Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2303905
Decision Date:	5/22/2024	**Hearing Dates:**	September 5, October 26, 2023; January 18, 2024
Hearing Officer:	Stanley M. Kallianidis	**Record Open Date**:	April 15, 2024

Appellant Representative:

[redacted]

MassHealth Representative:

Linda Phillips, RN

Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	CCM: Medical necessity of PCA hours
Decision Date:	5/22/2024	**Hearing Dates:**	September 5, October 26, 2023; January 18, 2024
MassHealth Rep.:	Linda Phillips, RN		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

On March 9, 2023, MassHealth approved the appellant for personal care attendant (PCA) services in addition to continuous skilled nursing (CSN) hours (see 130 CMR 422.410 and Exhibit 1). The appellant filed this appeal in a timely manner on May 10, 2023 (see 130 CMR 610.015 and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Hearing dates set for June 20, 2023, July 27, 2023 and December 12, 2023 were rescheduled at the appellant's request. Hearings were held on September 5 and October 26, 2023, and January 18, 2024 and were conducted by video conference (Exhibit 3).

Action Taken by MassHealth

MassHealth approved 93.5 hours of PCA services for the appellant when out of school and 81.5 hours of PCA services when in school. This is in addition to the appellant's 168 CSN hours currently in place.

Issue

Pursuant to 130 CMR 422.410, 130 CRM 450.204, and its pediatric PCA policy, was MassHealth correct in its determination of the appellant's medically necessary PCA hours?

Summary of Evidence

September 5, 2024 Hearing:

The MassHealth representatives, Linda Phillips, RN, and Terry Podgorni, RN testified that MassHealth Community Case Management (CCM) provides CSN and PCA services to medically complex members such as the appellant. The MassHealth representative testified that the subject of this appeal is the March 9, 2023 approval of the appellant for 81.5 weekly hours PCA services in school and 93.5 hours out of school. The date of the appellant's PCA evaluation was December 19, 2022.

MassHealth's packet consisting of the results of the appellant's PCA evaluation and pages of relevant regulations was entered into evidence. The packet had been forwarded to the appellant prior to the hearing date (Exhibit 4).

The MassHealth representative stated that the purpose of CCM care management is to ensure that complex care members are provided with a coordinated service plan that meets such member's individual needs and avoids duplication of services. The regulations that were used in the appellant's PCA assessment are at 130 CMR 422.410(A) &(B).

In addition to her PCA hours, the appellant has 168 weekly hours of continuous skilled nursing hours (24 hours per day). The authorization of 168 nursing hours weekly remains in effect until January 27, 2024 or until the new annual assessment has been completed, whichever is later. The total PCA and nursing hours for the appellant are 249.5 when in school and 261.5 hours when out of school.

The appellant's mother and attorney indicated that they are "appealing everything"- they wanted to appeal the appellant's 168 nursing hours, as well as the PCA hours. By way of history, the November 27, 2022 approval for 168 nursing hours was sent out November 21, 2022 and was made following a BOH decision of August 4, 2021 and hearing of June 1, 2021. Given the May 10, 2023 appeal that was filed in this case however, the November 2022 approval letter authorizing 168 hours of nursing hours was not timely appealed within the 120 day time frame allotted during the COVID public health emergency.[1] Therefore, the determination was made that the jurisdiction of the hearing extended only to the appellant's PCA hours (Exhibit 5).

[1] The 120-day extended time frame was set by MassHealth Eligibility Operations Memo 20-09 dated April 7, 2020. Subsequent to the 11/ 21/22 approval, several modification letters were sent out to account for the split of time between different providers. The 168 hours of CSN were unaffected.

According to the information contained in the packet, the appellant is [redacted] years old and has been a member of CCM since June 4, 2012. Her primary diagnosis is spastic quadriplegia. She also has feeding intolerance, hip dysplasia, aspirations, autonomic dysreflexia[2], seizure disorder, apnea (central and obstructive), constipation, low bone density, neurogenic bladder, respiratory insufficiency, non-traumatic cerebellar, medullary and spinal cord hemorrhage, chromosomal duplication of unknown clinical significance, bulbar dysfunction, lordosis, and a history of chronic UTI (Exhibit 4).

The MassHealth representatives continued that this was the appellant's initial PCA evaluation to determine her need for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Where two caregivers were determined as medically necessary for a task, a nurse is to be the primary caregiver, with a PCA or parent being the secondary caregiver.

For mobility and transfers, the appellant was found to need two caregivers to assist with manual transfers for safety due to diagnoses of autonomic dysreflexia and spinal precautions following recent spinal surgery. On Monday-Friday during in-school weeks, transfers were authorized 8 times daily, 10 minutes per transfer. When out of school transfers were authorized 12 times daily, 10 minutes per transfer. The total weekly time for transfers for school weeks was 640 minutes, and 840 minutes when out of school.

For quick wash, the appellant is dependent on two caregivers once per day for 10 minutes, or 70 minutes weekly. For shower, the appellant is dependent on two caregivers once per day for 60 minutes, or 420 minutes weekly. For grooming, the appellant is dependent on two caregivers twice per day, for 15 minutes each time. The total weekly time is 210 minutes.

For dressing the appellant is dependent on two caregivers once per day for 25 minutes, or 175 minutes weekly. For undressing needs 10 minutes once per day for 70 minutes weekly.

For passive range of motion exercises of upper extremities, the appellant needs 4 times per day for ten minutes each time for out of school weeks, and 2 times per day for in-school weeks. Total weekly time was 180 minutes in school and 280 minutes out of school. For passive range of motion exercises of lower extremities, the appellant needs 4 times per day for ten minutes each time for out of school weeks, and 2 times per day for in-school weeks. Total weekly time was 180 minutes in school and 280 minutes out of school.

For bladder care, the appellant is dependent on two caregivers and needs urine management 6 times per day, 15 minutes each time out of school. In school, the appellant needs care 3 times

[2] Autonomic dysreflexia, caused by spinal cord injury, is an abnormal, overreaction of the involuntary (autonomic) nervous system to stimulation This reaction may include high blood pressure and can be life-threatening. Treatment includes sitting up and raising the head. Source: NIH Medline Plus.

per day. The total weekly time for bladder chare in school is 405 minutes, and 630 minutes when out of school.

For bowel care, the appellant is dependent on 2 caregivers for bowel management 2 times per day, 25 minutes each time. The total weekly time for bowel care is 350 minutes.

For laundry, shopping and housekeeping, the appellant is authorized for 60 minutes weekly for each of these IADLs.

For repositioning, the appellant is dependent on two caregivers 10 times per day for 5 minutes each time when out of school and 6 times per day when in school.

The total weekly time for repositioning in school is 250 minutes, and 350 minutes when out of school.

For stander transfers, the appellant needs two transfers per day for ten minutes, or 140 minutes weekly.

For menstrual care, the appellant was determined to need 81 minutes per week.

For transportation to medical appointments, the appellant was determined to need 582 minutes per week which reflected travel time and time for transfers in and out of her van.

For nighttime PCA, the appellant was determined to need 2 caregivers for urine management 2 times per night for 15 minutes each time. She was also determined to need 2 caregivers for repositioning 6 times per night for five minutes each time. The one hour needed was adjusted up to two hours nightly.[3]

The appellant's attorney argued that MassHealth has not been honest and has not been receptive to meeting with his client as an informal conference request was denied. The reason he wanted to meet with MassHealth was to better understand the process. He requested a continuance because MassHealth has not provided the total file of the appellant and therefore he cannot put on a case. The attorney's request for a continuance was granted and the parties agreed to meet informally.

Prior to the continued hearing, the appellant requested a copy of the hearing transcript, a postponement of the next hearing, and a request for a subpoena (Exhibit 6).

October 26, 2023 hearing:

The appellant's mother testified that at issue in her appeal is that her daughter needs to be

[3] As of August 17, 2023, nighttime PCA hours can be used at any time and are included in the total hours approved.

repositioned every 20 minutes, and eight times per day as authorized by MassHealth is insufficient. Also, time for nighttime hours is insufficient.

The appellant's attorney requested all communications with CCM staff, all phone calls, emails and notes. In addition, he specifically asked for all clinician notes from the assessment, and not just their conclusions found in the progress notes. He stated that there is new evidence that needs to be reviewed by MassHealth consisting of letters from four different medical providers. He stated that upon MassHealth's review of these letters, the PCA issue may be resolved.

The MassHealth representatives stated that the appellant needs a new nursing assessment, but her hours were maintained until a new assessment has been completed. They reiterated that she has 168 hours of nursing services weekly, 24 hours daily, that are in place. The appellant's attorney had been previously provided with the appellant's CCM case file apart from the packet introduced at hearing. This included all of the appellant's progress notes, prior authorizations and assessments. The appellant's attorney did not dispute that he had all of the appellant's progress notes.

The MassHealth representative stated further that the clinical manager and occupational therapist do the assessment together and go over their notes. There are no handwritten notes that are maintained, however. Therefore, there are no notes to submit other than the progress notes themselves. [4]

Accordingly, the appellant's request for this hearing officer to issue a subpoena on the case file was denied as the appellant has been provided the appellant's CCM case file that MassHealth had sent to the attorney previously in addition to the packet regarding the PCA hours that are at issue at hearing. The request to see all CCM communications regarding the appellant was denied as being unnecessary and burdensome.[5]

Following the October hearing, MassHealth forwarded into the record the four medical letters that the appellant's attorney had referenced and issued its response to them (Exhibits 7 & 8).

In a September 8, 2023 letter, [redacted] a nurse practitioner who has been treating the appellant, indicated that "it is essential that there are two people available to reposition her at all times." The appellant "is at an increased risk of autonomic dysreflexia, fractures, and skin breakdown if she is not repositioned in a timely manner."

"Autonomic dysreflexia is medical emergency that if not addressed immediately can be fatal. The goal is to prevent autonomic dysreflexia by very frequent position changes and evaluation

[4] The appellant's CCM case file, consisting mainly of nursing progress notes was provided to the appellant prior to the hearing. It was not introduced into evidence nor was any part of it cited by either party at the hearing.

[5] Pursuant to 130 CMR 610.052 and 610.065 a hearing officer may limit evidence including denying a subpoena request.

for potential triggers." She added that the appellant "requires 2 people to reposition at all times to avoid injury. It is necessary to have two caregivers available 24 hours per day for repositioning and transfers. She often requires repositioning throughout the night as well as transfers of medical intervention that are unpredictable."

[redacted] added that "In addition to these physical concerns, there is a psychological, emotional aspect" to the appellant's condition. "Feeling upset or anxious triggers autonomic dysreflexia as well. In addition to the need for physical support, a second person provides additional psychological support" for her.

In a letter dated October 10, 2023, [redacted] a nurse practitioner who has been treating the appellant, spoke about her autonomic dysreflexia. She stated that "Autonomic Dysreflexia (AD) is a potentially dangerous clinical syndrome that can develop in persons with spinal cord injury (SCI), resulting in acute uncontrolled hypertension. AD is a medical emergency as the sudden onset of severe hypertension has been associated with seizures, intracerebral hemorrhage and even death. AD occurs when there is any noxious stimuli below the patient's level of injury." She added that "AD can also occur due to discomfort with positioning and must therefore be repositioned in bed every 2 hours and when seated in her wheelchair, every 20 minutes."

In an October 20, 2023 letter, her physician [redacted] stated that the appellant's "osteoporosis represents a matter of utmost concern, driven by her complex medical history that includes a C3-T1 spinal cord injury." Her "pediatric osteoporosis is classified as the most severe grade." [redacted] added that the appellant is at a "disproportionately high risk of impending fractures." Therefore, "she should not use a Hoyer lift, but her care necessitates fragile bone precautions with a two-person lift. Her fragility, coupled with recurrent fractures, makes it essential to have two caregivers available 24/7 to assist with repositioning and transfers."

In an October 24, 2023 letter, her physician [redacted] indicated that the appellant's spine cannot tolerate a Hoyer lift. He stated that to do a transfer for the appellant "requires either one very strong person, or more realistically two individuals to achieve a safe transfer that does not injure the spine and spinal rods"(Exhibit 7).

MassHealth indicated on November 22, 2023 that it had already seen the September letter and that it had reviewed the three October 2023 letters. It stated that the additional documentation supports a level of care that CCM had already agreed upon which is the need for two people to assist member with repositioning and transfers. Time has already been authorized on the PCA evaluation to support all necessary repositioning and transfers, separately and along with other ADL tasks performed. CCM previously requested from the appellant documentation from a provider who treats the appellant's parents that supports their inability to be the second person during times not already authorized for PCA services, but to date had not received any documentation (Exhibit 8).

MassHealth cited *PCA Operating Standards XXVI A. 1. (a-d). – Revised 5-28-15, Pages 62-63* as its authority for requiring a parent to be the second caregiver when two persons are required for a PCA task for children.

Section XXVI. Pediatric PCA Evaluation and PAU Clinical Review states as follows:

A1) Parent(s), legal guardian(s) or designee(s) are responsible for providing oversight and care for children and directing the PCA services (see MassHealth Regulations 130 CMR 422.412 (A) and 130 CMR 422.412 (F)).

a. The MassHealth Regulations address non-covered services (130 CMR 422.412 (C)) which include assistance provided in the form of cueing, prompting, supervision, guiding, and/or coaching.

b. A parent or "designee" (i.e. sibling, aunt, uncle, etc.) is required to be the second person when two people are required to perform a task (i.e. if a child has spastic tone due to cerebral palsy, a second person may be required for transfers).

i. Special consideration may be given for MD transportation if a second person is required to assist with medical and/or behavioral needs. Documentation must be consistent and clear to support this request.

c. Special consideration may be given to behavioral needs that demonstrate a safety risk for the child or others (i.e. removing a child from a dangerous situation), but documentation must support the request.

d. Special consideration may be given for IADL's if the documentation supports the reason(s) the parent(s) or legal guardian(s) cannot perform the task(s) or if the task(s) is/are above and beyond what would be expected of a non-disabled child of the same age for purposes of restraint.

The appellant requested that the hearing be continued further so that he may present further evidence and call further witnesses. Appellant specifically requested that Michelle Ingalls, RN testify at that time.

January 18, 2024 Hearing:

[redacted] testified that she and [redacted] collaborated on the appellant's assessment and need for PCA hours. She has been an RN for [redacted] years and worked for CCM since [redacted] The appellant's PCA hours that were assessed were based on information gathered from the appellant's mother, progress notes, and the "Time for Task" tool.

The appellant's mother was sent all the progress notes prior to the hearing. The nighttime hours approved averaged two hours nightly. The repositioning time at night was six times per

night at five minutes each time. This was based on interviews with the mother as was the approval of 15 minutes for grooming twice per day. She acknowledged that the appellant needs two people to lift her for transfers and repositioning.

The appellant's mother testified that the appellant needs two people for lifting and repositioning due to her risk for fractures. The amount of time that is required for these tasks cannot be quantified. The five minutes given for repositioning was inaccurate as was the 15 minutes for grooming. She was only given eight transfers while in school. The appellant needs between 20 and 32 transfers each day. The appellant has autonomic dysreflexia and needs more time than the "Time for Task" tool. She testified that her husband has been medically ordered not to lift.

[redacted] testified that the parents are expected to assist children in ADLs such as transfers. This is in the PCA guidelines. She testified that she gave the appellant an opportunity to submit medical evidence that the parents are unable to assist with lifting but did not receive a response. She stated that she would still be willing to adjust the PCA time upward if she received such documentation.

The appellant's attorney objected to the notion that parents can assist with ADLs. He requested that the hearing be continued for a fourth day to have [redacted] testify if willing, or if not, be compelled to testify by subpoena, but his request was refused by this hearing officer. The reason for the subpoena request denial was that the appellant had an opportunity prior to the third hearing date to request that [redacted] testify along with [redacted] but chose not to do so.

The record was extended for four weeks for the appellant to submit a memorandum or any additional evidence that he wanted included in the record. MassHealth was given four weeks to respond. The record was extended a further month at the request of the appellant (Exhibit 9).

In addition to submitting a memorandum of law, the appellant's attorney re-submitted the four medical letters that had already been placed into the record. He also attached a copy of the appellant's autonomic dysreflexia sheet from [redacted] dated September 27, 2022 and which travels with the appellant in case of emergency. Finally, he submitted a copy of the Board of Hearings decision dated August 4, 2021 previously cited at the outset of the hearing. In that decision, the hearing officer dismissed the appellant's appeal because MassHealth agreed to provide the appellant with 168 hours of CSN services as requested.

In his memo, the appellant's attorney argued that while MassHealth agrees a PCA is medically necessary to work alongside the full-time nurse on duty to assist with the frequent lifts, transfers and repositioning required, it has refused to authorize this time. This is contrary to federal Medicaid law and MassHealth regulations. On December 19, 2022, a CCM occupational therapist, [redacted] and a CCM nurse, [redacted] conducted a 20-minute interview with the appellant's mother. Neither of them met with [the appellant] or visited her home as part of the

evaluation. In addition, neither had any formal training or clinical experience working with patients with spinal cord injuries or autonomic dysreflexia.

Among the appellant's conditions, her diagnosis of autonomic dysreflexia is a potentially life-threatening condition during which the autonomic nervous system has dysfunction, allowing the blood pressure to raise very high. It puts her at risk of stroke or death if an episode is not immediately recognized and mitigated through skilled nursing interventions.

MassHealth's reason for refusing to authorize more than 2 hours per night of PCA services was that the regulations do not permit the approval of more time unless the services to be performed were constant and that 2 hours is the maximum under its's "Time for Task Guidelines." However, the "Time for Task Guidelines" does not have the force of a promulgated regulation.

MassHealth's second basis for refusing to pay for all medically necessary services is a document entitled "PCA Operating Standards." Like the "Time for Task Guidelines," this document does not have the force of a regulation, and it cannot be used by MassHealth to deny services if it conflicts with state or federal regulations or statutes. MassHealth insists that it was legally required to deny the requested PCA hours because the appellant's parents had not established that they had a medical disability to perform the overnight PCA services themselves. However, the only required parental help on PCA services for a member is with IADLs and is not applicable to PCA services related to ADLs or with assisting the overnight nurse (Exhibit 10).

MassHealth indicated in its response that it had reviewed all the documents submitted during the record open period by the appellant but was standing by its decision because PCA services are not intended for anticipatory needs such as the possibility of an occurrence. Therefore, the medically necessary PCA services to perform the appellant's required ADLs and IADLs are for 81 hours and 30 minutes per week when in-school and 93 hours and 30 minutes per week when out-of-school. These PCA services are provided in addition to the previously approved 168 hours per week of nursing services (Exhibit 11).

Findings of Fact

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

1. On March 9, 2023, MassHealth approved the appellant for 81.5 weekly hours PCA services in school and 93.5 hours out of school PCA following her December 19, 2022 evaluation. The PCA hours that were determined to be medically necessary were based upon an interview with the appellant's mother, progress notes and also the time for task tool (Exhibit 1 and testimony).

2. In addition to her PCA hours, the appellant has 168 weekly hours of continuous skilled nursing (24 hours per day). The authorization of 168 nursing hours weekly remains in effect until January 27, 2024 or until the new annual assessment has been completed, whichever is later (Exhibit 5 and testimony).

3. The appellant is [redacted] years old and has been a member of CCM since [redacted] Her primary diagnosis is spastic quadriplegia. She also has feeding intolerance, hip dysplasia, aspirations, autonomic dysreflexia, seizure disorder, apnea (central and obstructive), constipation, low bone density, neurogenic bladder, respiratory insufficiency, non-traumatic cerebellar, medullary and spinal cord hemorrhage, chromosomal duplication of unknown clinical significance, bulbar dysfunction, lordosis, and a history of chronic UTI (Exhibit 4).

4. This was the appellant's initial PCA evaluation to determine her need for assistance with ADLs and IADLs. Where two caregivers were determined as medically necessary for a task, a nurse is to be the primary caregiver, with a PCA or parent being the secondary caregiver (Exhibit 4 and testimony).

5. Based upon the PCA assessment, for mobility and transfers, the appellant needs two caregivers to assist with manual transfers for safety due to her autonomic dysreflexia and spinal precautions due to spinal surgery. On Monday-Friday during in-school weeks, transfers were authorized 8 times daily, 10 minutes per transfer. When out of school, transfers were authorized 12 times daily, 10 minutes per transfer. The total weekly time for transfer when in school weeks was 640 minutes, and 840 minutes when out of school (Exhibit 4 and testimony).

6. For quick wash, the appellant is dependent on two caregivers once per day for 10 minutes, or 70 minutes weekly. For showering, the appellant is dependent on two caregivers once per day for 60 minutes, or 420 minutes weekly. For grooming, the appellant is dependent on two caregivers twice per day, for 15 minutes each time. The total weekly time grooming time is 210 minutes (Exhibit 4 and testimony).

7. For dressing the appellant is dependent on two caregivers once per day for 25 minutes, or 175 minutes weekly. For undressing needs 10 minutes once per day for 70 minutes weekly (Exhibit 4 and testimony).

8. For passive range of motion exercises of upper extremities, the appellant needs 4 times per day for ten minutes each time for out of school weeks, and 2 times per day for in-school weeks. Total weekly time was 180 minutes in school and 280 minutes out of school. For passive range of motion exercises of lower extremities, the appellant needs 4 times per day for ten minutes each time for out of school weeks, and 2 times per day for in-school weeks. Total weekly time was 180 minutes in school and 280 minutes out of school (Exhibit 4 and testimony).

9. For bladder care, the appellant is dependent on two caregivers and needs urine management 6 times per day, 15 minutes each time out of school. In school, the appellant needs care 3 times per day when in school. The total weekly time for bladder chare in school is 405 minutes, and 630 minutes when out of school. For bowel care, the appellant

is dependent on 2 caregivers for bowel management 2 times per day, 25 minutes each time. The total weekly time for bowel care is 350 minutes (Exhibit 4 and testimony).

10. For laundry, shopping and housekeeping, the appellant is authorized for 60 minutes weekly for each of these IADLs (Exhibit 4 and testimony).

11. For repositioning, the appellant is dependent on two caregivers 10 times per days for 5 minutes each time when out of school and 6 times per day when in school. The total weekly time for repositioning in school is 250 minutes, and 350 minutes when out of school (Exhibit 4 and testimony).

12. For stander transfers, the appellant needs two transfers per day for ten minutes, or 140 minutes weekly (Exhibit 4 and testimony).

13. For menstrual care, the appellant was determined to need 81 minutes per week (Exhibit 4 and testimony).

14. For transportation to medical appointments, the appellant was determined to need 582 minutes per week which reflected travel time and time for transfers in and out of her van (Exhibit 4 and testimony).

15. For nighttime PCA, the appellant was determined to need 2 caregivers for urine management 2 times per night for 15 minutes each time. She was also determined to need 2 caregivers for repositioning 6 times per night for five minutes each time. The one hour needed was adjusted up to two hours nightly (Exhibit 4 and testimony).

16. In a September 8, 2023 letter, [redacted] indicated that "it is essential that there are two people available to reposition [the appellant] at all times." The appellant "is at an increased risk of autonomic dysreflexia, fractures, and skin breakdown if she is not repositioned in a timely manner" (Exhibit 7).

17. In a letter dated October 10, 2023, [redacted] stated that "Autonomic Dysreflexia (AD) is a potentially dangerous clinical syndrome that can develop in persons with spinal cord injury (SCI), resulting in acute uncontrolled hypertension. She added that the appellant must "be repositioned in bed every 2 hours and when seated in her wheelchair, every 20 minutes" (Exhibit 7).

18. In an October 20, 2023 letter, [redacted] stated that the appellant is at a "disproportionately high risk of impending fractures." Also, "her fragility, coupled with recurrent fractures, makes it essential to have two caregivers available 24/7 to assist with repositioning and transfers" (Exhibit 7).

19. In an October 24, 2023 letter, [redacted] indicated that the appellant's spine cannot tolerate a Hoyer lift. He stated that to do a transfer for the appellant "requires either one

very strong person, or more realistically two individuals to achieve a safe transfer that does not injure the spine and spinal rods (Exhibit 7)."

20. MassHealth cited *PCA Operating Standards XXVI A. 1. (a-d). – Revised 5-28-15, Pages 62-63* as its authority for requiring a parent to be the second caregiver when two persons are required for a PCA task for children (Exhibit 8).

Analysis and Conclusions of Law

This appeal involves MassHealth's March 9, 2023 approval of the appellant, for the first time, for PCA services in addition to CSN hours already in place. MassHealth approved 93.5 hours of PCA services for the appellant when out of school and 81.5 hours of PCA services when in school. This is in addition to the appellant's 168 CSN hours.

The appellant is [redacted] years old and has been a member of CCM since June 4, 2012. Her primary diagnosis is spastic quadriplegia. She also has feeding intolerance, hip dysplasia, aspirations, autonomic dysreflexia, seizure disorder, apnea (central and obstructive), constipation, low bone density, neurogenic bladder, respiratory insufficiency, non-traumatic cerebellar, medullary and spinal cord hemorrhage, chromosomal duplication of unknown clinical significance, bulbar dysfunction, lordosis, and a history of chronic UTI.

The appellant's diagnosis of autonomic dysreflexia was central to this appeal and was the basis to the argument that the approved PCA hours were insufficient to meet her medical needs pertaining to assistance with mobility, a task which includes transfers and repositioning. *See CMR 422.410(A): 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.*

The appellant was determined to need PCA assistance with some ADLs as well as IADLs, notwithstanding her having a nurse on duty for 24 hours, as she needs two caregivers for assistance with some tasks. The appellant was determined to need ADL assistance with mobility and transfers including repositioning, quick wash, shower, grooming, dressing/undressing, passive range of motion exercises, bladder and bowel care, stander time, and menstrual care. She was found to need IADL assistance with laundry, shopping, housekeeping, and transportation to medical appointments.

While the appellant's mother questioned some of the time for each task that was given and was based upon the "Time for Task Guidelines" used by MassHealth, there was no specific dispute that the time granted for each task was insufficient to meet the appellant's needs. For instance, MassHealth determined that the appellant needs 15 minutes for grooming twice per day and 25 minutes for dressing, and 10 minutes for undressing. However, there was no evidence offered by the appellant's mother or her attorney that task minutes were insufficient to meet the appellant's requirements for these tasks. The dispute in this case rather, involves the frequency that the appellant needs a PCA for assistance with mobility as it relates to her

transfers/repositioning every day given her autonomic dysreflexia and spinal precautions.

MassHealth separated out the time for repositioning from the PCA time allotted for transfers. MassHealth authorized 12 transfers per day out of school and 10 times per day, 10 minutes each time for transfers. The transfer times did not include transfers to use the bathroom, as these are included in bowel and bladder care. Apart from the repositioning time given, the transfer times and frequency themselves were not specifically disputed.

The real dispute was over the PCA time that MassHealth approved for the appellant's repositioning. The appellant's attorney contends that PCA assistance for repositioning 10 times per day (out of school) and 6 times per night is inadequate given her medical issues, particularly her autonomic dysreflexia. MassHealth contends that the time approved was based upon her PCA evaluation and is all that is medically necessary given the evaluation and parental responsibility.

Instead of 16 times daily, the appellant's mother testified that the appellant needs repositioning 20-30 times per day. The appellant's nurse practitioner who has been actively treating the appellant wrote that the appellant needs repositioning at least every two hours, or 24 hours per day. She and other medical providers also wrote of the appellant's need of two caregivers for repositioning. MassHealth fully acknowledged the appellant's need of two caregivers for many of her PCA tasks.

The appellant's attorney, apart from these letters, offered no medical evidence to support the contention that the appellant needed greater than 16 repositioning episodes on a daily basis. For instance, the attorney did not cite or submit into evidence any supportive medical records even though he had full access to all of the appellant's nursing progress notes. While letters from medical providers can provide insight into a case such as this, without corroboration, they cannot on their own be used to establish the appellant's PCA hours.

Absent evidence to the contrary, the findings and conclusions of the appellant's assessment are what must ultimately be determinative of the appellant's PCA requirements. This ruling is consistent with the PCA regulations. *See 130 CMR 422.422 (C) Evaluation to Initiate PCA Services: (1) An evaluation team consisting of a registered nurse, or licensed practical nurse under the supervision of a registered nurse, and an occupational therapist must conduct an initial evaluation, only for members who meet the criteria described in 130 CMR 422.403(A), (B), and (C)(1) through (3). The evaluation must accurately represent the member's need for physical assistance with ADLs and IADLs. The evaluation team must consider the member's physical and cognitive condition and resulting functional limitations to determine the member's ability to benefit from PCA services.*

In addition to disputing the adequacy of the day-time hours, the appellant's attorney argued that two nighttime PCA hours were insufficient to meet the appellant's repositioning needs during the hours of midnight-6 am. The appellant's premise that MassHealth somehow limited the appellant's nighttime hours due to "Time for Task Guidelines" is incorrect, however. In reality,

MassHealth did not cap the appellant's nighttime hours at 2 per night; rather it calculated that the appellant needs a nighttime total of 30 minutes for repositioning and 30 minutes for toileting. It then rounded this up to the two hours as this is the standard for nighttime hours. Thus, in this case, the "Time for Task Guidelines" of 2 night hours benefited the appellant by giving her an additional hour of PCA time.

While accepting that the appellant's needs can fluctuate given her medical condition, MassHealth indicated that it could only approve PCA time for what are her typical daily needs, and not needs based upon emergency conditions or unforeseen circumstances. MassHealth's position is that its PCA program does not cover anticipatory care, but actual hands-on necessary daily care is consistent with its regulations. *See 130 CMR 422.411: Covered Services (A): MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.*

MassHealth also was of the opinion that it could not approve additional PCA time for ADLs or IADLS as medically necessary given the appellant's parents responsibility to be the second caregiver when two people are required for a task. In support of its position it cited MassHealth's PCA policy memorandum, *PCA Operating Standards, XXVI. Pediatric PCA Evaluation and PAU Clinical Review (A)(1)(b): A parent or "designee" (i.e. sibling, aunt, uncle, etc.) is required to be the second person when two people are required to perform a task (i.e. if a child has spastic tone due to cerebral palsy, a second person may be required for transfers).* [6]

The example given in *PCA Operating Standards, XXVI. Pediatric PCA Evaluation and PAU Clinical Review (A)(1)(b)*, is of a transfer, an ADL pertaining to mobility, and not to an IADL. It is completely analogous to the mobility/transfer situation in this case where the appellant needs two caregivers for repositioning.

The appellant's attorney objected to MassHealth's use of the above policy. He argued that the policy does not have the force of a regulation and the regulations speak to parental responsibility only with respect to IADLs and not IADLs. He cited the following:

130 CMR 422.410(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.

[6] 130 CMR 450.204(A)(2) requires that for a service to be deemed "medically necessary" there can be no more conservative, less costly alternative. In this case, the appellant's parents would be the alternative.

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

While the appellant's argument is technically correct with respect to the regulations regarding IADLs specifying and ADLs not mentioning parental responsibility, the regulations are also clear with regard to the responsibility of a hearing officer to apply MassHealth written polices as well as its regulations in rendering a Fair Hearing decision. *610.082: Basis of Fair Hearing Decisions (A)* states: *The hearing officer's decision is based upon evidence, testimony, materials, and legal rules, presented at the hearing, including the MassHealth agency's interpretation of its rules, policies, and regulation. (C)(3) The hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation*.

Finally, it must be noted that the appellant's attorney was given several opportunities to submit evidence as to how the appellant's parents were physically unable or prevented in some other way from being the appellant's second caregiver for certain tasks. MassHealth indicated that it would consider raising the appellant's PCA hours only if such information was provided. However, the attorney offered no evidence of a disability or other reason as to why the appellant's parents could not be this second person. Instead, he objected to the request stating that this was not relevant to the appellant's case.

In conclusion, the appellant, by her attorney, has not demonstrated that MassHealth was incorrect in determining her PCA hours to accompany her 24 per day CSN hours given a lack of medical evidence contrary to the findings of her PCA assessment. Moreover, MassHealth's requirement and expectation that one of her parents be her second caregiver along with her nurse at times is consistent with its written policy.

The appeal is therefore denied.

Order for MassHealth

None.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

[redacted]

Linda Phillips, RN
Appeals Unit
Commonwealth Medicine
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