

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2301695

Decision Date: 4/12/2023

Hearing Date: 03/29/2023

Hearing Officer: Sara E. McGrath

Appearances for Appellant:



Appearances for MassHealth:

Donna Burns, 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

Appeal Decision:	Denied	Issue:	Prior Authorization for PCA Services
Decision Date:	4/12/2023	Hearing Date:	03/29/2023
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Pro se
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated February 10, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on March 2, 2023 (130 CMR 610.015(B); Exhibit 2). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)). At the conclusion of the hearing, the record was held open for the appellant to submit additional documentation. The appellant did not submit any additional information during the record-open period.

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant qualifies for additional PCA services under MassHealth regulations.

Summary of Evidence

The MassHealth representative, who is a registered nurse, appeared at the hearing by phone and testified to the following factual background: The appellant is a teen male with diagnoses that include autism and global developmental delays (Exhibit 3, p. 11). On January 26, 2022, MassHealth received an initial prior authorization (PA) request for PCA services for the appellant in the amount of 7.75 day/evening hours per week, and 14 night hours per week. On February 10, 2023, MassHealth reviewed the request and modified it, authorizing all of the day/evening hours requested, but denying the request for night hours in full.

The MassHealth representative explained that the appellant requested PCA assistance at night solely to assist with toileting.¹ The appellant requested 8 minutes per night (4 minutes x 2) to assist with bladder care, and 10 minutes per night for assistance with bowel care (Exhibit 3, p. 20). The MassHealth representative stated that because most people sleep through the night, the appellant has not demonstrated that PCA assistance with these toileting tasks is medically necessary. The appellant's mother appeared at hearing by phone and stated that she wakes her son several times during the night to urinate. If she does not do this, he almost always wets the bed. She added that her son takes sleep medication that causes him to sleep deeply. She stated that she does not want her son to wear any type of incontinence products; he is a teen and she wants to teach him good habits. She noted that her son does not need any assistance with bladder care once he is awakened.

The MassHealth representative responded and stated that because the appellant does not need physical assistance with the bladder care, the request for assistance at night was appropriately denied. The requested assistance – to wake the appellant so that he will go to the toilet – is along the lines of cueing and supervision and is not covered under MassHealth's PCA program. To the extent that the mother is undertaking a toilet training program, MassHealth considers this to be a parental responsibility that would also not be covered under MassHealth's PCA program. Finally, the MassHealth representative stated that because incontinence products would be cheaper than PCA services, MassHealth regulations dictate that PCA services would not be covered here.

Findings of Fact

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

1. The appellant is a teen male with diagnoses that include autism and global developmental delays.
2. On January 26, 2023, MassHealth received an initial PA request for PCA services for the appellant in the amount of 7.75 day/evening hours per week, and 14 night hours per week.

¹ The MassHealth representative stated that the request for PCA assistance with bladder and bowel care during the day/evening was approved as requested (Exhibit 3, p. 20).

3. On February 10, 2023, MassHealth reviewed and modified the request, resulting in an authorization of 7.75 day/evening hours per week, and 0 night hours per week.
4. The appellant requested time for PCA assistance with bladder and bowel care during the day/evening hours; MassHealth authorized the time as requested, despite clarification at hearing that the appellant is independent with bladder care.
5. The appellant also requested time for PCA assistance with bladder and bowel care at night (a total of 18 minutes).
6. The appellant does not need physical assistance with bladder care during the day/evening or at night, and does not receive assistance with bowel care at night.
7. The appellant's mother wakes the appellant several times at night to cue him to empty his bladder. Once in the bathroom, he is independent with the tasks related to bladder care.
8. On March 2, 2023, the appellant filed a timely appeal of the PCA modification notice.

Analysis and Conclusions of Law

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410 (130 CMR 422.402). Per 130 CMR 422.403(C), MassHealth covers PCA 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 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 ADLs and IADLs without physical assistance; (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); and (4) the MassHealth agency 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, or grooming;
- (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 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 personal care services; and
 - (c) other special needs approved by MassHealth 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 PCM 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

MassHealth also limits coverage to those services that have been determined to be medically necessary. Per 130 CMR 450.204(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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

MassHealth denied the appellant's PA request for PCA services at night because it determined that these services are not medically necessary. The record supports this determination. The appellant's mother explained that night assistance is needed to wake the appellant several times to cue him to urinate, and that without it, he wets the bed. She argues that he is too old to wear an incontinence product and she wants to teach him good habits.

PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA" (130 CMR 420.402). The appellant's request does not involve physical assistance with bladder care – the appellant's mother indicated at hearing that the appellant is independent with all tasks related to bladder care. Rather, the appellant requests PCA assistance to awaken him during the night and to cue him to use the toilet so that he remains continent.² This type of assistance is not a covered service. Per 130 CMR 422.412(C), MassHealth does not cover assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.³

The appellant has not demonstrated that additional PCA hours are medically necessary, and the appeal is denied.

Order for MassHealth

None.

² Notably, although time was requested for PCA assistance with bowel care at night, the testimony made clear that the appellant's toileting regimen at night is solely related to bladder care.

³ Because the appellant's request does not involve physical assistance with the task of toileting, MassHealth's additional arguments need not be addressed.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum