

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed in part	Appeal Number:	2303979
Decision Date:	7/17/2023	Hearing Date:	06/12/2023
Hearing Officer:	Casey Groff		

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, R.N., Optum, Clinical Reviewer



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Approved-in-part; Dismissed in part	Issue:	Personal Care Attendant Services
Decision Date:	7/17/2023	Hearing Date:	06/12/2023
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Rep.:	PCA Surrogate
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated April 13, 2023, MassHealth informed Appellant, a minor, that it modified his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant's mother filed a timely appeal on behalf of Appellant on May 12, 2023, appointing Appellant's PCA surrogate as his appeal representative. See 130 CMR 610.015(B); Exhibit 2. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant, a minor, was represented by his designated surrogate for the personal care attendant (PCA) program. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is ■ years-old and has primary diagnoses of intellectual and developmental delay. See Exh. 5, p. 10-11. On March 27, 2023, MassHealth received an initial prior authorization (PA) request from Appellant's personal care management (PCM) agency, seeking approval for 37 hours and 30 minutes of day/evening PCA services¹ for dates of service April 13, 2023 through April 12, 2024.² See Exh. 1, p. 3.

The requested services were made following an evaluation by a registered nurse and occupational therapist (OT) to determine the level of assistance Appellant required to perform activities of daily living (ADLs) and instrumental activities of daily living (IADLs). At hearing, the MassHealth representative reviewed the nursing and functional OT reports, which indicated, in part, that Appellant has significant intellectual and cognitive deficits, is non-verbal, very "child-like," and is unable to follow-directions, initiate mobility or tasks. The evaluations further stated that Appellant ambulates with physical assistance, otherwise he will not move; he has impaired mobility, impaired weight bearing, and gross and fine motor coordination deficits; he requires 24/7 supervision, cannot be left alone, and has significantly impaired safety/judgment; he has dual incontinence requiring adult diapers, and diaphoresis (excessive sweating). See Exh. 5. at 8-13.

Through a letter dated April 13, 2023, MassHealth notified Appellant that it modified his PA request by approving 25 hours and 30 minutes per-week of day/evening services.³ See Exh. 1. According to the letter, the reduction of hours was a result of MassHealth's decision to modify the times requested for the following ADL tasks: (1) mobility/transfers, (2) bathing, (3) nail care, (4) dressing / undressing, and (5) toileting (bladder and bowel care). Id.

In response, Appellant's mother filed a timely request for a fair hearing on her son's behalf and designated his PCA surrogate as the appeal representative. Appellant's mother included a written letter, as well as a print-out chart of her son's current health issues which listed diagnoses of autism, behavioral disorder, developmental non-verbal disorder, loss of bladder control, sleep apnea, and congenital anomaly of maxilla. See Exh. 2. In her letter, Appellant's mother disputed the modifications, noting that Appellant requires help with everything, is stubborn with care, and this causes everything to take longer. See Exh. 3. She further detailed

¹ This reflects the amount of time requested for school weeks. For the eight vacation weeks per-year, the request translated to 43 hours and 30 minutes per-week. See Exh. 1, p. 3.

² The PCM agency did not request any nighttime hours.

³ This reflects the amount of time approved for school weeks. This translated into an approval of 28 hours and 45 minutes per-week for vacation weeks. See id.

his care needs as follows:

....

[Appellant] needs help to get out of bed, walking in the house, feeding, grooming, toileting, stairs, dressing, bathing couple times if [he] goes in [his] pants accidentally. As a mother, I am taking care of him as much as I can, but he needs help at night too. I do not sleep at night because I take care of him. [Appellant] often screams at night, where I need to [sooth] him...take him to the shower or toilet, etc.

[Appellant] is a disabled ■-year-old kid, and we will appreciate any help. The increase of PCA hours will help to meet his personal or medical needs. These services are crucial for his overall health. His primary care has recommended the fast appeal and will provide the related documents in support upon request.

Id.

Bathing/Showering

The MassHealth representative explained that under the ADL category of “bathing,” Appellant’s PCM agency requested 45 minutes for assistance with a daily shower plus two-minutes for hair wash, for a combined total of 47 minutes per-day (47x1x7) for showering.⁴ See Exh. 5. at 20-21. In support of this request, the PCM agency commented that Appellant is dependent for all bathing tasks; he is unable to conceptualize, initiate, sequence, or complete any part of bathing; he requires physical assistance to and from the bathroom, and in and out of the tub; he is unable to retrieve or grasp supplies or wash and dry self; he is unable to wash hair; and requires a quick wash (sponge/bed bath) at the end of the day related to his dual incontinence and diaphoresis. See id.

MassHealth modified the time for shower (including hair wash) to 40 minutes per-day (40x1x7).⁵ See id. at 6. The MassHealth representative testified that the time requested exceeded normal limits. She further explained that MassHealth only covers PCA services that involve “hands-on” assistance. As such, MassHealth did not approve time that would include non-reimbursable tasks such as queuing, waiting, or re-directing. The representative explained that based on the documentation in the PA request, 40 minutes should be sufficient for the PCA to complete assistance with showering and hair wash.

In response, Appellant’s surrogate responded that assisting Appellant with showering takes

⁴ In a separate line item under “bathing,” Appellant’s PCM agency requested 10 minutes per-day for assistance with a “quick wash” (10x1x7). This had already been approved in full by MassHealth, and thus not at issue in this appeal.

⁵ The MassHealth representative explained that a separate line item for “hair wash” is included in the PA request, but that it is typically intended for members who cannot shower and have their hair washed as a separate process.

longer than 40 minutes. She explained that Appellant is entirely dependent on the PCA to complete this task. In particular, the PCA must physically guide Appellant to the bathroom (for example, by lifting him up from shoulders, holding his hand, etc.) and prepare him into the shower. Next, the PCA needs to physically perform all aspects of washing Appellant, including his hair, body, feet, and heels. The surrogate noted that Appellant tends to get dirty easily, which makes the washing process longer. The PCA then guides Appellant out of the shower and helps dry him off. Because of his resistive behaviors, everything takes longer. Not accounting for time spent negotiating or waiting, the surrogate approximated that it takes 45 minutes of hands-on assistance to complete this task.

Dressing/Undressing

Next, the MassHealth representative explained that Appellant's PCM agency requested 25 minutes per-day for assistance with dressing and 20 minutes per-day for undressing. See id. at 24-25. In support thereof, the PCM agency noted that Appellant is dependent for both upper-extremity and lower-extremity dressing/undressing; he is unable to conceptualize, initiate, sequence or complete any part of this ADL; he is unable to retrieve or transport appropriate clothing; is unable to don/doff clothes, socks, or shoes; he is unable to manage fasteners; he is unable to follow instructions; he has unsteady gait, impaired weight bearing, and is unable to push-off; he has a weak-grasp and very poor coordination. Id.

MassHealth modified the request by approving 20 minutes for dressing (20x1x7) and 18 minutes for undressing (18x1x7). See id. at 6. The MassHealth representative testified that this category includes solely the time for getting dressed once in the morning and getting undressed once at night. It does not include additional changes for toileting or incontinence, as that is typically included in a separate ADL category.

In response, Appellant's surrogate explained that the time approved is insufficient for the PCA to perform all dressing/undressing tasks. She estimated that it takes the PCA approximately 30 minutes in the morning to dress Appellant, and about the same time, or longer, for undressing at night. The surrogate testified that everything takes longer than normal due to his inability to participate in the process as well as his resistance to care. For example, the PCA must perform all dressing activities including donning/doffing Appellant's diapers/pads, shirts, shorts, underwear, socks, and shoes; the PCA fastens all zippers, buttons, and shoes. This process is further prolonged by Appellant's behaviors and resistance to care. Appellant often laughs through the process and will not cooperate with the PCA, such as not giving his hand when trying to put on his shirt.

Resolved Modifications

At hearing, the parties resolved the remaining modifications, as follows:

Mobility Activities and Transfers

At hearing, MassHealth agreed to approve, in full, the time requested for mobility activities at 2x8x2 and 2x5x5 (school weeks) and 2x8x7 (vacation weeks), in addition to the time already approved for assistance with stair-mobility to get on/off the school bus at 5x2x5. See id. at 6, 17.

For transfers, Appellant requested 5 minutes of PCA assistance for each transfer episode, at a frequency of 5 transfer episodes on school days and 8 episodes on non-school days. See id. at 17. MassHealth modified the request by reducing the time-per-episode to 2 minutes but approved the frequency of episodes as requested, i.e., 2x8x2 & 2x5x5 (school weeks) and 2x8x7 (vacation weeks). Upon discussion at hearing, Appellant accepted this modification.

Grooming/Nail Care

Under the category of “grooming” the PA request, Appellant requested 20 minutes per-week (20x1) for nail care. Id. at 22. MassHealth modified the request by approving 10 minutes per-week (10x1). At hearing, the parties agreed that 15 minutes per-week for assistance with nail care was appropriate, thereby resolving this part of the appeal.

Bowel & Bladder Care

Through his PA request, Appellant sought assistance for bladder care at 15 minutes per-episode and bowel care at 20 minutes per-episode. Id. at 28. MassHealth modified the request by reducing the times to 7 minutes per-episode for bladder and 10 minutes per-episode for bowel care. Id. at 6. Upon discussion at hearing, the parties agreed to 10 minutes per-episode for bladder care and 15 minutes per-episode for bowel care. MassHealth did not take issue with the requested episode frequency, resulting in the following agreed-upon resolution:

- Bladder Care: 10x8x2 and 10x5x5 (school weeks) and 10x8x7 (vacation weeks); and
- Bowel care: 15x1x7 (both school and vacation weeks).

Findings of Fact

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

1. Appellant is under the age of 18 with diagnoses that include intellectual delay, developmental delay, non-verbal disorder, autism, behavioral disorder, sleep apnea,

and congenital anomaly of maxilla.

2. Nursing and functional OT evaluations reported that Appellant has significant intellectual and cognitive deficits, is non-verbal, very “child-like,” and is unable to follow-directions, initiate mobility or tasks; he ambulates with physical assistance (otherwise he will not move), has impaired weight bearing and mobility, and gross and fine motor coordination deficits; he requires 24/7 supervision, cannot be left alone, and has significantly impaired safety/judgment; he has dual incontinence requiring adult diapers, and diaphoresis (excessive sweating).
3. On March 27, 2023, MassHealth received an initial PA request from Appellant’s PCM agency, seeking approval for 37 hours and 30 minutes of day/evening PCA services for dates of service April 13, 2023 through April 12, 2024.
4. On April 13, 2023, MassHealth modified Appellant’s PA request by approving 25 hours and 30 minutes per-week of day/evening services.
5. The reduction in hours was due to MassHealth’s decision to modify the times requested for assistance with the following ADLs: (1) mobility/transfers, (2) bathing, (3) nail care, (4) dressing / undressing, and (5) bladder and bowel care.

Bathing

6. Under the ADL of “bathing,” Appellant’s PCM agency requested 45 minutes for assistance with a daily shower plus two-minutes for hair wash, for a combined total of 47 minutes per-day (47x1x7) for showering.
7. MassHealth modified the time for shower (including hair wash) to 40 minutes per-day (40x1x7).
8. Appellant is dependent for all bathing tasks; he is unable to conceptualize, initiate, sequence, or complete any part of bathing; he requires physical assistance to and from the bathroom, and in and out of the tub; he is unable to retrieve or grasp supplies or wash and dry self; he is unable to wash hair; and has dual incontinence and diaphoresis.
9. Appellant does not participate in any aspect of showering and is entirely dependent on the PCA to complete this task, including being guided to the shower with physical assistance, and being washed and dried.

Dressing/Undressing

10. Appellant’s PCM agency requested 25 minutes per-day for assistance with dressing and 20 minutes per-day for undressing.

11. MassHealth modified the request by approving 20 minutes for dressing (20x1x7) and 18 minutes for undressing (18x1x7).
12. Appellant is dependent for both upper-extremity and lower-extremity dressing & undressing; he is unable to conceptualize, initiate, sequence or complete any part of this ADL; he is unable to retrieve or transport appropriate clothing; is unable to don/doff clothes, socks, or shoes; he is unable to manage fasteners; he is unable to follow instructions; he has unsteady gait, impaired weight bearing, and is unable to push-off; he has a weak-grasp and very poor coordination.

Mobility Activities and Transfers

13. At hearing, MassHealth agreed to approve, in full, the time requested for mobility activities at 2x8x2 and 2x5x5 (school weeks) and 2x8x7 (vacation weeks), in addition to the time already approved for assistance with stair-mobility to get on/off the school bus at 5x2x5.
14. Appellant accepted MassHealth's modification to transfers at 2x8x2 & 2x5x5 (school weeks) and 2x8x7 (vacation weeks).

Nail Care

15. At hearing, the parties agreed that 15 minutes per-week for assistance with nail care was appropriate, thereby resolving this part of the appeal.

Bowel & Bladder Care

16. At hearing, the parties agreed to PCA assistance with bladder care at 10x8x2 and 10x5x5 (school weeks) and 10x8x7 (vacation weeks); and assistance with bowel care: 15x1x7 (both school and vacation weeks), thereby resolving this part of the appeal.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:⁶ First, the

⁶ PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair the member’s functional ability to perform [at least two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). A service is “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 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 the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the prerequisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive assistance with his activities of daily living (ADLs) to meet his care needs. MassHealth regulations provide the following description of ADLs under the PCA program:

(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 bathing, personal hygiene, or grooming;

(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.

See 130 CMR 422.410 (emphasis added).

MassHealth covers the amount of PCA services a member requires based on the “activity time performed by a PCA in providing assistance with the [task].” 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with his or her ADL/IADL. See 130 CMR 422.402. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Bathing

In his PA request, Appellant requested a total of 47 minutes for daily shower and hair wash. MassHealth modified the request by approving a total of 40 minutes for these tasks. Based on the evidence presented at hearing, Appellant sufficiently demonstrated that the reduced time is insufficient for the PCA to provide adequate assistance in meeting Appellant’s bathing needs. The evidence shows that Appellant has autism, developmental and intellectual delays, and is non-verbal. Appellant’s representative testified that it takes the PCA more than 40 minutes of hands-on “physically assistance,” excluding time for negotiating and prompting, to shower Appellant. The representative’s testimony is supported by the nursing and OT evaluations, as well as Appellant’s mother’s written submission. Collectively, these sources demonstrate that Appellant is stubborn with care; he has impaired initiation, sequencing, and organization of tasks and mobility; he has poor gross and fine motor coordination. Appellant cannot participate in any aspect of bathing or showering. Due to his condition, the PCA must physically guide Appellant to the bathroom, get him undressed, perform each phase of washing his body and hair, and dry him. Accordingly, much of the PCA’s participation is “hands-on” and thus distinguishable from non-covered services in the form of “cueing, prompting, and supervision.” The evidence also shows that Appellant has specific hygiene concerns, such as dual incontinence and diaphoresis, which support the need for additional time to ensure he is thoroughly cleaned. Based on these factors, Appellant successfully demonstrated that MassHealth’s modification to bathing does not give the PCA sufficient time to meet Appellant’s

specific care needs. Accordingly, the appeal is APPROVED with respect to Appellant's request for showering at 47x1x7.

Dressing/Undressing

For the same reasons discussed above, Appellant demonstrated that MassHealth's modification to dressing/undressing at 20 and 18 minutes, respectively, is insufficient to meet his care needs. The PCM agency requested PCA assistance at 25 minutes per-day (25x1x7) for dressing and 20 minutes per-day (20x1x7) for undressing. The requested level of assistance is supported by the evidence in the record. The clinical evaluations, oral testimony, and written submission show that the intellectual and developmental delays underlying Appellant's condition, render him unable to participate in this ADL category, and further cause behavioral challenges that add resistance to the care offered by his PCA. Specifically, Appellant is unable to transport or retrieve clothing, manage fasteners, tie shoelaces, or follow instructions. He is reported to have "child-like" behaviors and is often uncooperative with care, such as not giving his arm to let the PCA put on a shirt. These factors indicate that the time requested is intended to account for the PCA's hands-on efforts to complete the ADL, rather than to perform non-covered tasks, such as supervision, coaching, or prompting. For these reasons, the appeal is APPROVED with respect to Appellant's request for dressing at 25x1x7 and undressing at 20x1x7.

Resolved Modifications

The appeal is DISMISSED with respect to the remaining modifications, which were resolved at hearing, as follows:

- **Mobility/transfers:**
 - *Mobility:* 2x8x2 and 2x5x5 (school weeks) and 2x8x7 (vacation weeks), as requested.
 - *Transfers:* 2x8x2 and 2x5x5 (school weeks), as accepted by Appellant.
- **Grooming/Nail Care:** 15x1
- **Toileting (bowel/bladder care):**
 - *Bladder care:* 10x8x2 and 10x5x5 (school weeks) and 10x8x7 (vacation weeks);
 - *Bowel care:* 15x1x7

Order for MassHealth

For the PA period covering dates of service beginning April 13, 2023 through April 12, 2024, adjust the modified ADLs, as follows:

- In accordance with this decision, approve the time requested for PCA assistance with showering (47x1x7),⁷ dressing (25x1x7) and undressing (20x1x7).

⁷ "Showering" includes time for hair wash, and is in addition to the 10 minutes daily quick wash (10x1x7), which

- In accordance with the parties' agreement at hearing, approve the time requested for mobility activities (2x8x2 & 2x5x5 for school weeks and 2x8x7 vacation weeks).⁸ Keep the modification to transfers at 2 minutes per-episode as reflected in 4/13/23 notice, i.e., 2x8x2 & 2x5x5 (school weeks) and 2x8x7 (vacation weeks).
- In accordance with the parties' agreement at hearing, adjust the approved time for nail care to 15x1x1; bladder care to: 10x8x2 and 10x5x5 (school weeks) and 10x8x7 (vacation weeks); and bowel care to 15x1x7.

All other requested ADLs to remain approved consistent with MassHealth's 4/13/23 notice.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

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

MassHealth approved in full, and was thus not addressed at appeal.

⁸ This is in addition to a separate line item requested under "mobility activities" specific to assistance with stairs to/from bus, which MassHealth approved in full at 5x2x5 and thus not addressed at appeal.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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

