

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2301646

Decision Date: 5/5/2023

Hearing Date: 03/29/2023

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN, Optum



*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:	Personal Care Attendant Services
Decision Date:	5/5/2023	Hearing Date:	03/29/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Mother of Minor Appellant
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 02/20/2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 8.00 day/evening hours per week to 7.00 day/evening hours per week plus 0 daily night time attendant hours for dates of service from 02/20/2023 to 02/19/2024 (130 CMR 422.410; Exhibit 1). A timely appeal was filed on the appellant's behalf by her mother² on 03/01/2023 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

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.

² The appellant is a minor child. Her mother represented her in this appeal. See Exhibit 4.

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 for PCA services was received on appellant's behalf on 02/07/2023 from her PCA provider, ARC of South Shore, Inc. (Provider), and is an initial evaluation for the dates of service of 02/20/2023 to 02/19/2024. In the prior authorization request for PCA services, the provider requested 8:00³ day/evening hours per week. Nighttime attendant hours were not requested.

The appellant is [REDACTED] and she lives with her mother. The primary diagnosis affecting her ability to function independently is autism (Exhibit 4).

The Optum representative testified that on 02/20/2023, MassHealth modified the PCA request to 7:00 day/evening hours per week. No nighttime attendant hours were requested or approved. MassHealth modified the request for PCA services in the Activity of Daily Living (ADL) tasks of mobility and grooming (nail care) (Exhibits 1 and 4).

Mobility

The appellant's PCA provider requested 5 minutes, 2 times per day, 7 times per week (5 X 2 X 7)⁴ for assistance with mobility. The provider noted that the time requested in this area is for the PCA to assist the appellant to and from the school bus for "safety" (Exhibit 4).

MassHealth denied the time requested for mobility – assistance to and from the bus. The MassHealth representative testified that the request for assistance in this area was denied for three reasons: first, appellant has the documented ability to ambulate on her own; second, the time is required for supervision, which is not a covered PCA service; and finally, walking a [REDACTED] child to and from the bus is a parental responsibility, not

³ PCA time is referred to in this format, 8:00, to signify 8 hours and 00 minutes.

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

covered by the PCA program (Exhibits 1 and 4).

The appellant's mother testified that the appellant "tries to fling herself down the stairs from the second-floor apartment," and that the mother "cannot keep up with the child." The mother stated she does not have a PCA at the moment, but the appellant needs assistance to and from the bus because it is not safe to let her go alone.

Grooming (Nail Care)

The appellant's PCA provider requested 5 X 1 X 1 for PCA assistance with nail care. The provider noted that the appellant requires maximum assistance with all grooming, including nail care due to cognitive deficits and resistance to care needs (Exhibit 4).

MassHealth denied the request for assistance with nail care. The MassHealth representative testified that nail care is a parental responsibility for a [REDACTED] child (Exhibits 1 and 4).

The appellant's mother testified that she cannot "just go ahead and clip [the appellant's] nails," and they have to take frequent breaks because the appellant is uncooperative.

Findings of Fact

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 02/07/2023 from her PCA provider, ARC of South Shore, Inc., and is an initial evaluation request for the dates of service of 02/20/2023 to 02/19/2024 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 8:00 day/evening hours of assistance per week. Nighttime attendant hours were not requested (Testimony; Exhibit 4).
3. The appellant is a [REDACTED] child who lives with her mother. The primary diagnosis affecting her ability to function independently is autism (Testimony; Exhibit 5).
4. On 02/20/2023, MassHealth modified the PCA request to 7:00 day/evening hours per week. Nighttime attendant hours were not approved (Testimony; Exhibits 1 and 4).
5. A timely appeal was filed on the appellant's request on 03/01/2023 (Exhibit 2).
6. A fair hearing took place on 03/29/2023. The appellant's mother is her legal

guardian who appeared as the appellant's appeal representative (Exhibits 2 and 3).

7. In the area of mobility, the appellant's provider requested 5 minutes, 2 times per day, 7 days per week (5 X 2 X 7)⁵. The provider noted that the time requested in this area is for the PCA to assist the appellant to and from the school bus for "safety" (Testimony; Exhibit 4).
8. MassHealth denied the request for PCA assistance in the area of mobility to and from the school bus (Testimony; Exhibits 1 and 4).
9. Assisting a [REDACTED] child to and from the school bus is a parental responsibility.
10. In the area of grooming (nail care), the appellant's PCA provider requested 5 X 1 X 1). The provider noted that the appellant requires maximum assistance with all grooming, including nail care due to cognitive deficits and resistance to care needs (Exhibit 4).
11. MassHealth denied the request for assistance with nail care (Testimony; Exhibits 1 and 4).
12. Assisting a [REDACTED] child with nail care is a parental responsibility (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

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

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 (emphasis added).

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).

MassHealth made two modifications to the appellant's request for PCA services submitted on 02/07/2023 from her PCA provider, ARC of South Shore, Inc. The request is an initial evaluation for dates of service from 02/20/2023 to 02/19/2024. In the prior authorization request for PCA services, the provider requested 8:00 day/evening hours per week. The appellant is a [REDACTED] child who lives with her mother. The primary diagnosis affecting her ability to function independently is autism.

MassHealth modified the PCA request to 7:00 day/evening hours per week. Nighttime attendant hours were not requested and not approved. MassHealth modified the request for assistance in the ADLs of mobility (to and from the school bus) and grooming (nail care).

In both modifications, MassHealth denied the time requested primarily because the tasks for which assistance was requested are a parental responsibility for a [REDACTED] child. The MassHealth representative testified that that a [REDACTED] child should not be able to go to and from a school bus without assistance from a parent. Additionally, for the nail care request, she testified that a [REDACTED] child needs parental assistance to cut her nails.

The appellant's mother testified credibly that she needs assistance to help care for the appellant. She stated that she was unfamiliar with the PCA process, but that the time approved will not meet the appellant's needs.

MassHealth's testimony is supported by the regulations and the material facts in the hearing record. The appellant's mother has not met the burden of showing MassHealth's decision is incorrect. As a result, this 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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