

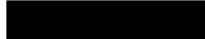
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2301844
Decision Date:	4/28/2023	Hearing Date:	04/13/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:

 Mother

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:	Prior Authorization – PCA
Decision Date:	4/28/2023	Hearing Date:	04/13/2023
MassHealth’s Rep.:	Donna Burns, RN	Appellant’s Rep.:	Mother
Hearing Location:	Remote	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 28, 2023, MassHealth modified the appellant’s request for personal care attendant services, allowing fewer hours than were requested. (Exhibit 3; 130 CMR 422.410.) The appellant filed this timely appeal on March 8, 2023.¹ (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.412, in determining that some of the appellant’s requested time is non-compensable cueing and prompting.

¹ This appeal was initially dismissed by the Board of Hearings on March 10 for the lack of authority to file an appeal. On March 20, the appellant’s mother submitted a copy of her guardianship paperwork and this matter was scheduled for hearing.

Summary of Evidence

On or around February 15, 2023, the appellant's personal care management ("PCM") agency submitted a prior authorization reevaluation requesting 27 hours per week of day/evening personal care attendant ("PCA") hours and two hours per night. The prior authorization period for this request ran from April 20, 2023 through April 19, 2024. The appellant is an adult with a primary diagnosis of autism, and also has diagnoses of diabetes, high cholesterol, anxiety, and obsessive-compulsive disorder. MassHealth made three modifications to this request, allowing 25 hours and 30 minutes of day/evening PCA hours per week and two hours per night. MassHealth only modified the time requested for nail care, shaving, and skin care.

The time requested for nail care was 20 minutes, one time per week. MassHealth allowed 10 minutes. MassHealth's representative testified that trimming fingernails usually only takes a couple of minutes and is only done once per week, and that toenails should also only take a couple of minutes and be done less frequently. Therefore, the allowed time was already more than is normally allowed for nail care. The appellant was represented by his mother, who is also his legal guardian. She explained that the appellant can be resistive to activities, but he is particularly afraid of nail trimming. It takes two people; she holds his hand and the PCA cuts the nails. They also are very detailed in trimming his nails, cleaning his hands, using different sized trimmers, and filing the nails. She testified that his toes need to be trimmed carefully because he is diabetic. He has not been to a podiatrist in about a year. He will start going again soon, and the podiatrist will trim his toenails, but that may only be twice a year.

MassHealth's representative responded that MassHealth generally only covers the time it takes to perform a task. MassHealth considers time required to redirect a member or otherwise navigate behavioral hurdles to be non-compensable "coaching and cueing." The appellant's representative responded that he is a 408-pound man, and he can pull her over if pulls his hand away when they are trying to trim it. A lot of their need for additional time arises from his reluctance to participate in tasks and his physical ability to prevent that task from being accomplished if he does not want it done. She explained that she lost her husband to COVID and helping the appellant has become more difficult without his additional support. The appellant has also put on a lot of weight since his father's death, and his size simply requires additional time now. MassHealth suggested trying to trim his nails while he is asleep. The appellant's mother responded that he is a very light sleeper and will wake up if you try to pick up his hand.

The second modification was to shaving. The appellant requested 20 minutes, four times per week. MassHealth allowed 10 minutes, four times per week. The appellant's representative explained that the appellant's beard grows quickly, and his hair is very kinky, so it must often be gone over twice to make sure his face is smooth. She described combing out the facial hair first, then lathering, shaving, rinsing, and repeating. The appellant can also be resistive to shaving and he needs to be constantly redirected to the task. MassHealth's representative testified that the agency usually only allows five minutes per shaving, so she would need to stay at 10 minutes per shaving. The appellant's representative had never timed how long these tasks take with or without the time needed to redirect the appellant into cooperating with nail care or shaving, but she believed strongly that they took at least as long as requested.

Finally, MassHealth modified the appellant's request for 10 minutes per day for skin care down to five minutes per day. Based upon the testimony regarding the appellant's size and his need for diabetic foot cream, MassHealth restored all of the requested time in this category.

Findings of Fact

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

1. On or around February 15, 2023, the appellant's PCM agency submitted a prior authorization reevaluation requesting 27 hours per week of day/evening PCA hours and two hours per night for the prior authorization period of April 20, 2023 through April 19, 2024. (Exhibit 5, p. 3.)
2. The appellant is an adult with a primary diagnosis of autism, and also has diagnoses of diabetes, high cholesterol, anxiety, and obsessive-compulsive disorder. He has recently gained significant weight, and he can be resistive to care. (Exhibit 5, p. 8; testimony by the appellant's representative.)
3. Through a notice dated February 28, 2023, MassHealth made three modifications to the appellant's request and approved 25 hours and 30 minute per week of day/evening services and two hours per night. MassHealth reduced the amount of time allowed for nail care, shaving, and skin care. (Exhibit 3.)
4. The appellant requested 20 minutes per week for nail care, and MassHealth allowed 10 minutes per week. (Exhibit 5, pp. 3, 16-17.)
5. The appellant requested 20 minutes, four times per week for shaving. MassHealth allowed 10 minutes, four times per week. (Exhibit 5, pp. 3, 16-17.)
6. The appellant requires additional time for nail care and shaving because he is resistive to the tasks and his care providers seek to perform a thorough job. The appellant's requested time is based upon his caregiver's estimation of how long the tasks take, though they have never timed the tasks. (Testimony by the appellant's representative.)
7. MassHealth's considers time for redirecting the appellant to be non-compensable cueing or prompting. The time allowed for these tasks is already more than is usually required for these tasks. (Testimony by MassHealth's representative.)
8. At the hearing, based upon the appellant's testimony, MassHealth approved the requested time for skin care. (Testimony by MassHealth's representative.)

Analysis and Conclusions of Law

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily

living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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.

(130 CMR 422.410(A).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth also limits what services it covers within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers “physically assisting” members with their ADLs or the “activity time” of “providing assistance” with IADLs. (See 130 CMR 422.410(A); 422.411(A).) This means that MassHealth does not cover time downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

- (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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

This appeal is DISMISSED in part with regards to skin care. MassHealth restored in full all time requested in, and there is no longer a MassHealth action to be reviewed through a fair hearing decision. (130 CMR 610.051(B).) This increases the originally allowed time by 35 minutes per week.

The remaining issues are whether all the time required to provide nail care and shaving assistance to the appellant is compensable. MassHealth's estimates are reasonable for the amount of time needed to physically complete these tasks. The appellant's representative acknowledged that she had never measured how long these tasks actually take, and some portion of the time needed is to redirect the appellant to the task. MassHealth reasonably interprets its own regulation to prohibit time for this redirection as non-compensable "cueing, prompting, supervision, guiding, or coaching." Therefore, this appeal is DENIED in part with regards to nail care and shaving.

Order for MassHealth

Increase the appellant's PCA hours by the time agreed at the hearing as of the beginning of the prior authorization request, April 20, 2023.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

