

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied in part;
Dismissed in part

Appeal Number: 2303490

Decision Date: 5/26/2023

Hearing Date: 5/23/2023

Hearing Officer: David Jacobs

Appearances for Appellant:



Appearances for MassHealth:

Mary-Jo Elliot, 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 in part; Dismissed in part	Issue:	Prior Authorization (PCA Services)
Decision Date:	5/26/2023	Hearing Date:	5/23/2023
MassHealth Rep:	Mary-Jo Elliot, RN	Appellant 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 notice dated April 18, 2023, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410) (Exhibit 1). The appellant filed a timely appeal on April 28, 2023. (130 CMR 610.015(B)). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a female under the age of 21 whose provider, Tempus Unlimited Inc., submitted an initial request for PCA services on her behalf. The record reflects that the appellant has a primary diagnosis of trisomy, a gastrostomy tube, and a developmental disability (Exhibit 7, pg. 9). On April 4, 2023, MassHealth received an initial prior authorization request for PCA services. The appellant was represented by her mother. The appellant seeks PCA services in the amount of 23 hours day/evening hours per week, and 2 night hours per week. On April 18, 2023, MassHealth modified the request and authorized 21.75 hours day/evening hours per week, and 2 night hours per week. Three modifications were made by MassHealth.

1. Mobility (Exhibit 7, pg. 12-13)

For the mobility task of stairs, the evaluating nurse's notes indicate that the appellant is required to be carried up and down stairs (Exhibit 7, pg. 13). Furthermore, the notes indicate that the time given for assistance is to help the appellant on the stairs to reach her bedroom and the school bus (Exhibit 7, pg. 13). The appellant goes to school two days a week (Exhibit 7, pg. 9). All PCA time for assistance with the stairs to reach the appellant's bedroom was approved. The appellant requested time for PCA assistance with stairs to reach the school bus for 5 minutes, 2 times a day, 5 days a week. The request was modified by MassHealth to 5 minutes, 2 times a day, 2 days a week. The MassHealth representative testified that the frequency was reduced to two days a week to represent the two days the appellant goes to school. The appellant's mother affirmed that her daughter goes to school two days a week and testified that it is required to take stairs from their home to reach the outside. She further testified that her daughter needs additional PCA time for assistance with stairs because her daughter's therapist recommended that she bring her outside every day as to not be overwhelmed by being inside all the time. Moreover, her daughter gets very fussy after being fed with her feeding tube and needs to be taken outside to get that energy out. The MassHealth representative responded that the tasks the mother described are social services and are not covered by MassHealth.

2. Bathing (Exhibit 7, pgs. 15-16)

The parties were able to resolve the dispute regarding the bathing task (time for PCA assistance with a bath and quick wash). The appeal is therefore dismissed as to this issue.

3. Other Healthcare Needs (Exhibit 7, pgs. 25-26)

The parties were able to resolve the dispute regarding the use of a standing device. The appeal is therefore dismissed as to this issue.

Findings of Fact

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

1. The appellant is female under 21 years of age with primary diagnosis of trisomy, a gastronomy tube, and a developmental disability.
2. On April 4, 2023, the appellant submitted an initial request for PCA services in the amount of 23 hours day/evening hours per week and 2 night hours per week.
3. On April 18, 2023, MassHealth modified the request and authorized 21.75 day/evening hours per week and 2 night hours per week.
4. At hearing, the parties were able to resolve disputes regarding time for PCA assistance with the bathing task and other healthcare needs.
5. The parties were unable to resolve the dispute regarding the mobility task of assistance with stairs to the school bus.
6. The appellant requested time for PCA assistance with mobility assistance with stairs to the school bus as follows: 5 minutes, 2 times a day, 5 days a week; MassHealth modified this time to: 5 minutes, 2 times a day, 2 days a week.
7. It is required for the appellant to be carried up and down stairs.
8. The evaluating nurse notes state that assistance with stairs was intended for help the appellant reach her bedroom and the school bus. All time for the appellant to reach her bedroom was approved.
9. The appellant goes to school two days a week.
10. The appellant's therapist recommends that the appellant be taken outside at least once a day to not be overwhelmed by being inside all the time.
11. The appellant's mother takes the appellant outside to feed her through her feeding tube because she gets fussy afterwards and needs to get that energy out.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth 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, 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.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to [MassHealth]. . . .

Mobility (stairs)

The appellant disputes MassHealth's modification of the time requested for PCA assistance with the mobility task of assistance with stairs to reach the school bus.

The appellant has not demonstrated that 5 minutes, 2 times a day, 5 days a week for assistance with mobility on stairs to reach the bus is medically necessary. The evaluating nurse's notes indicate that the time for mobility assistance on stairs was requested specifically for assistance for the appellant to reach her bedroom and the school bus (Exhibit 7, pg. 13). The appellant only goes to school two days a week (Exhibit 7, pg. 9). Therefore, I find that it was appropriate for MassHealth to limit time for assistance with stairs to reach the school bus on days where the appellant is actually going to school. The appellant's mother compassionately testified that her daughter also needs help on the stairs when going outside for fresh air and to deal with fussiness after eating. However, these arguments are not relevant to the prior authorization request which specifies that the time was requested specifically for assistance on stairs to reach the school bus. Pursuant to 130 CMR 422.403(C)(1), PCA time is limited to that which is prescribed by the physician or nurse practitioner overseeing the appellant. According to the nurse's notes (Exhibit 7, pg. 13) that time was prescribed for assistance with the stairs for the appellant to reach the school bus. Therefore, this portion of the appeal is denied.

Order for MassHealth

Rescind notice on appeal, and approve time requested for PCA assistance with bathing and other healthcare needs.

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 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.

David Jacobs
Hearing Officer
Board of Hearings

cc: Optum