

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Denied in part

Appeal Number: 2209567

Decision Date: 4/14/2023

Hearing Dates: 01/31/2023;
03/08/2023

Hearing Officer: Marc Tonaszuck

Appearances for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN, Optum

Interpreter:

Spanish



*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:	Personal Care Attendant Services
Decision Date:	4/14/2023	Hearing Dates:	01/31/2023; 03/08/2023
MassHealth's Rep.:	Mary-Jo Elliott, RN, Optum	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction¹

Through a notice dated 12/01/2022, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 38 hours and 15 minutes (38:15) of day/evening hours per week plus 2 daily night time attendant hours to 13:30 day/evening hours per week plus 2 daily night time attendant hours for the dates of service from 12/01/2022 to 11/30/2023 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 12/27/2022 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

A fair hearing took place on 01/31/2023 before the Board of Hearings. In order to

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

adequately address each of the parties' arguments, the hearing was reconvened on 03/08/2023 (Exhibits 3A and 3B).

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for personal care attendant 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 personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request (PA) for PCA services was received on appellant's behalf from her PCA provider, Northeast ILP, Inc. ("provider"), and is a re-evaluation request for the dates of service of 12/01/2022 to 11/30/2023. In the PA request for PCA services, the provider requested 38:15 day/evening hours per week plus 2 daily nighttime attendant hours. The appellant is ■ years of age and her primary diagnoses are epilepsy, cognitive impairment, and developmental delay. She is non-verbal (Exhibit 4).

The Optum representative testified that on 12/01/2022 MassHealth modified the PCA request to 13:30 day/evening hours per week. Nighttime attendant hours were approved as requested (2 hours per night). Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) tasks of mobility, transfers, repositioning, passive range of motion exercises, bathing, quick wash, dressing, undressing, feeding, bladder care, bowel care, and nail care.

The MassHealth representative testified that before taking action on the PA, she reached out to the provider for information and clarification about the request. The provider failed to respond to MassHealth. As a result, some of the modifications were made because there was no documentation or information to support the requested PCA time. The MassHealth representative further testified that the provider's PA did not comport with the appellant's documented abilities, her school schedule and her PCA needs.

Mobility/Transfers/Repositioning

The appellant's provider requested on the appellant's behalf 5 minutes, 4 times per day, 7 days per week (5 X 4 X 7²) and 5 X 2 X 7 for assistance with mobility; 5 X 1 X 7 and 5 X 2 X 7 for assistance with transfers; and 5 X 2 X 7 and 5 X 4 X 7 for assistance with repositioning. The provider noted that the appellant is dependent with all activities of daily living (ADLs) due to a history of cognitive impairment, developmental delay and epilepsy disorder.

MassHealth initially denied all time requested in this area because the provider did not make clear the need for the PCA time or why the time was required. MassHealth requested additional information from the provider, but the provider failed to respond to MassHealth. After a discussion with the appellant's mother and her advocate at the fair hearing, the parties agreed on the following PCA time: Mobility: 5 X 2 X 5 and 3 X 4 X 7; Transfers: 5 X 1 X 5 and 5 X 2 X 2; and Repositioning: 3 X 2 X 5 and 3 X 4 X 2. The time was approved in two parts for each area to address the appellant's needs on weekdays, when she attends school, and on weekends when she is home all day.

Passive Range of Motion Exercises (PROM)

The appellant's provider requested 5 X 1 X 7 for each extremity, 20 minutes per day total. MassHealth initially denied the time requested for assistance with PROM because there was no information provided by the PCA agency about what services the appellant receives in school. After discussing the appellant's needs at the fair hearing, MassHealth approved all time requested for PROM.

Bathing

The appellant's provider requested 60 X 1 X 7 for assistance with showering, 20 X 1 X 7 for assistance with a quick wash, and 5 X 1 X 7 for assistance with hair (shampoo). The provider noted that the appellant requires physical assist with showering activity, including routine transfers; physical assist with sponge/bed bath and drying, including routine transfers.

MassHealth modified the request for assistance with bathing as follows: shower and shampoo – 25 X 1 X 7; and quick wash – 5 X 1 X 7. The MassHealth representative testified that there was inadequate documentation to support the full request of PCA time for assistance with bathing.

The appellant's mother testified that 30 minutes per day for assistance with bathing will meet the appellant's needs.

² PCA time designated in this manner, (i.e., 5 X 4 X 7) means 5 minutes, 4 times per day, 7 times per week.

Dressing/Undressing

The appellant's provider requested 20 X 1 X 7 for assistance with dressing and 15 X 1 X 7 for assistance with undressing. The provider noted that the appellant needs "physical assist [with] upper extremity dressing; physical assist [with] lower extremity dressing; physical assist with donning footwear."

MassHealth first modified the request for assistance with dressing to 15 X 1 X 7 and with undressing to 10 X 1 X 7. The MassHealth representative testified that the time requested exceeds the time necessary for someone with the appellant's needs.

The appellant's mother and advocate testified that the appellant "does not do anything" to help dress or undress. She cannot put her arms in the sleeves by herself and her "legs are twisted." In addition, she wears AFO (ankle foot orthotics), requiring additional time for dressing/undressing.

The MassHealth representative responded that there is no mention of AFO's in the documentation submitted by the provider. She stated that she could approve 18 X 1 X 7 for dressing and 12 X 1 X 7 for undressing, which includes time to don and doff the AFO's.

Feeding

The appellant's provider requested 20 X 1 X 7 and 20 X 1 X 7 for assistance with eating. The provider noted that the appellant is dependent with all ADL's due to a history of cognitive impairment, developmental delay and epilepsy disorder.

MassHealth initially denied all PCA time for assistance with eating. The MassHealth representative testified that the documentation was unclear about why the time was requested twice and what time is necessary for this task.

The appellant's mother and advocate clarified that the appellant needs assistance with eating twice a day on school days and three times a day on weekends. She also eats one snack a day on school days and two on weekends.

The MassHealth representative responded that she will approve 15 X 2 X 5 for school days; 15 X 3 X 2 for weekends; 5 X 1 X 5 for a snack on school days; and 5 X 2 X 2 for snacks on weekends.

Toileting

Appellant's provider requested 7 X 5 X 7 for assistance with bladder care and 10 X 2 X 7 for assistance with bowel care. The provider noted that the appellant requires "physical assist with toilet hygiene; physical assist with clothing management; physical assist with changing absorbent product; and physical assist with regular transfer."

MassHealth divided the time modified for assistance with toileting by school days and then by weekends. For bladder care, MassHealth approved 7 X 4 X 5 for weekdays (school days) and 7 X 5 X 2 for weekends. For bowel care, MassHealth approved 10 X 1 X 5 for weekdays and 10 X 2 X 2 for weekends. The MassHealth representative testified that the time for the task was approved, but the frequency was adjusted to account for the time the appellant receives assistance from the school personnel.³

The appellant's mother and advocate testified that the appellant wears diapers. During school days she needs to be changed twice a day at home and, during the weekends about five times per day.

The MassHealth representative responded that the time approved gives the appellant time for five diaper changes a day during school weeks and seven a day on weekends.

The appellant's mother agreed with the modification.

Nail Care (vacation weeks)

Appellant's PCA provider requested 10 X 1 X 7 for assistance with nail care. The provider noted that the appellant is dependent with all ADL's due to a history of cognitive impairment, developmental delay and epilepsy disorder.

MassHealth modified the request for assistance with nail care during vacation weeks to 5 X 1 X 1. The MassHealth representative testified that it appears the provider made an error with this part of the request. Normally, nail care is performed once per week and takes 5 minutes.⁴

The appellant's mother agreed with this modification.

Bladder Care (vacation weeks)

The appellant's provider requested 7 X 7 X 7 for assistance with bladder care. The provider noted that the appellant requires "physical assist with toilet hygiene; physical assist with clothing management; and physical assist with changing absorbent product."

MassHealth modified the request for assistance with bladder care (vacation weeks) to 7 X 5 X 7. The MassHealth representative testified that this modification would bring the time approved to the same as weekends. Additionally, 10 X 2 X 7 for bowel care was approved as requested. Since the appellant wears a diaper, the time approved allows for 7 diaper changes per day (6:00 a.m. to 12:00 midnight).

The appellant's mother agreed with the modification.

³ MassHealth does not approve PCA assistance for services provided by a school or institution.

⁴ In fact, the provider requested 5 X 1 X 1 for assistance with nail care during school weeks.

Findings of Fact

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

1. MassHealth received a PA request for PCA services from the appellant's PCA provider, Northeast ILP, Inc. ("provider"). It is a re-evaluation request for the dates of service of 12/01/2022 to 11/30/2023 (Testimony; Exhibit 4).
2. In the PA request for PCA services, the provider requested 38:15 day/evening hours per week plus 2 daily nighttime attendant hours (Testimony; Exhibit 4).
3. The appellant is [REDACTED] years of age and her primary diagnoses are epilepsy, cognitive impairment, and developmental delay. She is non-verbal (Testimony; Exhibit 4).
4. On 12/01/2022 MassHealth modified the PCA request to 13:30 day/evening hours per week. Nighttime attendant hours were approved as requested (2 hours per night) (Testimony; Exhibits 1 and 4).
5. The appellant's provider requested on the appellant's behalf 5 minutes, 4 times per day, 7 days per week (5 X 4 X 7⁵) and 5 X 2 X 7 for assistance with mobility; 5 X 1 X 7 and 5 X 2 X 7 for assistance with transfers; and 5 X 2 X 7 and 5 X 4 X 7 for assistance with repositioning. The provider noted that the appellant is dependent with all activities of daily living (ADLs) due to a history of cognitive impairment, developmental delay and epilepsy disorder (Testimony; Exhibit 4).
6. The parties agreed on the following PCA time: Mobility: 5 X 2 X 5 and 3 X 4 X 7; Transfers: 5 X 1 X 5 and 5 X 2 X 2; and Repositioning: 3 X 2 X 5 and 3 X 4 X 2. The time was approved in two parts for each area to address the appellant's needs on weekdays, when she attends school and on weekends, when she is home all day (Testimony).
7. The appellant's provider requested 5 X 1 X 7 for assistance with PROM for each extremity (Testimony; Exhibit 4).
8. After initially denying the time requested for assistance with PROM, at the fair hearing MassHealth approved all time requested for PROM (Testimony; Exhibits 1 and 4).
9. The appellant's provider requested 60 X 1 X 7 for assistance with showering, 20 X 1 X 7 for assistance with a quick wash, and 5 X 1 X 7 for assistance with hair

⁵ PCA time designated in this manner, (i.e., 5 X 4 X 7) means 5 minutes, 4 times per day, 7 times per week.

(shampoo). The provider noted that the appellant requires physical assist with showering activity, including routine transfers; physical assist with sponge/bed bath and drying, including routine transfers (Testimony; Exhibit 4).

10. MassHealth modified the request for assistance with bathing as follows: shower and shampoo – 25 X 1 X 7; and quick wash – 5 X 1 X 7 (Testimony; Exhibit 4).
11. The appellant's mother agreed that 30 minutes per day for assistance with all bathing activities was adequate to meet the appellant's needs (Testimony).
12. The appellant's provider requested 20 X 1 X 7 for assistance with dressing and 15 X 1 X 7 for assistance with undressing. The provider noted that the appellant needs "physical assist [with] upper extremity dressing; physical assist [with] lower extremity dressing; physical assist with donning footwear" (Testimony; Exhibit 4).
13. MassHealth modified the request for assistance with dressing/undressing to 18 X 1 X 7 for dressing and 12 X 1 X 7 for undressing, which includes time to don and doff the AFO's (Testimony).
14. The appellant's provider requested 20 X 1 X 7 and 20 X 1 X 7 for assistance with eating. The provider noted that the appellant is dependent with all ADL's due to a history of cognitive impairment, developmental delay and epilepsy disorder (Testimony; Exhibit 4).
15. After initially denying the time requested for assistance with eating, at the fair hearing, MassHealth modified the request to 15 X 2 X 5 for school days; 15 X 3 X 2 for weekends; 5 X 1 X 5 for a snack on school days; and 5 X 2 X 2 for snacks on weekends (Testimony).
16. Appellant's provider requested 7 X 5 X 7 for assistance with bladder care and 10 X 2 X 7 for assistance with bowel care. The provider noted that the appellant requires "physical assist with toilet hygiene; physical assist with clothing management; physical assist with changing absorbent product; and physical assist with regular transfer" (Testimony; Exhibit 5).
17. MassHealth modified the request for assistance with toileting by dividing the time by school days and then by weekends. For bladder care, MassHealth approved 7 X 4 X 5 for weekdays (school days) and 7 X 5 X 2 for weekends. For bowel care, MassHealth approved 10 X 1 X 5 for weekdays and 10 X 2 X 2 for weekends (Testimony).
18. Appellant's mother agreed with MassHealth's modification for assistance with toileting (Testimony).
19. Appellant's PCA provider requested 10 X 1 X 7 for assistance with nail care

(vacation weeks). The provider noted that the appellant is dependent with all ADL's due to a history of cognitive impairment, developmental delay and epilepsy disorder (Testimony; Exhibit 4).

20. MassHealth modified the request for assistance with nail care during vacation weeks to 5 X 1 X 1 (Testimony).

21. Appellant's mother agreed with the modification for assistance with nail care (vacation weeks) (Testimony).

22. The appellant's provider requested 7 X 7 X 7 for assistance with bladder care (vacation weeks). The provider noted that the appellant requires "physical assist with toilet hygiene; physical assist with clothing management; and physical assist with changing absorbent product" (Testimony; Exhibit 4).

23. MassHealth modified the request for assistance with bladder care (vacation weeks) to 7 X 5 X 7. This modification brings the time approved during vacation weeks to the same time as weekends. Additionally, 10 X 2 X 7 for bowel care was approved as requested. Since the appellant wears a diaper, the time approved allows for 7 diaper changes per day (6:00 a.m. to 12:00 midnight) (Testimony).

24. Appellant's mother agreed with the modification of time for assistance with bladder care (vacation weeks) (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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 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 (emphasis added).

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) MassHealth covers personal care 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 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting

(4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

- (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.

(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 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).

This appeal involved a complicated set of facts due the PCA provider failing to properly request PCA time in a format that is understandable to MassHealth or to provide documentation when requested by MassHealth. As a result, modifications were made in the notice dated 12/01/2023. At the fair hearing, the modifications were reviewed carefully by both parties. MassHealth showed an understanding of the appellant's needs and the MassHealth representative adjusted the modifications to comport with the appellant's PCA needs.

In the area of PROM, MassHealth restored all time, as requested, at the fair hearing. Thus, this portion of the appeal is dismissed.

In the areas of mobility/transfers/repositioning, bathing, toileting, nail care (vacation weeks) and bladder care (vacation weeks), the appellant's mother agreed with MassHealth's modifications. This portion of the appeal is therefore denied.

Dressing/Undressing

The appellant's provider requested 20 X 1 X 7 for assistance with dressing and 15 X 1 X 7 for assistance with undressing. The provider noted that the appellant needs "physical assist [with] upper extremity dressing; physical assist [with] lower extremity dressing; physical assist with donning footwear." MassHealth modified the request for assistance with dressing/undressing to 18 X 1 X 7 for dressing and 12 X 1 X 7 for undressing, which includes time to don and doff the AFO's.

Appellant's mother testified that the appellant is unable to assist with dressing and undressing and therefore the full time requested is necessary. There was no testimony presented by the appellant's mother to show why the modified time is not enough time to assist the appellant with her dressing and undressing needs. Accordingly, this portion of the appeal is denied.

Eating

The appellant's provider requested 20 X 1 X 7 and 20 X 1 X 7 for assistance with eating. The provider noted that the appellant is dependent with all ADL's due to a history of cognitive impairment, developmental delay and epilepsy disorder. After initially denying the time requested for assistance with eating, at the fair hearing, MassHealth modified the request to 15 X 2 X 5 for school days; 15 X 3 X 2 for weekends; 5 X 1 X 5 for a snack on school days; and 5 X 2 X 2 for snacks on weekends. The appellant's mother did not specifically address the amount of time the PCA spends assisting the appellant with her eating/feeding. The provider's request is unintelligible. MassHealth's modification makes sense and incorporates the appellant's needs for assistance in this area. This portion of the appeal is therefore denied.

For the foregoing reasons, this appeal is dismissed in part; and denied in part.

Order for MassHealth

Restore all time as requested in the area of PROM – 20 X 1 X 7 (5 minutes per extremity). In all other areas, proceed with modifications.

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, Division of Medical Assistance, at the address on the first page of this decision.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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