

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2300434
Decision Date:	4/13/2023	Hearing Date:	02/24/2023
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN

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:	DENIED	Issue:	Prior Authorization - PCA
Decision Date:	4/13/2023	Hearing Date:	02/24/2023
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	Mother
Hearing Location:	Quincy		

Authority

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

Jurisdiction

Through notice dated January 4, 2023, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed for this appeal in a timely manner on January 16, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. MassHealth was represented by a Registered Nurse and clinical appeals reviewer who submitted a packet of documentation concerning the subject prior authorization request including the current PCA evaluation (collectively, Exhibit B). Appellant was represented by his mother who did not file any documentation other than the Fair Hearing Request (Exhibit A).

The MassHealth representative testified that Appellant's provider agency submitted a written prior re-authorization request seeking 16.25 hours per week and 0 overnight hours of PCA services. MassHealth modified the request approving 10.75 hours per week.

According to the written request, Appellant is a [REDACTED] male who was born severely premature at 24 weeks gestation. Appellant is non-verbal, has FTT (Failure to Thrive) developmental delays and hypotonia. Appellant also has concavity of chest, low muscle tone, requires Gtube for feedings and medication administration. He has a special feeding formula and is starting to be fed very small portions of pureed foods. Appellant is incontinent of bladder and bowel and wears diapers. Appellant is followed by GI in Boston. Appellant is non-ambulatory, but is able to crawl short distances. Appellant has low muscle tone and gets PT at rehabilitation facility in [REDACTED] and uses both a gait trainer and stander in the home.

According to the request, after observing Appellant in his home during the PCA evaluation, it was determined that he would benefit from continued PCA assistance so he can remain at home with parent, be safe and have his physical needs met efficiently.

The MassHealth representative testified that MassHealth approved all of the time requested for assistance except in two areas: Range of Motion (ROM) and assistance with feeding.

ROM -

Appellant requested 5 minutes, once per day, seven days per week for each of her four extremities. MassHealth denied all of the time to assist with ROM.

The MassHealth representative explained that there are two forms of Range of Motion (ROM): active and passive.

Assistance with passive range of motion involves the PCA manipulating a member's limb because due to paralysis, the member cannot enervate his/her own muscles. The MassHealth PCA program covers assistance with passive ROM.

Assistance with active range of motion involves guiding and helping a member to move

a limb that he/she can move because they do not suffer from complete paralysis and can enervate the muscles in their limbs. This describes Appellant, who is able to enervate the muscles in his upper and lower extremities. Assistance with active range of motion is not covered under the MassHealth PCA program.

The MassHealth representative further explained that the written request indicates Appellant seeks assistance with ROM to preserve muscle mass. The MassHealth representative testified that ROM does not help to maintain muscle mass. ROM also does not prevent atrophy, does not increase muscle tone and does not increase strength or endurance. Assistance with ROM is used to help maintain flexibility in the limbs to preserve range of motion. The MassHealth representative also noted that Appellant uses his limbs in ways that do improve strength and endurance as MassHealth approved all time requested to assist Appellant with using his gait trainer and stander in the home.

In response, Appellant's mother testified Appellant only goes to PT once per week. She acknowledged that Appellant does crawl short distances and does use the gait trainer, but only for 5 minutes at a time. Appellant also uses his stander for 15-30 minutes at a time. Appellant's mother testified that Appellant was recently diagnosed with autism and reiterated that Appellant is non-verbal and cannot vocalize his needs.

Feeding –

The MassHealth representative testified that Appellant requested 10 minutes, once per day, seven days per week to assist with Gtube feedings and 3 minutes, six times per day, seven days per week to assist with oral feeding. MassHealth approved all the time requested to assist with the GTube feeding, but denied all the time to assist with oral feeding.¹

The MassHealth representative explained that the request indicates Appellant receives his primary nutrition through his GTube and that oral feedings are only being trialed with small amounts of pureed food. The MassHealth representative testified that training and monitoring are not covered PCA services.

In response, Appellant's mother testified that Appellant is now receiving GTube feedings 24 hours per day, seven days per week. Appellant also has reflux and needs to be watched all day in case of aspiration. Appellant's mother testified that Appellant is receiving some food orally every day too, but due to the reflux and risk of aspiration, he needs to be watched at all times while eating orally.

Findings of Fact

¹ The MassHealth representative noted that the subject notice contained an error and mistakenly left out the 70 minutes per day requested to assist with the GTube feeding. The representative has corrected the error and restored the 70 minutes.

By preponderance of the evidence, this record supports the following findings:

1. Appellant's provider agency submitted a written prior re-authorization request seeking 16.25 hours per week and 0 overnight hours of PCA services.
2. MassHealth modified the request approving 10.75 hours per week.
3. Appellant is a [REDACTED] male who was born severely premature at 24 weeks gestation.
4. Appellant is non-verbal, has FTT (Failure to Thrive) developmental delays and hypotonia.
5. Appellant has concavity of chest, low muscle tone, requires Gtube for feedings and medication administration.
6. Appellant has a special feeding formula and is starting to be fed very small portions of pureed foods.
7. Appellant is incontinent of bladder and bowel and wears diapers.
8. Appellant is followed by GI in [REDACTED].
9. Appellant is non-ambulatory, but is able to crawl short distances.
10. Appellant has low muscle tone and gets PT at rehabilitation facility in Salem NH and uses both a gait trainer and stander in the home.
11. MassHealth approved all of the time requested for assistance except in two areas: Range of Motion (ROM) and assistance with feeding.
12. Appellant requested 5 minutes, once per day, seven days per week for assistance with ROM for each of her four extremities.
13. MassHealth denied all of the time to assist with ROM.
14. There are two forms of Range of Motion (ROM): active and passive.
15. Assistance with passive range of motion involves the PCA manipulating a member's limb because due to paralysis, the member cannot enervate his/her own muscles.
16. Assistance with active range of motion involves guiding and helping a member to move a limb that he/she can move because they do not suffer from complete paralysis and can enervate the muscles in their limbs.

17. Appellant, is able to enervate the muscles in his upper and lower extremities.
18. According to the written request, Appellant seeks assistance with ROM to preserve muscle mass.
19. ROM does not help to maintain muscle mass, does not prevent atrophy, does not increase muscle tone and does not increase strength or endurance.
20. Assistance with ROM is used to help maintain flexibility in the limbs to preserve range of motion.
21. Appellant uses his limbs in ways that do improve strength and endurance as MassHealth approved all time requested to assist Appellant with using his gait trainer and stander in the home.
22. Appellant goes to PT once per week.
23. Appellant crawls short distances and does use the gait trainer, for about 5 minutes at a time and uses his stander for 15-30 minutes at a time.
24. Appellant requested 10 minutes, once per day, seven days per week to assist with Gtube feedings and 3 minutes, six times per day, seven days per week to assist with oral feeding.
25. MassHealth approved all the time requested to assist with the GTube feeding, but denied all the time to assist with oral feeding.²
26. Appellant receives his primary nutrition through his GTube.
27. Oral feedings are only being trialed with small amounts of pureed food.
28. Appellant needs to be monitored while receiving GTube and oral feedings due to reflux and the risk of aspiration.

Analysis and Conclusions of Law

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (*Massachusetts Inst. of Tech. v. Department of Pub. Utils.*, 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

² The MassHealth representative noted that the subject notice contained an error and mistakenly left out the 70 minutes per day requested to assist with the GTube feeding. The representative has corrected the error and restored the 70 minutes.

ROM – It was undisputed that Appellant can enervate the muscles in each of his extremities, so assistance with ROM would be active, not passive. The PCA program covers assistance with certain specified activities of daily living (ADLs) (130 CMR 422.411 and 130 CMR 422.410(A)). While assistance with passive ROM is listed, assistance with active ROM is not (130 CMR 422.410(A)(5)). Accordingly, MassHealth properly applied to controlling regulations to Appellant's condition in denying time requested for assistance with active ROM.

Appellant receives his primary nutrition through his Gtube feedings and MassHealth has approved all time requested for assistance with Gtube feeding. The request and Appellant's mother indicate that Appellant is only trialing oral intake on a limited basis. Appellant's mother described the need for assistance with oral feedings as monitoring Appellant due to his reflux and risk for aspiration. There is no doubt that Appellant does require such assistance while trying to take food orally. Unfortunately, the controlling regulation clearly states that the MassHealth PCA program does not cover time for monitoring (130 CMR 422.412(C)).

On this record, Appellant has not met his burden of demonstrating the invalidity of MassHealth's action. Accordingly, the appeal is denied.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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