

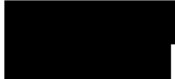
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2208367
Decision Date:	2/14/2023	Hearing Date:	12/22/2022
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:




Appearance for MassHealth:

Via telephone
Donna Burns, R.N.



*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:	Prior Authorization- PCA services
Decision Date:	2/14/2023	Hearing Date:	12/22/2022
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South 1 (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 October 17, 2022, MassHealth modified the Appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services from the requested 16 hours and 45 minutes of day/evening PCA assistance per week to 14 hours and 45 minutes of day/evening PCA assistance per week. (Exhibit 1). The appellant filed this appeal in a timely manner on November 9, 2022 (See, 130 CMR 610.015(B) and Exhibit 2). Modification of a PA request is valid grounds for appeal (See, 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's PA request for personal care services.

Issue

The appeal issue is whether MassHealth was correct in modifying the Appellant's PA request for personal care services.

Summary of Evidence

The Appellant was represented by his legal guardian, who appeared and testified at the hearing via

telephone. MassHealth was represented by a Registered Nurse who appeared at the hearing via telephone and testified as follows: the Appellant is a [REDACTED] male with a primary diagnosis of Moebius syndrome, including visual impairment and unsteady gait. (Exhibit 7, p. 12). On October 3, 2022, the provider, AgeSpan, Inc. submitted a re-evaluation request for 16 hours and 45 minutes per week for day/evening hours and 0 hours per night. (Ex. 7, p. 3). On October 17, 2022, MassHealth modified the request to 14 hours and 45 minutes per week of day/evening hours. (Ex. 1; Ex. 7, p. 5).

There were three (3) modifications. MassHealth modified bathing from the requested amount of 45 minutes, once per day, 7 days a week to 30 minutes, once per day, 7 days a week because 30 minutes is the maximum amount of assistance per guidelines. (Testimony). Moreover, 30 minutes is the same amount of time that the Appellant received last year for assistance with bathing. (Testimony). The Appellant's representative stated that she performs bathing of the Appellant, not the PCA. (Testimony). The Appellant requested 10 minutes a week for nail care ("Grooming" category). MassHealth modified this request to 5 minutes a week. The Appellant's representative stated that she performs the Appellant's nail care, not the PCA. (Testimony). The Appellant requested 5 minutes a day for deodorant and lotion ("Other" category). MassHealth modified this request to 3 minutes a day. After hearing testimony from the Appellant's representative, MassHealth agreed to the requested time of 5 minutes per day for assisting the Appellant with deodorant and lotion.

Findings of Fact

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

1. The Appellant is a non-verbal [REDACTED] male MassHealth member who resides with his legal guardian. (Testimony; Ex. 4).
2. The Appellant's medical diagnoses include Moebius syndrome, visual impairment and unsteady gait. (Testimony; Ex. 7, p. 12).
3. AgeSpan, Inc., a PCM agency, submitted a PA re-evaluation request to MassHealth on the Appellant's behalf on or about October 3, 2022 seeking 16 hours and 45 minutes of day/evening PCA assistance per week and 0 nighttime hours. (Testimony; Ex. 7 p. 3).
4. By notice dated October 17, 2022, MassHealth modified the requested time to 14 hours and 45 minutes of day/evening PCA assistance per week and 0 nighttime hours for services from October 27, 2022 to October 26, 2023. (Testimony; Ex. 1; Ex. 7, p. 5).
5. There is no aid pending. (Ex. 6).
6. MassHealth modified bathing, nail care ("grooming" category) and deodorant and lotion ("other" category). (Testimony; Ex. 7).

7. MassHealth rescinded its modification on deodorant and lotion (“other” category) and the parties agreed to 5 minutes per day. (Testimony).
8. The Appellant’s assistance with bathing was modified from 45 minutes once per day, 7 days per week to 30 minutes once per day, 7 days per week. (Testimony).
9. The Appellant’s assistance with nail care was modified from 10 minutes per week to 5 minutes per week. (Testimony).
10. The Appellant’s representative assists the Appellant with bathing and nail care. (Testimony).

Analysis and Conclusions of Law

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 of 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 quality that meets professionally recognized standards of 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. 1396(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 the 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 medication 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.

[Bolded, emphasis added].

MassHealth made modifications to the Appellant's request for the following ADL: assistance with bathing and grooming.

With respect to the modification of bathing from 45 minutes per day, 7 days a week to 30 minutes per day, 7 days a week, the MassHealth nurse testified that per guidelines, the maximum assistance is 30 minutes per day, noting that this is solely time for bathing and drying off. Moreover, the Appellant received 30 minutes last year for bathing. Upon inquiry as to whether there has been a change in the Appellant's circumstances from last year that would require additional time for bathing this year, the Appellant's representative explained that the Appellant has a mind of a child so anything pertaining to his personal care takes longer. Therefore, nothing has really changed since last year other than the Appellant is a little slower. The Appellant's representative further testified that she bathes the Appellant at nighttime and the PCA only bathes the Appellant when she is not able to do so.

As to the modification of nail care from 10 minutes a week to 5 minutes a week, the Appellant's representative testified that she also tends to the Appellant's nail care after she bathes him. The PCA ensures that the Appellant is presentable and that his fingernails and hands are clean each morning.

The MassHealth representative's testimony is persuasive and supported by documentary evidence. MassHealth's modifications are justified and the Appellant, who has the burden, did not provide convincing evidence to support that it takes longer than 30 minutes per day, 7 days per week solely for assisting the Appellant with bathing and drying off, nor that it takes longer than 5 minutes per week to assist the Appellant with nail care. Indeed, the Appellant's representative testified that she performs both tasks herself and needs occasional assistance from the PCA due to a change in her employment situation.

For these reasons, the parts of this appeal challenging the modifications of bathing and nail care are denied.¹

Due to the above-stated agreement between the parties, the part of this appeal challenging the MassHealth modification of deodorant and lotion ("Other" category found within the ADL: bathing

¹ This denial does not preclude the Appellant's representative from reviewing the 44-page MassHealth packet and contacting the PCM in the event that there is any information that was reported incorrectly to MassHealth.

and grooming) is dismissed.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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