

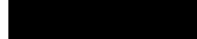
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2304186
Decision Date:	09/14/2023	Hearing Date:	07/26/2023
Hearing Officer:	Christine Therrien		

Appearance for Appellant:

 Father

Appearance for MassHealth:

Robin Brow, OT
Donna Burns, RN



*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; Denied in part	Issue:	PCA – Modification to time requested
Decision Date:	09/14/2023	Hearing Date:	07/26/2023
MassHealth's Rep.:	Robin Brown, OT Donna Burns, RN	Appellant's Rep.:	Father
Hearing Location:	Quincy Harbor South - telephonic		

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 5/12/23, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from the requested 154 day/evening hours per week plus 3 nighttime hours per day. (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 5/22/23. (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal. (130 CMR 610.032). The appellant's attorney submitted a request to reschedule the first hearing date of 6/28/23. (Exhibit 6).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying the appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is an Occupational Therapist who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. The MassHealth representative testified that a prior authorization request for PCA services was received on the appellant's behalf on 4/28/23 from his PCA provider, the Center for Living and Working, and is a re-evaluation request for the dates of service of 5/21/23 – 5/20/24. The MassHealth representative testified that due to the Covid flexibilities in place at the time, there were no signed physician orders. In the prior authorization request for PCA services, the provider requested 154 day/evening hours per week plus 3 nighttime attendant hours a day.¹ The MassHealth representative testified that the prior authorization is for 23 hours of direct personal care services per day. The MassHealth representative testified that the MassHealth reviewer questioned how the appellant could need or receive 23 hours of direct personal care per day. The appellant is over the age of 18 and lives with his father. The primary diagnoses affecting the appellant's ability to function independently are Cerebral Palsy with spasticity, contractures, and severe scoliosis. In addition, the appellant has a G-tube for feedings/nutrition/medications and is non-verbal and non-ambulatory. (Exhibit 4).

The MassHealth representative testified that MassHealth modified the PCA request to 110 day/evening hours per week plus 2 nighttime hours per day. The MassHealth representative testified that there were six modifications made to the request for PCA services. The MassHealth representative testified that because the time requested was deemed excessive by the initial reviewing nurse all the modifications were sent for secondary review and were examined by PCA management who agreed with all the modifications. Modifications were made in the areas of Passive Range of Motion (PROM), PROM at night, oral care, grooming-other (lotion), eating, medication administration, and meal preparation. (Exhibits 1 and 4).

Passive Range of Motion (PROM)

The appellant's PCA provider requested 10 minutes, 4 times per day, 7 times per week (10 X 4 X 7)² during the day and 10 x 2 x 7 at night of PROM for each limb.

MassHealth modified the request for PROM during the day to 10 X 3 X 7 for each limb and modified the nighttime PROM to zero. The MassHealth representative testified that the time requested was longer than ordinarily required and the standard of care is 1-2 times a day. The MassHealth representative testified that last year the appellant was approved for 10x3x7 for PROM.

¹ Nighttime hours are between midnight and 6 a.m.

² PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

The appellant's father testified that the appellant really needs to keep his limbs moving and that the appellant's condition is not one that gets better only worse. The appellant's father testified that the appellant would become stiff and in more pain without the PROM. The appellant's father also testified that the appellant does not sleep during the night and takes "cat naps" during the day.

The MassHealth representative testified that the requested time for all areas under mobility was approved. The appellant's father stated that PROM and all the other movements the appellant has assistance with during the day are not the same thing.

Oral Care

The appellant's provider requested 15 X 2 X 7 for assistance with oral care. MassHealth modified the request for assistance with oral care to 10 X 2 X 7. The MassHealth representative testified that the time requested was excessive for someone with the appellant's physical needs. The appellant's father did not specifically speak to why oral care would take longer than ordinarily required for someone with the appellant's needs.

Grooming - Lotion

The appellant's provider requested 7 X 1 X 7 for assistance with the application of lotion. MassHealth modified the request for assistance with the application of lotion to the standard of care which is 5 X 1 X 7. The MassHealth representative testified that the time requested was excessive for someone with the appellant's physical needs.

The appellant's father testified that the appellant requires barrier cream to prevent sores on his body. The appellant's father testified that the lotion is put on irritated spots typically from urine. The appellant's father testified that this could happen a few times a day.

The MassHealth representative testified that the barrier cream is part of the toileting routine and all the time requested for toileting was approved.³

Eating

The appellant's provider requested 45 x 8 x 7 for oral eating, and 15 x 6 x 7 for G-tube feeding.⁴ The provider noted that the appellant is dependent for feeding by mouth and has 8-9 small meals a day with pureed food and thickened liquids. The provider noted that extra time is given to allow the appellant frequent rests while eating. MassHealth approved the request for G-tube feeding and modified the request for oral feeding to 15 x 8 x 7 because the time requested is longer than

³ The provider stated the frequent changes throughout the day and night due to keeping the skin clean and dry.

⁴ 15 x 2 x 7 for night G-tube feedings was requested and approved.

ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that MassHealth only pays for hands-on care and not the time it takes for the appellant to rest during eating.

The appellant's father testified that the appellant has a meal prepared for him and then it is fed to him over the course of nine feedings. The appellant's father testified that the appellant is an aspiration risk so he must be fed slowly. The appellant's father asked where the regulations state how long it should take to feed his son. The appellant's father testified that after feeding the appellant by mouth he is given formula via a G-tube. The appellant's father testified that the thicker the liquid the longer it takes to get through the G-tube. The appellant's father testified that when the appellant's stomach is full then no more liquid will go in.

Medication Administration

The appellant's provider requested 10 x 6 x 7 for medication administration. The provider noted that all medications are crushed and then given through the G-tube. MassHealth modified the request to 6 x 3 x 7 because the time requested is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that it appeared there are medications given three times a day. The MassHealth representative testified that the requested time for G-tube feeding was approved.

The appellant's father testified that the medications are given as a bolus through a 60cc syringe and there is no control over how fast the medications can be given because of several factors like how full the appellant's stomach is, if the appellant's bladder is full, or if the appellant tightens up. The appellant's father testified that the appellant is given medications 6 times per day.⁵

Meal Prep

The appellant's provider requested 90 minutes per day for assistance with meal preparation. MassHealth modified the request to 60 minutes per day because the appellant lives with a legal guardian and MassHealth expects family members and legal guardians to provide non-reimbursable assistance with Instrumental Activities of Daily Living (IADLs) like meal prep, laundry, and housekeeping. The MassHealth representative testified that MassHealth approved the requested time for the other IADLs (laundry 90 minutes, housekeeping 30 minutes, and equipment maintenance).

The appellant's father testified that he is awake all night with the appellant because the appellant does not sleep and therefore, he does not go to sleep until between 7-9 a.m. when the PCA arrives. The appellant's father testified that he needs to be awake with the appellant at night since

⁵ According to the documentation submitted the appellant has medications prescribed via G-tube as follows: 1 medication is given 4 times per day, 1 medication is given 3 times per day, 4 medications are given 2 times per day, and 4 medications are given once a day. (Exhibit 4, p. 8).

there are only a few hours of nighttime PCA care. The appellant's father testified that if the hours requested are removed then it would likely push the appellant into a hospital setting.

Findings of Fact

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

1. MassHealth received a prior authorization re-evaluation request for PCA services on the appellant's behalf on 4/28/23 from his PCA provider, the Center for Living and Working, for the dates of service of 5/21/23 – 5/20/24.
2. In the prior authorization request for PCA services, the provider requested 154 day/evening hours per week plus 3 nighttime attendant hours per day.
3. The prior authorization is for 23 hours of direct personal care services per day.
4. The primary diagnoses affecting the appellant's ability to function independently are Cerebral Palsy with spasticity, contractures, and severe scoliosis. Additionally, the appellant has a G-tube for feedings/nutrition/medications and is non-verbal and non-ambulatory.
5. MassHealth modified the PCA request to 110 day/evening hours per week plus 2 nighttime hours per day. The MassHealth representative testified that there were six modifications made to the request for PCA services.
6. Because the time requested was deemed excessive by the initial reviewing nurse all the modifications were sent for secondary review and were examined by PCA management who agreed with all the modifications.
7. The appellant's PCA provider requested 10 X 4 X 7 during the day and 10 x 2 x 7 at night of PROM for each limb. MassHealth modified the request for PROM during the day to 10 X 3 X 7 for each limb and modified the nighttime PROM to zero.
8. The appellant's provider requested 15 X 2 X 7 for assistance with oral care. MassHealth modified the request for assistance with oral care to 10 X 2 X 7.
9. The appellant's provider requested 7 X 1 X 7 for assistance with the application of lotion. MassHealth modified the request for assistance with the application of lotion to 5 X 1 X 7.
10. The appellant's provider requested 45 x 8 x 7 for oral eating, and 15 x 6 x 7 for G-tube feeding. MassHealth approved the request for G-tube feeding and modified the request for oral feeding to 15 x 8 x 7.

11. The appellant's provider requested 10 x 6 x 7 for medication administration. The provider noted that all medications are crushed and then given through the G-tube. MassHealth modified the request to 6 x 3 x 7.
12. The appellant's provider requested 90 minutes per day for assistance with meal preparation. MassHealth modified the request to 60 minutes per day.

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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 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.

Regulations at 130 CMR 422.412 describe non-covered PCA 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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

- (C) MassHealth covers personal care 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 personal care services 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 following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
 - (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The types of PCA services available are described in 130 CMR 422.410 below:

- (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/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 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 personal care agency must assume the following.
- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
 - (2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
 - (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the

administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

MassHealth received a prior authorization re-evaluation request for PCA services on the appellant's behalf from his PCA provider for the dates of service of 5/21/23 – 5/20/24. In the prior authorization request for PCA services, the provider requested 154 day/evening hours per week plus 3 nighttime attendant hours per day. MassHealth modified the request and due to the excessive number of hours the prior authorization request was reviewed a second time. MassHealth determined there is no rest period for the appellant with 23 hours of hands-on care.

MassHealth reduced the time requested for assistance with PROM to 10 X 3 X 7 for each limb and zero time for nighttime PROM. MassHealth based its modifications on the documentation included with the prior authorization request and a determination that the request is not medically necessary to the extent it exceeds the standard of care. The appellant's father testified that the appellant needs the requested time for PROM or he will become stiff and pained. The appellant's father was unable to meet his burden of showing MassHealth's modification was not correct. This portion of the appeal is therefore denied.

MassHealth reduced the time requested for assistance with oral care to 10 X 2 X 7. MassHealth based its modifications on the documentation included with the prior authorization request and a determination that the request is not medically necessary because it is longer than ordinarily required for someone with the appellant's needs. The appellant's father did not speak to the appellant's oral care and primarily focused on feeding the appellant. The appellant's father was unable to meet his burden of showing MassHealth's modification was not correct. This portion of the appeal is therefore denied.

MassHealth reduced the time requested for assistance with the application of lotion to the standard of care which is 5 X 1 X 7. MassHealth based its modifications on the documentation included with the prior authorization request and a determination that the request is not medically necessary to the extent it exceeds the standard of care. The appellant's father testified that the appellant needs the requested time for the application of barrier cream caused by urine. MassHealth approved all the requested time for toileting when the barrier cream is most often applied because the provider indicated the requested time was necessary to keep the appellant's skin clean and dry. The appellant's father was unable to meet his burden of showing MassHealth's modification was not correct. This portion of the appeal is therefore denied.

MassHealth reduced the time requested for oral feeding to 15 x 8 x 7. MassHealth based its modifications on the documentation included with the prior authorization request and a determination that the request is not medically necessary to the extent that the time is longer than ordinarily required for someone with the appellant's physical needs. The appellant's father

testified that the appellant needs the requested time because the appellant has a risk of aspirating and must take small bites with frequent rests. Under 130 CMR 422.412(C) it states that MassHealth does not cover “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching,” as part of the PCA program. While waiting in between bites is not specifically defined under 130 CMR 422.412, 130 CMR 422.413 states in part that MassHealth authorizes payment to PCAs for the performance of PCA activity time. MassHealth defines activity time as “the actual amount of time spent by a PCA physically assisting the member with ADLs and Instrumental Activities of Daily Living (IADLs).” (130 CMR 422.402). The waiting time during oral feeding is not covered by MassHealth. The appellant’s father was unable to meet his burden of showing MassHealth’s modification was not correct. This portion of the appeal is therefore denied.

MassHealth reduced the time requested for assistance with medication administration to 6 x 3 x 7. MassHealth based its modifications on the documentation included with the prior authorization request and a determination that the request is not medically necessary because it is longer than ordinarily required for someone with the appellant’s needs. The appellant’s father testified that the medications are administered through the G-tube. The appellant’s father testified that the appellant’s medications are crushed and mixed with liquid then given as one bolus six times per day prior to giving the appellant his formula. The appellant’s father testified that the rate at which the bolus of medication is administered varies due to whether the appellant’s stomach is full, or he has a full bladder. Since the appellant receives medications via his G-tube six times per day the modification should be 6 x 6 x 7. The appellant’s father was unable to meet his burden of showing MassHealth’s modification to the time requested per episode is not correct. Given that there is no consistency with medication administration due to the appellant’s varying stomach condition MassHealth’s modification to 6 minutes per episode as the standard of care is correct. This portion of the appeal is approved for 6 minutes, 6 times per day, 7 days per week.

MassHealth reduced the time requested for assistance with meal preparation to 60 minutes per day. 130 CMR 422.410(c)(1) states that “[w]hen a member is living with family members, the family members will assist with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up...” The appellant’s father testified that he prepares one meal and divides it up into 9 smaller meals. The appellant’s father was unable to meet his burden of showing MassHealth’s modification was not correct. This portion of the appeal is therefore denied.

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

Order for MassHealth

Restore time for medication administration to 6 x 6 x 7. Regarding all other modifications, 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.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

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