

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2301055
Decision Date:	4/14/2023	Hearing Date:	03/17/2023
Hearing Officer:	Mariah Burns		

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:	Personal Care Attendant Services
Decision Date:	4/14/2023	Hearing Date:	03/17/2023
MassHealth's Rep.:	Donna Burns, RN ¹	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote	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 January 5, 2023, MassHealth modified the appellant's request for prior authorization for personal care attendant (PCA) hours. Exhibit 1. The appellant filed this appeal in a timely manner on February 5, 2023. See 130 CMR 610.015(B) and Exhibit 2. Denial of prior authorization is valid grounds for appeal. 130 CMR 422.417(B) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization of PCA services.

Issue

The appeal issue is whether MassHealth was within its discretion to modify the appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and testified as follows: The appellant is a minor child with a primary diagnosis of developmental delays and

¹ There is no known relation between the hearing officer and MassHealth representative.

nephronophthisis. He lives with his parents and four siblings, one of whom also receives PCA services. The appellant has a right kidney that is smaller than the left, is incontinent of the bowel and bladder, has been diagnosed with ADHD, suffers from constipation, and is short statured – for which he is on growth hormones. The personal care management (PCM) company, Center for Living and Working, submitted a prior authorization request to MassHealth for PCA services on behalf of the appellant on December 12, 2022. The request was for 10 hours and 30 minutes per week for 41.40 school weeks and 13 hours and 15 minutes per week for 12 vacation weeks. MassHealth reviewed the documentation submitted by the PCM and modified the request to 8 hours and 30 minutes per week for 40.14 school weeks and 11 hours and 15 minutes per week for 12 vacation weeks. The request was modified in the areas of physical assist with bathing and laundry.

Upon testimony from the appellant's mother, MassHealth agreed to modify the bathing hours to 25 minutes, one time per day, seven days per week. Although the PCM originally requested 30 minutes for that service, the appellant's mother agreed to the modification at hearing, resolving any issue with the authorized bathing hours.

With respect to the requested laundry hours, MassHealth indicated that, because the appellant is a minor, the regulations do not permit the agency to compensate a PCA for the time spent doing laundry, as that would typically be a responsibility of the parent. The appellant's mother stated that, due to his complete bladder and bowel incontinence, the appellant has significantly more laundry than a typical child of his age and that is why the PCM requested 45 minutes per week. The MassHealth representative reiterated that MassHealth will not pay for a PCA to do a child's laundry unless the parent or guardian is physically unable to.

Findings of Fact

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

1. On December 22, 2022, the Center for Living and Working submitted a prior authorization request for PCA hours to MassHealth on behalf of the appellant. The request was for 10 hours and 30 minutes per week for 41.40 school weeks and 13 hours and 15 minutes per week for 12 vacation weeks and included a) a request for physical assist with bathing for 30 minutes, one time per day, seven days per week; and b) 45 minutes per week for laundry. Testimony, Exhibit 1, Exhibit 4 at 12, 23.
2. On January 5, 2023, MassHealth issued a notice modifying the appellant's request to 8 hours and 30 minutes per week for 40.14 school weeks and 11 hours and 15 minutes per week for 12 vacation weeks. The modification included authorization for a) physical assist with bathing for 20 minutes, one time per day, seven days per week; and b) no minutes for laundry. Testimony, Exhibit 1, Exhibit 4 at 12, 23.
3. The appellant's mother filed a timely notice of appeal on February 5, 2023. Exhibit 2.
4. The appellant is a minor child who suffers from developmental delays, nephronophthisis,

ADHD, constipation, and incontinence. He resides with his parents and four siblings, one of whom also receives PCA hours. Testimony, Exhibit 4 at 8.

5. At hearing, MassHealth and the appellant's mother agreed to a modification of hours for physical assist with bathing to 25 minutes, one time per day, seven days per week, thereby obviating that issue on appeal. Testimony.

6. The appellant's request for prior authorization for assisting with laundry was denied because that is a service that is typically expected to be completed by a child's parent. Testimony, Exhibit 1.

7. There is no evidence in the record that the appellant's parents suffer from any physical disability or anything that would prevent them from being able to do the appellant's laundry. Testimony.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.²
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting that categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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

² ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

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...

...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.

130 CMR 450.204(A)-(B).

As part of the PCA program, MassHealth typically does not cover, among other things, “services provided by family members.” 130 CMR 422.412(F). A family member is defined as “the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.” 130 CMR 422.402. For a minor child, this includes most IADLs, as family members are expected to “provide assistance with...routine laundry, housekeeping, shopping, and meal preparation and clean-up.” 130 CMR 422.410(C)(1).

With respect to the issue of bathing, MassHealth and the appellant agreed upon authorized hours, leaving no issue on appeal for that category. The appeal is thereby **dismissed** as to assistance with bathing.

With respect to the issue of laundry, there is no evidence in the record that the appellant’s parents are physically incapable of doing his laundry or that doing his laundry would be physically taxing on them. They are therefore responsible for that task, and MassHealth was within its discretion in modifying the appellant’s prior authorization request. The appeal is thereby **denied** as to assistance with laundry.

Order for MassHealth

Approve prior authorization for PCA assistance with bathing 25 minutes, one time per day, seven days per week.

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, 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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

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