

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2302664
Decision Date:	5/26/2023	Hearing Date:	05/03/2023
Hearing Officers:	Paul O'Neill (at hearing); Rebecca Brochstein (writer of appeal decision)		

Appearances for Appellant:

, Appellant's Mother

Appearances for MassHealth:

Mary-Jo Elliott, R.N.



*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:	Approved in part; Denied in part	Issue:	Prior Approval (PCA Services)
Decision Date:	5/26/2023	Hearing Date:	05/03/2023
MassHealth's Rep.:	Mary-Jo Elliott, R.N.	Appellant's Rep.:	Appellant's Mother
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

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 March 3, 2023, MassHealth modified the appellant's prior authorization request for Personal Care Attendant (PCA) services (Exhibit 1).¹ The appellant filed this appeal in a timely manner on April 3, 2023 (130 CMR 610.015(B) and Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

The hearing officer who heard the appeal is no longer with the Board of Hearings. The appellant agreed to waive a new hearing and instead to have the new hearing officer rely on the record from the appeal hearing held on May 3, 2023, in writing the appeal decision.

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services by denying some of the time requested for several tasks.

¹ For purposes of this decision, the exhibits have been renumbered to include the MassHealth notice on appeal.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

Summary of Evidence

Prior to rendering this decision, the new hearing officer listened to the recorded testimony from the hearing and reviewed all the documentation in the appeal record.

A registered nurse from Optum, a MassHealth contractor, appeared telephonically on behalf of MassHealth and offered the following background through testimony and documentary evidence: The appellant is a [REDACTED] child² with a diagnosis of autism and a medical history that also includes Hunter syndrome, intellectual disability, gait abnormality, impaired speech, language delays, and hearing loss. In February 2023, Tempus Unlimited, Inc., a personal care agency, submitted a prior authorization request for personal care attendant (PCA) services on the appellant's behalf. The agency requested a total of eight hours per week of PCA services, and no PCA time at night. MassHealth reviewed the documentation submitted by the agency and modified the request, approving a total of seven hours of PCA assistance per week.

The MassHealth representative testified that because this was an initial request, the PCA agency completed both an occupational therapy evaluation and a nursing assessment. The OT report indicates that the appellant requires minimum level of assistance for mobility, and maximum assistance for bathing, grooming, toileting, and dressing; is dependent for passive range of motion and medications; and is independent with transfers in and out of bed, in and out of the tub or shower, and on and off the toilet. It also states that he can manage stairs. The report includes the following narrative:

Today's evaluation was conducted by videoconference due to COVID 19. All information obtained was observed, demonstrated, and/or reported. Surrogate (Mom) reported that Consumer lives with Surrogate and his Dad. Consumer requires 24/7 supervision for safety. Consumer is able to walk without device. He wears bilateral AFOs. Surrogate reported that his gait is slow. He is able to transfer on and off of his bed, the couch, and chairs. He requires physical assistance to transfer off of lower things such as the toilet and the floor. Consumer would benefit from an OT/PT assessment at home to address such areas as need for raised toilet seat. Consumer is able to spoon feed himself. His food is cut up extra small secondary to oral motor issues. He drinks from a sippy cup. Consumer is verbal and he verbally indicates when he needs to use the "potty" and is able to urinate himself but needs assistance with clothing management. He requires assistance with cleaning after bowel movements. He also requires physical assistance with washing his hands. Consumer wears a pull-up at night and Surrogate reported that the pull-up is wet approximately half of all mornings when he wakes. Consumer has decreased ROM and

² The appellant turned [REDACTED] shortly after the hearing.

cognitive ability that result [sic] in need for physical assistance dress [sic], dress (including AFO's), grooming, specially [sic] tooth brushing and hair grooming, and with bathing. Certain grooming tasks (nail grooming), all IADLs (meal prep, laundry, housing [sic], and shopping) as well as medication administration, set-up CPAP, etc., PROM, and doctor's appointments considered "parental responsibility" per MassHealth. (Exhibit 4 at 9-10)

The MassHealth representative testified that MassHealth modified the PA request in two areas, mobility/transfers and bladder care. She stated that in both cases, the modifications were to frequency per day, and not to the duration of the task. In the area of mobility/transfers, the agency requested PCA time of one minute, six times per day, seven days per week. The PCA evaluation states that the appellant is independent with mobility and transfers, "aside from low surface areas." See Exhibit 4 at 17. MassHealth modified this request to allow one minute, six times per day, two days per week (weekends); plus one minute, three times per day, five days per week (weekdays). The MassHealth representative testified that the reviewer made this because the appellant is in school six hours each weekday, and therefore needs assistance from the PCA fewer times on those days. She noted that the agency did not differentiate between school days and non-school days for any of the tasks in the PA request.

In the area of bladder care, the agency requested PCA assistance of three minutes, six times per day, seven days per week. The PCA evaluation states that the appellant requires physical assistance with toilet hygiene, clothing management, and changing absorbent products. See Exhibit 4 at 25. MassHealth similarly modified this request to allow three minutes, six times per day, two days per week (weekends), plus three minutes, three times per day, five days per week (weekdays). The MassHealth representative again noted that the appellant is in school for six hours on weekdays and would require fewer total toileting episodes at home on school days.

The appellant's mother appeared at the hearing telephonically and testified on her son's behalf. She stated that the family recently moved to Massachusetts from Texas, where the appellant had been approved for forty hours per week of personal care assistance. She expressed understanding that the two states have different systems and evaluation criteria, but questioned how they could arrive at such vastly different conclusions about the amount of assistance her son requires.

The mother testified that the agency significantly underestimated the amount of time it takes to accomplish the appellant's ADLs due to his intellectual disability and his behavioral challenges. She also emphasized that the appellant's primary diagnosis is Hunter syndrome (not autism), indicating he is more medically complex than the agency presented him to be. The mother testified that the reviewer asked basic questions about what the appellant can and cannot do, but did not elicit details about the steps and the time needed to set up and complete each of his ADLs and IADLs. As a result, she maintained, the evaluation does not paint an accurate picture of his needs. She added that she understands parents are responsible for assisting with IADLs, but that the appellant's need for assistance with these tasks is well beyond that of a neurotypical child his age.³

³ The mother stated that when she questioned the agency's plan to request only eight hours per week in PCA time from MassHealth, the agency representative told her she could file an appeal to try to get

The appellant's mother testified that the appellant is physically able to walk up and down stairs, but she generally has to hold his hand to ensure he does so safely. She stated that she also physically assists him when he needs to rise from the floor or the toilet. In addition, she testified, he needs a "two-handed pull" to get off the couch.⁴

The appellant's mother submitted a letter that echoes her arguments at hearing, in addition to a copy of the Texas Children's Health Plan initial authorization of services from 2019. The mother's letter states as follows:

. . . I am writing today to appeal the PCA hours granted by Mass Health on behalf of my son [appellant's name]. [Appellant] is a joyful [REDACTED] who has a rare genetic condition called Hunter Syndrome which affects approximately 500 children in the US. This is a life limiting, progressive, neurodegenerative disease without a cure. He lacks an enzyme in his body which helps to break down and recycle long chain sugars that every cell in the body makes. Without this ability to "recycle" these sugars, they build up in his organs, bones, joints and brain and leading to permanent damage and loss of previously acquired skills. As a result of his condition, he is intellectually disabled, has significant behavioral challenges, speech impairment and physical disabilities which prevents him from performing ADL's and [IADLs]. He has an assigned 1 to 1 paraprofessional throughout the day as part of his IEP. In order to meet his educational needs, [appellant] has been granted an out of district placement at the SSEC community school whose focus is on children with complex medical needs and behavioral challenges. [Appellant] has also been diagnosed with autism which further impairs his ability to function independently.

It is my belief that the occupational therapy/nursing report submitted grossly underestimates the time it takes and does not account for how his intellectual disability and behavioral challenges impacts his ability to perform adl's and iadl's. Things such as his inability to follow basic one or two step commands, need for constant redirection due to perseverative thinking (associated with Hunter Syndrome), significant inattention as well as his physical limitations all impair his ability to bathe, groom, toilet and feed.

In terms of IADL's (meal prep, equipment maintenance, medical transportation/appointments etc.) I understand that in the state of Massachusetts, this is assumed to be a matter of parental responsibility for the pediatric population. As a parent, I do this wholeheartedly. I would, however, ask the hearing officer to consider that assisting [appellant] with IADL's far exceeds time spent as compared to the parent of a neurotypical child. This has significant impact on our family. As an example, [appellant]

additional time. The hearing officer clarified that he did not have the authority to approve time beyond what was requested. He and the MassHealth representative stated that the appellant can request an increase in PCA time from the agency.

⁴ There was no specific testimony regarding the appellant's needs around bladder care.

has a minimum of 12 medical specialists (genetics x2, cardiology, pm&r, orthopedics, speech, audiology, ENT x2, complex care, pediatrics, physical therapist, occupational therapist and pulmonology) all of whom require visits at least twice a year to as frequently as 3 xs a week visits. In addition, he requires hospitalization once a month.

Lastly we do have a documented precedent for PCA hours. While living in Texas, from 2002 until our move to MA in July of 2022, we were granted 40 hours a week of need based PCA services through Texas Medicaid's Medically Dependent Children's program. I have enclosed a copy of the initial assessment as well as documentation of the 40 hours of services. I hope that I have been able to provide a more comprehensive picture of my son for your consideration. (Exhibit 5).

Findings of Fact

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

1. The appellant is a child with diagnoses that include Hunter syndrome, autism, intellectual disability, gait abnormality, impaired speech, and hearing loss.
2. In February 2023, Tempus Unlimited, Inc., a personal care agency, submitted an initial prior authorization request for personal care attendant (PCA) services on the appellant's behalf. The agency requested a total of eight hours per week of PCA services, and no PCA time at night.
3. On March 3, 2023, MassHealth modified the request to approve a total of seven hours per week.
4. The appellant requested PCA time for mobility/transfers in the amount of one minute, six times per day, seven days per week.
 - a. MassHealth modified the request to approve one minute, six times per day, two days per week (for weekends); plus one minute, three times per day, five days per week (for weekdays).
 - b. MassHealth modified the request because it determined the appellant is in school six hours per day during the week, and therefore requires less frequent assistance on those days.
 - c. The appellant requires assistance rising from low surface areas (such as the floor and toilet). He needs "two-handed pull" assistance to rise from the couch, and also needs hands-on help managing stairs for safety reasons.
5. The appellant requested PCA time for bladder care in the amount of three minutes, six times per day, seven days per week.

- a. MassHealth modified the request to approve three minutes, six times per day, two days per week (for weekends); plus three minutes, three times per day, five days per week (for weekdays).
- b. MassHealth modified the request because it determined the appellant is in school six hours per day during the week, and therefore requires less frequent assistance on those days.
- c. The appellant requires assistance with toilet hygiene, clothing management, and changing absorbent products.

Analysis and Conclusions of Law

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Pursuant to 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).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

ADLs and IADLs are described at 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, 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 MassHealth as being instrumental to the health care of the member.

(C) 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

In this case, the appellant's PCA agency filed an initial request for a total of eight PCA hours per week. MassHealth reviewed the request and approved a total of seven hours per week, with modifications to the time sought for two areas.

The first modification was to the time requested for mobility and transfers. The appellant sought one minute, six times per day, seven days per week for this task; MassHealth separated the time into weekends and weekdays, approving the time as requested for weekends (one minute, six times per day, two days per week), but adjusting the frequency on school days (one minute, three times per day, five days per week). In this modification, MassHealth reasoned that the appellant would be home for less time on school days and would therefore require fewer PCA-assisted transfers on those days. While this is not an unreasonable assumption, the appellant's mother clarified at hearing that the appellant requires more assistance with transfers than what is described in the PCA agency's evaluation. The evaluation suggests that he needs assistance only for transfers from low surfaces (such as the floor), but the mother testified that he also needs a "two-hand pull" to rise from the couch and a hand to stabilize him when he navigates the stairs. Given these needs, the request for six times per day, even on school days, is not excessive.

MassHealth made a similar modification to the request for PCA time for bladder care. The appellant requested three minutes, six times per day, seven days per week. MassHealth again modified the frequency but not the duration, differentiating weekends from school days, by approving three minutes, six times per day, two days per week (weekends), plus three minutes, three times per day, five days per week (weekdays). Unlike the area of mobility/transfers, however, there was little specific discussion at hearing about the appellant's bladder care needs, and no substantive evidence as to how frequently he requires PCA assistance (either during the week or on weekends). As such, there is no basis to overturn MassHealth's modification on this issue.

For the foregoing reasons, this appeal is approved in part and denied in part.⁵

⁵ As the presiding hearing officer noted, if the appellant's mother is dissatisfied with the PCA agency's assessment, she may request that the agency complete a new evaluation and file a request for an increase in PCA time.

Order for MassHealth

Approve the request for PCA assistance with mobility/transfers in full (one minute, six times per day, seven days per week) retroactive to the beginning of the PA period.

Implementation of this Decision

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Optum