

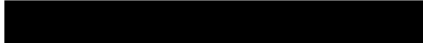
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Dismissed in Part	Appeal Number:	2302007
Decision Date:	4/14/2023	Hearing Date:	04/10/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



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:	Approved in Part; Dismissed in Part	Issue:	Prior Authorization
Decision Date:	4/14/2023	Hearing Date:	04/10/2023
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Mother
Hearing Location:	All Parties Appeared by Telephone	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 services. (130 CMR 422.000; Exhibit 1A; Exhibit 1B). The appellant filed this appeal in a timely manner on March 13, 2023. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services.

Summary of Evidence

The appellant is under the age of 18 and has a primary diagnosis of autism. The appellant is non-verbal, resistant to care and has behavioral issues. The appellant's mother testified that the increase in the appellant's strength and complexity of behavioral issues require more time for tasks to be completed. (Testimony; Exhibit 4). On February 1, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services. (Testimony; Exhibit 4).

The appellant requested 22.25 day/evening hours for weeks when the appellant is in school and 27.50 hours for school vacation weeks. (Testimony; Exhibit 4). MassHealth modified this request and approved 18.75 day/evening hours for weeks when the appellant is in school and 21.75 hours for school vacation weeks. (Testimony; Exhibit 4). The dates of service are February 26, 2023 through February 25, 2024. (Testimony; Exhibit 4). MassHealth modified the time requested for 4 tasks. (Testimony; Exhibit 4).

The appellant requested 45 minutes each day for showering. MassHealth modified this request and approved 35 minutes each day for showering. MassHealth determined that 45 minutes was longer than ordinarily required for showering. The MassHealth representative noted that last year the appellant was approved for 30 minutes each day for showering. The MassHealth representative testified that an additional 15 minutes seemed excessive.

The appellant's mother testified that the appellant's behavioral issues have increased resulting in an increase in the time necessary to complete tasks like showering. The appellant's mother testified that it often takes longer than 45 minutes for showering due to the need to deescalate some behaviors that occur during that time. The appellant's mother also noted that the appellant has grown considerably over the past year making it more difficult to assist with showering due to an increase in weight and strength. At hearing, the MassHealth representative proposed an increase in showering time to 40 minutes each day. The appellant's mother appeared somewhat amenable to that adjustment but still noted that the requested 45 minutes is well below the overall time necessary to complete the task.

The appellant requested 5 minutes each week for assistance with nailcare during school weeks and 5 minutes each day during school vacation weeks. The MassHealth representative testified that an adjustment was made to the time approved for nailcare during school vacation weeks to approve 5 minutes each week to keep it consistent with the time approved during school weeks. The MassHealth representative testified that this appeared to be a typographical error

by the agency when filling out the form. The appellant's mother did not dispute this modification.

The appellant requested 30 minutes, three times each day for assistance with eating during school vacation weeks. MassHealth modified this request and approved 20 minutes three times each day for assistance with eating during school vacation weeks. The MassHealth representative testified that this modification was based on the appearance of a discrepancy in the time approved for in-school versus vacation weeks as the appellant requested 20 minutes three time each day for assistance with eating during the time when the appellant is in school. Records indicate that the PCA is required to assist the appellant with eating all foods except for a few finger foods. The appellant is unable to use utensils and requires hand over hand assistance. The PCA assists with fluids. The appellant is unable to initiate, sequence or complete tasks.

The appellant's mother testified that the appellant attempts to perform some of the tasks associated with eating but is unable to complete the tasks on his own and cannot begin to perform some. The appellant's mother thought that 30 minutes was appropriate as they are trying to teach the appellant to eat some foods on his own. Additionally, the appellant is primarily at home during those vacation weeks so requires assistance with snacks and more time with each meal.

The appellant requested 20 minutes each day for assistance with dressing. MassHealth modified this request and approved 15 minutes each day for assistance with dressing. The MassHealth representative noted that there was no modification made to the time for undressing. The MassHealth representative testified that part of this modification was based on the appellant being a minor so the agency deeming the task as a parental responsibility. The appellant was approved for 5 minutes each day for assistance with dressing last year.

The appellant's mother testified that she is often not present during the time that the appellant is getting dressed. The appellant's mother testified that, similar to the increase in complexity to tasks such as assistance with showering, an increase in growth, strength and behavioral issues are impacting tasks such as assistance with dressing. The appellant's mother testified that the appellant often needs redirection and de-escalation as well as additional time due to a significant change in size and strength.

Findings of Fact

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

1. The appellant is under the age of 18 and has a primary diagnosis of autism.
2. The appellant is non-verbal, resistant to care and has complex behavioral issues.
3. The appellant has experienced an increase in growth and strength over the past year.
4. On February 1, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services.
5. The appellant requested 22.25 day/evening hours for weeks when the appellant is in school and 27.50 hours for school vacation weeks.
6. MassHealth approved 18.75 day/evening hours for weeks when the appellant is in school and 21.75 hours for school vacation weeks.
7. The dates of service are February 26, 2023 through February 25, 2024.
8. The appellant requested 45 minutes each day for showering.
9. MassHealth approved 35 minutes each day for showering.
10. It often takes more than 45 minutes to assist the appellant with showering due to issues related to behavior as well as an increase in growth and strength.
11. The appellant requested 5 minutes each week for assistance with nailcare during school weeks and 5 minutes each day during school vacation weeks.
12. MassHealth modified the time requested for assistance with nailcare during school vacation weeks to one time each week for consistency with the time requested and approved for school weeks.
13. The appellant requested 30 minutes, three times each day for assistance with eating during school vacation weeks.

14. MassHealth approved 20 minutes three times each day for assistance with eating during school vacation weeks.
15. The appellant requested and MassHealth approved 20 minutes three times each day for assistance with eating while the appellant is in school.
16. The appellant is unable to use utensils and requires hand over hand assistance when eating.
17. The PCA assists with fluids.
18. The appellant is unable to initiate, sequence or complete tasks associated with eating.
19. The appellant has more time at home during school vacation weeks so requires additional time for assistance with eating snacks and fluids.
20. The appellant requested 20 minutes each day for assistance with dressing.
21. MassHealth 15 minutes each day for assistance with dressing.
22. MassHealth deemed this task as being a parental responsibility.
23. Last year, the appellant was approved for 5 minutes each day for assistance with dressing.
24. The appellant's increase in growth, strength and behavioral issues impact the time required for dressing.

Analysis and Conclusions of Law

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). 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. (130 CMR 422.403(C)).

The appellant meets these conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as "medically necessary" if 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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

Upon hearing testimony and reviewing evidence at hearing, the appellant did not dispute the modification made to the time requested for nailcare during school vacation weeks to be consistent with the time during school weeks (5 minutes each week). Therefore, that part of the appeal is dismissed. (130 CMR 610.035(A)(8)).

Activities of daily living include physically assisting a member with bathing, personal hygiene, or grooming. (130 CMR 422.410(A)(3)). Records presented

and testimony of the appellant's mother demonstrate that the appellant requires the time requested for assistance with showering as the appellant's behavioral issues and strength have increased due to his age and physical growth. The information presented at hearing by the appellant's mother led the MassHealth representative to consider approving 40 minutes each day for assistance with showering. The appellant's mother testified that the overall task takes well over 45 minutes and the hands-on assistance is likely 45 minutes or more. As the records and testimony presented at hearing indicate that the time requested for assistance with bathing was medically necessary, the modifications made by MassHealth were not correct. (130 CMR 422.410(A)(3); 130 CMR 450.204). This part of the appeal is approved.

Activities of daily living include physically assisting a member with dressing and undressing. (130 CMR 422.410(A)(4)). Records presented and testimony of the appellant's mother demonstrate that the appellant requires the time requested for assistance with dressing. Similar to the testimony presented regarding the time requested for bathing and MassHealth's consideration of increased strength and behavioral issues as a likely reason for approve additional time for bathing, those same factors should be taken into consideration into the time requested for assistance with dressing. As the records and testimony at hearing indicate that the time requested for assistance with bathing was medically necessary, the modifications made by MassHealth were not correct. (130 CMR 422.410(A)(4); 130 CMR 450.204). This part of the appeal is approved.

Activities of daily living include physically assisting a member to eat. (130 CMR 422.410(A)(6)). Testimony and evidence presented at hearing demonstrate that the appellant requires the time requested for this task. While the time requested for assistance with meals during vacation weeks was inconsistent with the time requested during school weeks, neither party disputed the fact that the appellant spends more time at home during vacation weeks. This would likely require more time to assist with meals, snacks and fluids as all are being provided at home. The modifications made by MassHealth were not correct. This part of the appeal is approved.

As noted above, this appeal is dismissed in part and approved in part.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve the following as of February 26, 2023:

- Nailcare: 5 minutes each week during school and vacation weeks;

- Bathing: 45 minutes each day during school and vacation weeks;
- Dressing: 20 minutes each day during school and vacation weeks;
- Eating: 30 minutes, three times each day during vacation weeks.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

CC:

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