

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2300331
Decision Date:	2/24/2023	Hearing Date:	02/15/2023
Hearing Officer:	Christopher Taffe		

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN, Clinical Reviewer,
OPTUM (by phone)

Interpreter:

Catalina (ITI # 392553, 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:	DENIED	Issue:	PA – PCA Hours – Child
Decision Date:	2/24/2023	Hearing Date:	02/15/2023
MassHealth’s Rep.:	M.J. Elliott, RN	Appellant’s Rep.:	██████████
Hearing Location:	HarborSouth Tower, Quincy	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 December 23, 2022, MassHealth modified Appellant’s Prior Authorization (“PA) request for 15.50 hours/week of day and evening Personal Care Attendant (PCA) services by approving 13.75 day and evening PCA hours/week. See Exhibit 1; 130 CMR 422.412(A); 130 CMR 422.412(F); and 130 CMR 450.204. Appellant is a minor child and his mother filed a timely request for an appeal with the Board of Hearings on January 13, 2023. See Exhibit 1; 130 CMR 610.015(B). Challenging a MassHealth determination on the scope of assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Because Appellant filed an appeal within an appropriate time frame, Appellant was awarded “Aid Pending” benefits of 14.75 day and evening PCA hours/week during the pendency of this appeal. See 130 CMR 610.036; Exhibit 1.¹

¹ In the appeal filing, Appellant’s family checked the box to decline Aid Pending protection of benefits, see Exhibit 1, but the Board of Hearings reached out to MassHealth and implemented the process to protect the pre-existing PCA benefits and services per 130 CMR 610.036. This issue will be addressed in the Order, but it is noted here as MassHealth should not seek any potential recoupment for benefits awarded by this Aid Pending status per 130 CMR 610.036(D).

Action Taken by MassHealth

MassHealth partially approved Appellant's PCA hour request by approving 13.75 PCA hours for the current PA period.

Issue

Is the MassHealth decision regarding the number of hours justified based on the request and record, or has Appellant produced sufficient evidence to allow him to receiving greater assistance?

Summary of Evidence

Appellant's mother appeared and testified at hearing by phone. Ms. Elliott, a registered nurse, also appeared by phone to provide testimony on behalf of the OPTUM, the MassHealth contractor who helps to administer some of the agency's prior approval services. Appellant's mother did not request an interpreter with her appeal filing or prior to hearing but she requested a Spanish-speaking interpreter during the beginning of the hearing and one was provided per 130 CMR 610.017.

The MassHealth Personal Care Attendant program involves unskilled and unlicensed personnel who are hired to assist members with physical disabilities by providing paid time for hands-on assistance with a member's Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). The PA review process utilized by the MassHealth PCA program allows the agency to determine medical necessity for the minutes requested by the member and make "modifications" where appropriate; the PCA time approved by MassHealth must be based on the member's capabilities, bear a relationship to the member's diagnosis and request, and comply with the applicable MassHealth PCA regulations.

At the time of the PA request in question, Appellant was a [REDACTED] boy and MassHealth member who lives at home with his mother and family. In the prior year, he received approval from MassHealth for 14.75 PCA hours/week². For the new and current PA period running from February 7, 2023 to February 6, 2024, Appellant's PCA provider (Northeast ARC) submitted a request on or around December 23, 2023. MassHealth approved 13.75 hours/week, but the PA request sought 15.25 hours/week.

Appellant's PA request indicates that Appellant weighs over 90 lbs. He is non-verbal and his medications include Albuterol and Guanfacine, an oral medication used to treat attention deficit hyperactivity disorder and high blood pressure. Appellant's chronic condition necessitating his PCA services is that the child is on the Autism Spectrum Disorder. Consumer has episodes of bladder incontinence, sensory issues, and behavioral issues, including bolting. He is unable to initiate or follow directions or sequences involved in completing a task. Consumer lacks safety

² There was no request, approval, or dispute involving "nighttime" PCA hours; all requests and approvals are for "day and evening" PCA services to be received between 6:00 A.M. and 12 midnight. These "day and evening hours" will be referred to as "hours" for the remainder of this decision.

awareness, as evidenced by the bolting, and his behavioral issues were reported to be increasing. During the PCA evaluation, Appellant's mother reported that Appellant needed more assistance with grooming tasks including oral care (twice daily) and lotion application due to increased behavioral issues and sensory specific behaviors.

In being approved for 13.75 hours, Appellant received approval for PCA time for the ADLs of Bathing; Grooming (for Oral Care); Dressing and Undressing; Eating; and Toileting; for all of those activities, the full time requested for PCA assistance was approved

There were only two modifications made by MassHealth, to separate activities, for which no time was approved.

One was for the ADL of Mobility-Transfers where the request sought PCA assistance of 5 minutes/activity, 2 activities/day, 5 days a week for a total of 50 minutes/week. MassHealth testified that this request, as indicated by the 5 days/week, appeared to be based on assistance with getting Appellant to and from the bus stop before and after school on the five school days in a typical week.³ MassHealth stated that no time would be allowed because, even if the child was not impaired, a [REDACTED] would not be expected to have the safety awareness to be at a school bus stop alone and this was a parental responsibility and could not be an expectation that would be satisfied by the PCA program. Appellant's mother was asked if she understood this expectation and thought it was reasonable, and she did not express any disagreement.⁴

The second modification involved the ADL of Grooming-Other and the request was for 5 minutes daily (35 minutes week) and it appeared to be for applying lotion. The comments to the PCA application reads in its entirety on Exhibit 3, page 14, as follows: "*requires assistance with grooming tasks including BID oral care, other (sic) including applying lotion, resistance to care, no safety awareness, increased behaviors (sic), decreased ability to initiate/sequence/complete task and decreased FMC.*"

MassHealth testified that it was unclear what the lotion was for, or the medical need for it, and how it differed from any lotion that may be needed or applied during a wash. MassHealth asked the mother to explain what the lotion was for, and how there was a need for the PCA to do it, expressing that this too may border on a parental responsibility for any caretaker of a [REDACTED] child. Appellant's mother then responded by talking about how big Appellant was giving, how he was over 90 lbs, and how she could not help him and the family needed more help. When asked to clarify repeatedly about what type of lotion of being used (and whether it was medicine related), the mother reiterated the lack of safety awareness and how Appellant was getting more difficult to control.

³ There is no mention of bus rides or school anywhere in Exhibit 3, but the need for this twice a day activity presumably on the 5 weekdays, appeared to be linked to a school schedule and it was not contradicted or elaborated on further by Appellant's mother during her appearance at hearing.

⁴ The discussion on this did not reach a withdrawal as the hearing testimony then moved on to the second modification, and as described below, Appellant's mother dropped off the call and never returned for a more general discussion at the end of the hearing of whether she would accept this or both modifications.

During this line of questioning, approximately 40+ minutes into the hearing, Appellant's mother dropped off the phone call. The Hearing Officer tried to contact Appellant by phone at the same number three times over the next 10 minutes, but all calls to same phone number went unanswered with no voicemail option. Within one minute after she dropped the call, and before the Hearing Officer tried to call her, there was indication of a call from Appellant's mother coming in on the hearing room phone but the call could not be quickly answered without losing the interpreter or the MassHealth Representative on the original line. By the time the Hearing Officer figured out how to put the original call on hold, the Appellant's call-back attempt was no longer available. The Hearing Officer then spent the next 10 minutes reaching out to Appellant unsuccessfully before ending the hearing. [The Hearing Officer also did not receive any information later on that hearing day,⁵ from Board of Hearings staff, about any post-hearing phone calls or attempts by the Appeal Representative to reach out to the general Board of Hearings number about her disconnection from the call.]

Findings of Fact

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

1. Appellant is a [REDACTED] MassHealth member who has received PCA services in the prior year. During the past PA period he was approved for 14.75 PCA hours/week, and he has Aid Pending protection of those benefits pending the outcome of this appeal. (Testimony and Exhibits 1 and 3)
2. For the PA period at issue in this appeal, from February 7, 2023 to February 6, 2024, Appellant's PCA provider submitted a request for 15.25 hours/week. (Testimony and Exhibits 1 and 3)
3. MassHealth made two modifications, resulting an approval of 13.75 hours/week. (Testimony and Exhibit 1 and 3)
4. Appellant's PCA submission indicates that the Appellant weighs just over 90 lbs. Appellant is non-verbal and has autism. Appellant has episodes of bladder incontinence, sensory issues, and behavioral issues, including bolting. He is unable to initiate or follow directions or sequences involved in completing a task. Appellant lacks safety awareness, as evidenced by the bolting, and his behavioral issues were reported to be increasing. (Testimony and Exhibit 3)
5. MassHealth approved PCA time in full for the Appellant for the ADLs of Bathing; Dressing and Undressing; Eating; and Toileting. MassHealth also approved in full PCA time for assistance with the activity of Grooming (for Oral Care).
6. MassHealth did not approve two portions of the PCA request.

⁵ As of Wednesday, February 22, 2023, one week after the hearing, there have still been no further communication attempts by Appellant's mother.

- a. One portion of the request denied was for the ADL of Mobility-Transfers where the request sought PCA assistance of 5 minutes/activity, 2 activities/day, 5 days a week for a total of 50 minutes/week. (Testimony and Exhibit 3)
 1. The request was for getting Appellant to and from the school bus stop. (Testimony)
- b. The other portion of the request denied was for the ADL of Grooming-Other. The request was for minutes daily (35 minutes week) and was for applying lotion. (Testimony and Exhibit 3)
 1. There is no information on what this lotion is for, or whether it is a type of medication. (Testimony and Exhibit 3)
 2. Prior to the end of hearing, and before there were any phone difficulties that led to the end of the hearing, Appellant's mother was asked multiple times what type of lotion was being used and whether the lotion had a medical purpose, and no information specific to the lotion was provided. (Testimony)

Analysis and Conclusions of Law

The regulations concerning PCA Services are found at 130 CMR 422.000 et seq. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when “(1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.” It is undisputed that this Appellant is a MassHealth member eligible for PCA services.

All requested PCA services must be medically necessary for prior authorization to be approved. A portion of the MassHealth regulation which applies to all providers, including the PCA program, and which describes what kind of services meet the definition of “*medical necessity*”, appears below:

130 CMR 450.204: Medical Necessity

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.***

(B) *Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality...*

(Emphasis added.)

The relevant portion of 130 CMR 422.410 which further defines the specific ADLs and IADLs covered by this program reads as follows:

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

(A) Activities of Daily Living (ADLs). *Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:*

- (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) *dressings: 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.*

(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 PCA services; and*
 - (c) **other special needs approved by the MassHealth agency as being instrumental to the health care of the member.**

(Bolded emphasis added.)

Another regulation relevant to this appeal is found in 130 CMR 420.412.

422.412: Non-covered 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.

(Bolded emphasis added.)

With regard to the two disputed modifications, the MassHealth rationale for denying the time for the transfers to school bus is the most sound. While it's understandable that the family may desire PCA time to help provide safety for the bus stop trips, that ignores the fact that in Massachusetts, ██████████ children are usually 1st or 2nd graders. Even if a 1st or 2nd grader had no medical impairments, it would still be expected that the family member would accompany such child to and from the bus stop. To that end, MassHealth's argument that it's akin to babysitting, or a familial duty makes the most sense and the need is not medically necessary, as the need for transporting the child to the bus stop would still exist even if a child did not have autism or any medical impairment. I thus find MassHealth's decision to deny PCA time for this activity to be logical and consistent with the governing Medicaid regulations.

As to the additional time not allowed for application of daily lotion, both the record and testimony at hearing fail to provide evidence of what this lotion is for, and why it's not part of the covered PCA time approved for the separate ADLs of bathing (which includes post-wash time) or that time when Appellant is getting dressed or undressed. I find that Appellant's mother had ample opportunity during the hearing to explain what the lotion was for, but the testimony given was generic. Thus it is difficult to conclude that the lotion was for a needed medical purpose, nor was there any evidence of what the lotion could be and where it was applied that could justify the five minutes of hands-on assistance required daily. I thus find no reason in the record to overturn the MassHealth decision to not award this other piece of disputed time.

Accordingly, based on the evidence in the record and governing law applying to the PCA program, I conclude that the MassHealth decision is justified and consistent with the applicable regulations. This appeal is DENIED.

Order for MassHealth

None, other than to remove the Aid Pending. Send a Notice of Implementation or non-appealable written notice informing Appellant of the effective date on which the PCA hours will decrease from 14.75 hours/week to 13.75 hours/week. As the removal of Aid Pending will result in a decrease of assistance and because PCA time has to be scheduled in advance, MassHealth should make sure the effective date of change is at least 10 days after the date the written notice is mailed to the family.

Further, due to the administrative error by the agency that led to the inadvertent placement of Aid Pending, the MassHealth program should also take no steps to pursue any recoupment of protected benefits per 130 CMR 610.036.⁶

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: PCA Appeals Coordinator @ Optum

⁶ See fn. 1, *supra*.