

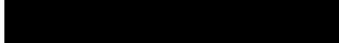
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2301725
Decision Date:	4/19/2023	Hearing Date:	03/30/2023
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, R.N.

Interpreter:



*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:	Approved in part; Denied in part; Dismissed in part	Issue:	PA-PCA Services
Decision Date:	4/19/2023	Hearing Date:	03/30/2023
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (phone)	Aid Pending:	No

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 February 14, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on February 23, 2023. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant is a minor who was represented at hearing via telephone by his mother.

The MassHealth representative testified that the documents submitted show that the appellant has a primary diagnosis of autism, with medical history including sensory issues, poor fine motor skills, no safety awareness and resistive to care needs. (Ex. 4, p. 12; Testimony). The appellant's personal care management (PCM) agency, Arc of the South Shore, submitted a prior authorization request for PCA services requesting 12 hours/30 minutes day/evening hours per week and 2 nighttime hours per night. MassHealth modified the request to 10 hours/30 minutes day/evening hours per week and 0 nighttime hours per night. (Ex. 4, 13-27; Testimony).

There were six modifications based upon MassHealth regulations. MassHealth modified Mobility from 5 minutes, 2 times a day, 5 days a week to 0. MassHealth modified Bathing from 15 minutes an episode, 1 time a day, 7 days a week to 10 minutes an episode, 1 time a day, 7 days a week. MassHealth modified Grooming, nail care, from 5 minutes an episode, 1 time a day, 1 day a week to 0. MassHealth modified Dressing from 10 minutes an episode, 1 time a day, 7 days a week to 7 minutes an episode, 1 time a day, 7 days a week. MassHealth modified Toileting, Bowel Care from 8 minutes an episode, 1 time a day, 7 days a week to 7 minutes an episode, 1 time a day, 7 days a week. Lastly, MassHealth modified Nighttime hours from 10 minutes an episode, 1 time a night to 0.

After testimony by the mother of appellant and discussion between the parties, the parties were able to resolve the dispute related to Mobility and agreed on 0 time for this task. Therefore, this part of the appeal is dismissed. Regarding Toileting, Bowel Care, after testimony from the mother, MassHealth agree to 8 minutes an episode, 1 time a day, 7 days a week. Therefore, this part of the appeal is dismissed.

Appellant's mother testified that appellant is difficult to dress and bath. He is dependent for most tasks. He does nothing to help himself when bathing. He moves around and is not focused. He does not cooperate when trying to dress him. He runs away and is not predictable when toileting. She testified he wakes up every night and cries a lot. When he wakes up, he urinates.

Findings of Fact

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

1. The appellant is a minor MassHealth member with a primary diagnosis of autism and had sensory issues, poor fine motor skills, no safety awareness and is resistive to care needs. (Testimony; Ex. 4, p. 12).
2. MassHealth received a prior authorization request for PCA services requesting 12 hours/30 minutes day/evening hours per week 2 nighttime hours per night. (Testimony; Ex. 4).
3. MassHealth modified the request to 10 hours/30 minutes day/evening hours per week and 0 nighttime hours per night (Testimony; Ex. 1).

4. The appellant filed this appeal in a timely manner on February 23, 2023. (Ex. 2).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with Mobility and Toileting. (Testimony).
6. The appellant seeks time for PCA assistance with Bathing, as follows: 15 minutes an episode, 1 time a day, 7 days a week. (Testimony; Ex. 4, p. 16).
7. MassHealth modified the requested time for Bathing to 10 minutes an episode, 1 time a day, 7 days a week. (Testimony).
8. Appellant requested PCA time assistance with Grooming, nail care as follows: 5 minutes an episode, 1 time a day, 1 day a week. (Ex. 4, p. 17; Testimony).
9. MassHealth modified the time requested for Grooming, nail care, to 0. (Testimony).
10. Appellant requested PCA time assistance with Dressing, as follows: 10 minutes an episode, 1 time a day, 7 day a week. (Ex. 4, p. 19; Testimony).
11. MassHealth modified the time requested for Dressing to 7 minutes an episode, 1 time a day, 7 days a week. (Testimony).
12. Appellant requested PCA nighttime assistance for Bladder Care for a diaper change, as follows: 10 minutes an episode, 1 time a night, 7 day a week. (Ex. 4, p. 21; Testimony).
13. MassHealth modified the nighttime request to 0. (Testimony).

Analysis and Conclusions of Law

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 or grooming;

- (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth 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 service is “medically necessary” if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) 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. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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.

See 130 CMR 422.412 (emphasis added).

The appeal is dismissed as to the following ADL's. At hearing, the parties were able to resolve the dispute related to PCA assistance with Mobility. The parties agreed on 0 time for this task. (Testimony). Regarding Toileting, Bowel Care, after testimony from the mother of appellant, MassHealth agreed to 8 minutes an episode, 1 time a day, 7 days a week. (Testimony). As the parties agree on time for this task, this part of the appeal is dismissed.

Bathing:

Appellant's PCM agency requested 15 minutes an episode, 1 episode a day for 7 days a week for bathing. MassHealth modified this to 10 minutes an episode, 1 episode a day for 7 days a week. (Testimony; Ex. 4, p. 16). Appellant's level of assist in bathing is total dependence. (Ex. 4, p. 15). Regarding transfers in and out of tub/shower, appellant is independent with supervision. (Ex. 4, p. 32). Appellant's mother testified that she does not have a tub and she puts appellant in the shower everyday. (Testimony). The mother further testified that the PCA is not helping with bathing right now. She is not paying the PCA for that and so she is not counting minutes for bathing. (Testimony). Appellant's mother had not offered any evidence showing that MassHealth's modification of bathing to 10 minutes an episode is incorrect. She has failed to meet her burden and this part of the appeal is denied.

Grooming (nail care):

Under Grooming, nail care, appellant's PCM agency requested 5 minutes an episode, 1 episode a day, 1 day a week. MassHealth modified this task to 0 minutes. (Testimony; Ex. 4, p. 17). The MassHealth nurse testified that they would not approve nail care for a 4 year old because that is a parental responsibility. She further testified that a child's nails do not grow that quickly and a PCA could harm a child's nails when cutting them. (Testimony). The MassHealth nurse was asked by this hearing officer if this was codified anywhere in the regulations. She testified that cutting a child's nails does not require two people and a parent should be able to cut a child's nails without the intervention of a PCA. The nurse testified that there is no medical necessity for a PCA to participate in a child's nail care. In response to MassHealth testimony, the mother of appellant testified she had no questions and she did not agree with MassHealth's modification for Grooming, nail care. Appellant offered no evidence refuting MassHealth's determination that 0 time is needed for PCA services for nail care. Appellant has shown no medical necessity for the participation of a PCA in Grooming, nail care. Appellant has not met his burden for the allocation of 5 minutes for this task and this part of the appeal is denied.

Dressing:

Appellant's PCM agency requested 10 minutes an episode, 1 episode a day for 7 days a week for dressing. MassHealth modified it to 7 minutes an episode, 1 episode a day for 7 days. Appellant

is totally dependent for dressing. (Testimony; Ex. 4, p. 19).¹ The MassHealth nurse acknowledged the sensory and fine motor skills issues affecting appellant. She stated every child is different but she wanted to hear a description from the mother of what happens when appellant is being dressed. (Testimony). The mother testified she did not understand how the time is calculated. She said the people who do the calculations should come and see him (appellant). She testified it takes longer than 10 minutes a day to dress him because he does not cooperate. Appellant's request for 10 minutes an episode, 1 episode a day, 7 days a week is approved. MassHealth offered no convincing evidence why the time should be modified to 7 minutes an episode. On the other hand, appellant offered a plethora of evidence why 10 minutes is necessary. Appellant is totally dependent for dressing, (Ex. 4, p. 19); he does not cooperate, (Testimony); In the Occupational Therapy Functional Status Report, it shows appellant manifests gross motor coordination deficits, fine motor coordination deficits, cognition issues, behavior issues and endurance/stamina issues. (Ex. 4, p. 8). The mother's testimony and these documented issues clearly demonstrate that 10 minutes an episode for dressing is appropriate. This part of the appeal is approved.

Nighttime Hours:

Under Bladder Care, appellant's PCM agency requested 10 minutes an episode, 1 episode a night for Nighttime hours from 12 am to 6 am for a diaper change. MassHealth modified this to 0 minutes. (Ex. 4, p. 21; Testimony). The appellant's mother testified that appellant wakes up every night and stays awake for several hours. He cries and pees a lot. She testified that she sometimes has to change him twice in one night. When asked what she does at night when he wakes up, she stated she changes him, looks at him and stays with him. (Testimony). The MassHealth nurse stated these activities fall under supervision and monitoring, which is not covered under the PCA program. (130 CMR 4.22.412 (C)). Because the mother is a family member, (130 CMR 422.402), the activities of babysitting and supervision are not covered by the PCA program. (130 CMR 422.412 (A) (C) and (F)). The testimony of the mother of appellant shows the requirements for PCA nighttime hours have not been met. The request for nighttime hours is denied.

In summary, based on the above, appellant's request for 10 minutes an episode for Dressing is approved. Appellant's request for 15 minutes an episode for Bathing is denied. Appellant's request for 5 minutes an episode, 1 episode a week, 1 day a week for Grooming, nail care, is denied. Based upon the mother's testimony, Nighttime hours are denied. Concerning Mobility and Toileting, the parties agreed to the times for these tasks and the appeal regarding these two issues is dismissed.

Order for MassHealth

Rescind the modification regarding Dressing, which was approved at 7 minutes an episode, and restore the request for 10 minutes an episode.

¹ MassHealth did not modify the time for Undressing. (Testimony).

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.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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