

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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|-------------------------|--------------|-----------------------|-----------|
| Appeal Decision: | Denied | Appeal Number: | 2301283 |
| Decision Date: | 3/22/2023 | Hearing Date: | 3/16/2023 |
| Hearing Officer: | David Jacobs | | |

Appearances for Appellant:



Appearances for MassHealth:

Cheryl Eastman, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

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|--------------------------|----------------------------|-----------------------|------------------------------------|
| Appeal Decision: | Denied | Issue: | Prior Authorization (PCA Services) |
| Decision Date: | 3/22/2023 | Hearing Date: | 3/16/2023 |
| MassHealth Rep: | Cheryl Eastman, RN | Appellant Rep: | Mother |
| Hearing Location: | Board of Hearings (Remote) | Aid Pending: | No |

Authority

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

Jurisdiction

Through notice dated 1/30/2023, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410; Exhibit 1). The appellant filed a timely appeal on 2/15/2023 (130 CMR 610.015(B)). Denial of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a teenage male whose provider, TEMPUS Unlimited, Inc., submitted a request for PCA services on his behalf. The record reflects that the appellant has a primary diagnosis of Costello syndrome. On 1/19/2023, MassHealth received an initial prior authorization request for PCA services. The appellant seeks PCA services in the amount of 23 day/evening hours per week and 0 night hours per week. On 1/30/2023, MassHealth modified the request and authorized 22.5 day/evening hours per week and 0 night hours per week.

The record includes a prior authorization request (Exhibits 6 and 7). The prior authorization request reports that the appellant's primary diagnosis of Costello syndrome causes hypotonia and cognitive delays in the appellant.

MassHealth made one modification to the prior authorization request (Exhibit 7, pgs. 10-11). The modification at issue can be found under Other Healthcare Needs and in this category, the appellant requests 5 minutes, 2 times a day, 7 days a week for the activity. The provider notes for this activity are: "Wears TLSO Hard Body Jacket on & off assist. 4 min on & 2 min off, reported by mother/surrogate." The MassHealth representative testified that the notes suggest that this activity was likely requested for the donning and doffing of a Hard Body Jacket, a medical device for the treatment of scoliosis, that the appellant wears at times. MassHealth modified the request to 6 minutes, 1 time a day, 7 days a week. This modification results in a reduction of time in this category (70 minutes reduced to 42 minutes). The MassHealth representative testified that the basis for this modification is the mother's report that this task takes a total of 6 minutes per day (4 minutes on and 2 minutes off). The MassHealth representative explained that the Hard Body Jacket is also mentioned in the notes related to the categories of Dressing and Undressing. She noted that it is unclear if the provider intended to request assistance with the Hard Body Jacket in two places, or whether this was done in error. However, if it was intentional, the time requested for assistance with Dressing and Undressing was not modified, and therefore would include extra time to deal with the Hard Body Jacket.

The appellant's mother appeared on the appellant's behalf. She testified that the notes in the Other Healthcare Needs are accurate. However, she was unclear why her son was losing 30 minutes of PCA time when he needs even more time for his disability. She gave detailed testimony that her son's condition causes him reduced fine motor function, balance, ambulation, and grip strength, among other things. The MassHealth representative responded that the appellant has been authorized to receive the appropriate amount of assistance in the category of Other Healthcare Needs. There is no documentation to substantiate the original request for 5 minutes, 2 times a day, 7 days a week, and the authorization is in line with the time frames explained by the appellant's mother.

Findings of Fact

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

1. The appellant is a teenage male with a primary diagnosis of Costello syndrome.
2. The appellant is in the care of his mother who assists him with regular dressing as well as putting on and taking off a Hard Body Jacket.
3. The prior authorization request includes a medical history which states that the appellant's condition causes cognitive delays and hypotonia.
4. On 1/19/2023, the appellant submitted an initial request for PCA services in the amount of 23 day/evening hours per week and 0 night hours per week.
5. On 1/30/2023, MassHealth modified the request and authorized 22.5 day/evening hours per week and 0 night hours per week.
6. The parties were unable to resolve the disputes regarding the time listed in Other Healthcare Needs.
7. In the category of Other Healthcare Needs, the appellant requested 5 minutes, 2 times a day, 7 days a week to put on and take off his Hard Body Jacket. MassHealth modified the time for this activity to 6 minutes, 1 time a day, 7 days a week.
8. The appellant's mother explained that it takes 4 minutes to put on the Hard Body Jacket and 2 minutes to take it off each day.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. 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.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 or 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 MassHealth as being instrumental to the health care of the member.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to [MassHealth]. . . .

The appellant disputes MassHealth's modification of the time requested for PCA assistance with the putting on and taking off of the appellant's Hard Body Jacket under Other Healthcare Needs.

The appellant has not demonstrated that MassHealth's modification of PCA time for assistance with Other Healthcare Needs was done in error. The appellant requested time in this category for assistance donning and doffing his Hard Body Jacket. Specifically, the appellant requested assistance as follows: 5 minutes, 2 times per day, 7 days per week, or 70 minutes per week. The provider did not include any specific detail describing why 10 minutes per day for this task is needed. The appellant's mother, however, provided clarification and indicated that this task takes 6 minutes per day (4 minutes to put the jacket on and 2 minutes to take it off). On this basis, MassHealth modified the request to reflect these time frames (6 minutes every day, or 42 minutes per week). As there is no evidence to suggest that the PCA would need more time than the mother to perform this task, MassHealth's modification seems reasonable and accurately reflects the time it takes to accomplish this task.

The appellant's mother testified generally to her son's significant needs and his need for more assistance. This testimony, while certainly credible, does not justify the authorization of additional time in the category of Other Healthcare Needs.¹

In conclusion, despite the mother's compassionate testimony regarding the needs of her son, the record does not support the authorization of any additional time. MassHealth does not give more PCA time generally as it must directly relate to an ADL or IADL as described by the law (130 CMR 422.410) and cannot give more time than what is requested by the provider.

The appeal is denied.

Order for MassHealth

None

¹ To the extent that the mother's argument is specific to the appellant's needs in the areas of Dressing and Undressing, it bears noting that MassHealth authorized all of the time that was requested in these two areas.

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.

David Jacobs
Hearing Officer
Board of Hearings

cc: Optum