

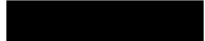
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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|-------------------------|---------------------|-----------------------|------------|
| Appeal Decision: | Dismissed Denied | Appeal Number: | 2303636 |
| Decision Date: | 6/15/2023 | Hearing Date: | 06/05/2023 |
| Hearing Officer: | Patricia Mullen | | |

Appearance for Appellant:

, mother

Appearance for MassHealth:

Mary Jo Elliott, RN, Optum



*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

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|---------------------------|-------------------------------|--------------------------|------------|
| Appeal Decision: | Dismissed Denied | Issue: | PCA/NTA |
| Decision Date: | 6/15/2023 | Hearing Date: | 06/05/2023 |
| MassHealth's Rep.: | Mary Jo Elliott, RN, Optum | Appellant's Rep.: | Mother |
| Hearing Location: | Quincy Harbor South | | |

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 April 26, 2023, MassHealth modified the appellant's request for prior authorization for 15.5 hours a week in day/evening personal care attendant (PCA) services and 14 hours a week for a nighttime attendant (NTA), and approved 11.25 hours a week in day/evening PCA services and 0 hours for NTA, because MassHealth determined that time requested for PCA assistance and NTA assistance with certain activities of daily living (ADLs) did not meet criteria under MassHealth medical necessity and PCA regulations. (see 130 CMR 422.410; 422.412; 450.204 and Exhibit 1). The appellant filed this appeal in a timely manner on May 3, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization for PCA services and denied the appellant's request for a NTA.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410; 422.412 in determining that time requested for PCA assistance and NTA assistance with certain activities did not satisfy the criteria set forth in the PCA and medical necessity regulations.

Summary of Evidence

The appellant is a child and was represented telephonically at the hearing by his mother. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for PCA services. The appellant's provider, WestMass Eldercare, submitted an initial request for prior authorization for 15.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on April 14, 2023. (Exhibit 5, p. 3). By notice dated April 26, 2023, MassHealth approved 11.25 hours per week in day/evening PCA services and 0 hours per week for NTA services for dates of service April 26, 2023 to April 25, 2024. (Testimony, exhibits 5, p. 3). The appellant is 4 years old and has diagnoses of autism and developmental delay with significant behavioral component; he is primarily non verbal. (Exhibit 5, pp. 12, 13). Pursuant to the occupational therapy report, the appellant suffers from insomnia and sleeps only a few hours, spending the rest of the time running around the house. (Exhibit 5, p. 10). The appellant requires 24 hour close supervision for safety due to impaired safety awareness and poor judgement. (Exhibit 5, p. 10). The appellant lives with his mother, adult sister, and teenage brother. (Exhibit 5, p. 13). An in person evaluation was conducted by a nurse from the appellant's provider agency on April 11, 2023. (Exhibit 5, p. 13). The appellant's provider requested time for PCA assistance with bathing, nail care, oral care, dressing/undressing, eating, bladder/bowel care, and NTA assistance with toileting at night from midnight to 6:00 am. (Exhibit 5, pp. 17-38). The MassHealth representative stated that time requested for PCA assistance with bathing, oral care, dressing/undressing, eating, and bladder/bowel care was modified and time requested for PCA assistance with nail care and for a NTA was denied.

At the hearing, the MassHealth representative approved 20 minutes a day for PCA assistance with bathing and hair wash, the requested 15 minutes a day for PCA assistance with dressing, and the requested 8 minutes a day for PCA assistance with bowel care. The appellant's representative agreed to these adjustments and did not dispute the time approved for PCA assistance with oral care (3 minutes a day), the denial of time for nail care (included in the additional time for bathing), the time approved for undressing (5 minutes a day), and the time approved for bladder care (5 minutes, 5 times a day). Accordingly, the appeal of these issues is withdrawn and dismissed.

The only issue remaining in dispute is the denial of time requested for a NTA. (Testimony, exhibit 5, p. 26). The appellant's provider requested 6 minutes, 3 times a night, for a total of 18 minutes a night, for NTA assistance with bladder care. (Exhibit 5, p. 26). The NTA hours are the 6 hour period from midnight to 6:00 a.m. (Exhibit 5, p. 26). The appellant's provider requested PCA assistance with bladder care 5 times a day for the 18 hour period from 6:00 am to midnight. (Exhibit 5, p. 26).

The nurse evaluator from the provider agency wrote that the appellant is diaper dependent and requires assistance with changing his absorbent product. (Exhibit 5, p. 26). The nurse evaluator wrote that the appellant has behavioral insomnia and remains awake most of the night with need for 3 diaper changes. (Exhibit 5, p. 26). The minimum time for NTA assistance is 2 hours a night and thus, while only 18 minutes a night of assistance was noted, the provider requested 14 hours a week for NTA assistance. (Exhibit 5, p. 37).

The appellant's representative stated that the appellant went to bed at 10:00 pm the night prior to the hearing, was up at midnight, and did not sleep again until 8:00 am. The appellant's representative stated that they have tried Melatonin, but it has not helped. The appellant's representative stated that the appellant runs all over the house. The appellant's representative stated that the appellant's adult sister is his PCA, and she tries to keep him in one area at night and soothe him with a bottle.

The MassHealth representative stated that 3 diaper changes during a 6 hour overnight period is excessive. The MassHealth representative testified that the appellant is [REDACTED] and many [REDACTED] children, without medical conditions, still need an absorbent product, such as Pull Ups, at night. The MassHealth representative stated that a diaper change for a [REDACTED] child overnight is a parental responsibility. The MassHealth representative referred to the OT and nurse evaluator comments regarding the appellant's insomnia and running through the house at night, noting that supervision, babysitting, and behavioral management are not covered services under the PCA program. The MassHealth representative stated that it appears the real issue here is the appellant's insomnia and need for supervision during the night when he elopes from his bed, not so much the need for hands on physical assistance with an ADL.

Findings of Fact

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

1. The appellant's provider, WestMass Eldercare, submitted an initial request for prior authorization for 15.5 hours per week in day/evening PCA services and 14 hours per week for NTA services on April 14, 2023; by notice dated April 26, 2023, MassHealth approved 11.25 hours per week in day/evening PCA services and 0 hours per week for NTA services for dates of service April 26, 2023 to April 25, 2024.
2. The appellant is [REDACTED] and has diagnoses of autism and developmental delay with significant behavioral component; he is primarily non verbal; the appellant suffers from insomnia and sleeps only a few hours, spending the rest of the time running around the house; the appellant requires 24 hour close supervision for safety due to impaired safety awareness and poor judgement.

3. The appellant lives with his mother, adult sister, and teenage brother; the appellant's adult sister is his PCA.
4. An in person evaluation was conducted by a nurse from the appellant's provider agency on April 11, 2023.
5. The appellant's provider requested time for PCA assistance with bathing, nail care, oral care, dressing/undressing, eating, bladder/bowel care, and NTA assistance with toileting at night from midnight to 6:00 am.
6. Time requested for PCA assistance with bathing, oral care, dressing/undressing, eating, and bladder/bowel care was modified by MassHealth, and time requested for PCA assistance with nail care and for a NTA was denied.
7. At the hearing, MassHealth approved 20 minutes a day for PCA assistance with bathing and hair wash, the requested 15 minutes a day for PCA assistance with dressing, and the requested 8 minutes a day for PCA assistance with bowel care.
8. The appellant's representative agreed to these adjustments and did not dispute the time approved for PCA assistance with oral care, the denial of time for nail care, the time approved for undressing, and the time approved for bladder care.
9. The appellant's provider requested 6 minutes, 3 times a night, for a total of 18 minutes a night, for NTA assistance with bladder care; the NTA hours are the 6 hour period from midnight to 6:00 a.m.
10. The appellant's provider requested PCA assistance with bladder care 5 times a day for the 18 hour period from 6:00 am to midnight.
11. The appellant is diaper dependent and requires assistance with changing his absorbent product.
12. The appellant has behavioral insomnia and remains awake most of the night.
13. The minimum time for NTA assistance is 2 hours a night.

Analysis and Conclusions of Law

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.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for 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) 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth 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 MassHealth 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.

(130 CMR 450.204(A)-(C)).

Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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.

(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 PCA services; and

(c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM 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 PCA 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(130 CMR 422.410).

Noncovered Services: 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.

(130 CMR 422.412).

After hearing testimony at the hearing, MassHealth approved 20 minutes a day for PCA assistance with bathing and hair wash, the requested 15 minutes a day for PCA assistance with dressing, and the requested 8 minutes a day for PCA assistance with bowel care. The appellant's representative agreed to these adjustments and did not dispute the time approved for PCA assistance with oral care, the denial of time for nail care, the time approved for undressing, and the time approved for bladder care, and withdrew the appeal with regard to these issues. Because these issues resolved at hearing, the appeal is dismissed as to these issues. (130 CMR 610.035(A)(2), (8)).

The only issue that remained in dispute after the hearing was MassHealth's denial of the requested 14 hours a week for an NTA. The appellant gets up at night and runs around the house. Naturally, a [REDACTED] child would need supervision for safety when this happens, however the PCA program does not cover supervision, behavioral management, or babysitting. While it is understandable that the appellant's family members want some respite from the appellant's overnight activity, watching over a child at night is not a covered PCA task, and would be parental responsibility for a [REDACTED] child. As noted by the MassHealth representative, the real reason for the request for the NTA appears to be the desire for someone to watch the appellant at night when he is awake and running around, and not the need for 3 diaper changes in a 6 hour period. However, assisting a [REDACTED] child with a wet diaper in the night would also be a parental responsibility. MassHealth's denial of the appellant's request for NTA assistance is upheld and the appeal is denied as to this issue.

Order for MassHealth

If MassHealth has not already done so, make the adjustment agreed to at the hearing for PCA assistance with bathing, dressing, and bowel care; adjustments are retroactive to April 26, 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.

Patricia Mullen
Hearing Officer
Board of Hearings

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