morning from 6:00 am until G-tube is removed at 7:00 am.
10. MassHealth denied the time for assistance with the G-tube.

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 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.

130 CMR 422.403(C).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home. (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA. (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLs). (130 CMR 422.410(A)).

120 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

- (A) Activities of Daily Living. 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.
- (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 personal care 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 personal care 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 personal care 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.

The requested services must also be medically necessary for prior authorization to be approved. (130 CMR 450.204). 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 MassHealth. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the 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.

Regulations at 130 CMR 422.412 describe non-covered PCA 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.
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

Per 130 CMR 503.007, MassHealth is the payer of last resort and only pays for health care and related services when no other source of payment is available, except as otherwise required by federal law.

- (A) Health Insurance. Every applicant and member must obtain and maintain available health insurance in accordance with 130 CMR 505.000: Health Care Reform: MassHealth: Coverage Types. Failure to do so may result in loss or denial of eligibility unless the applicant or member is
 - (1) receiving MassHealth Standard or MassHealth CommonHealth; and
 - (2) younger than 21 years old or pregnant.
- (B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available
 - (1) through the member's health-insurance, if any; or
 - (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth received a prior authorization request for PCA services on appellant's behalf from her PCA provider, TriValley Inc. The appellant is [REDACTED] and she lives with her parents. The primary diagnoses affecting her ability to function independently are Autism; Type 1 Diabetes; developmental delay; immunocompromise; removal of pancreas, gall bladder, and spleen; failure to thrive; and use of a G-tube. At the hearing MassHealth agreed to restore all time requested for mobility, bathing, dressing, eating and laundry. As a result, the appeal is dismissed regarding the modifications made in those areas.

The appellant's provider requested 910 minutes per week for of assistance with eating. The appellant's mother testified that the appellant is dependent for spoon and drink feeding by mouth. The appellant's mother testified that the appellant has a history of failure to thrive and she still requires nighttime G-tube feeding to increase her calories. The prior authorization requested time in the category of assistance with other healthcare needs for the appellant's nightly G-tube feeding. The appellant's

provider requested ten minutes, once a day, seven days a week for assistance with the G-tube feeding before bed and requested ten minutes, once a day, seven days a week for assistance with the G-tube feeding in the morning. The provider noted that the appellant requires overnight feeding from 7:00 pm to 7:00 am. The time requested is to set up tube feeding each evening and taper down in the morning from 6:00 am until G-tube is removed at 7:00 am. MassHealth denied time for PCA assistance with G-tube feeding. The MassHealth representative, a registered nurse, testified credibly that the G-tube feeding includes enzymes which makes this a medication administration task outside the scope of an unskilled PCAs ability and falls into the category of parental responsibility. 130 CMR 422.412 describe non-covered PCA services and includes “(F) services provided by family members, as defined in 130 CMR 422.402.”¹ The appellant’s parents are legally obligated to provide assistance with the appellant’s ADLs therefore those services are available to the appellant at no cost to her and as such are not covered by MassHealth. MassHealth is correct in denying PCA coverage for G-tube feeding in accordance with 130 CMR 450.204(A)(2) and 130 CMR 503.007(B)(2). This appeal is denied in part; dismissed in part.

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.

¹ 130 CMR 422.402: Family Member - the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

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