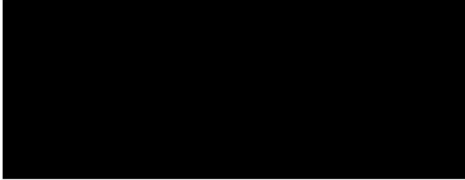


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2304939
Decision Date:	09/07/2023	Hearing Date:	07/17/2023
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliot, RN for Optum



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

APPEAL DECISION

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Personal Care Attendant Services; Pediatric; Medical Necessity
Decision Date:	09/07/2023	Hearing Date:	07/17/2023
MassHealth's Rep.:	Mary-Jo Elliot, RN	Appellant's Rep.:	Mother
Hearing Location:	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 March 9, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services after a medical necessity review. *See* 130 CMR 450.303 and Exhibit 1. The appellant filed this appeal in a timely manner on June 16, 2023.¹ *See* 130 CMR 610.015(B) and Exhibit 2. Scope of services is valid grounds for appeal. *See* 130 CMR 610.032.

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, and restated in MassHealth Operations Memo (EOM) 20-10 dated August 1, 2022, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

As this EOM was still in effect at the time of the issuance of the notice at issue, the appellant had 120 days to file the appeal.

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA hours.

Issue

The appeal issue is whether MassHealth was within its discretion in its modification of the appellant's request for PCA hours.

Summary of Evidence

The appellant is a minor child MassHealth Standard member over the age of five who is currently receiving PCA services and was telephonically represented at hearing by her mother. MassHealth was represented telephonically by a clinical nurse reviewer for Optum, who manages MassHealth's PCA program. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from a primary diagnosis of [REDACTED]

[REDACTED] The appellant has profound developmental disabilities, is blind, non-verbal, non-ambulatory, and has selective hearing. She has no purposeful movements of her own. She also has at least 20 seizures per day that range in severity. Finally, she has dysphagia, poor chewing ability, drooling, and incontinence of the bladder and bowel. MassHealth received a prior authorization request on the appellant's behalf requesting 44 hours of day and evening PCA hours per week and 2 nighttime hours per day. After reviewing the appellant's application, MassHealth modified and approved the appellant for 30 hours of day and evening PCA hours per week and approved the nighttime hours in full.

MassHealth made only one modification to the appellant's prior authorization request in the area of eating. The request was for 30 minutes, three times per day, seven days per week for large meals and 15 minutes, 2 times per day, seven days per week. MassHealth denied the request in full. The reason given on the notice was that "some of the services...requested are service provided by family members." Exhibit 1 at 2. The MassHealth representative gave greater context to this, reporting that PCA Operating Standards indicate that, when a member is a child who is at high risk of aspiration, MassHealth will not cover feeding, as it is expected to be conducted by a parent or a skilled clinician. She also stated that the appellant previously filed an appeal for PCA hour modifications, and that at hearing the previous MassHealth representative granted some time for feeding. As a result, she indicated that she would approve 20 minutes, three times per day, seven days per week for large meals and 10 minutes, two times per day, seven days per week for small meals, mostly for the time that the PCA assists in holding up the appellant's head and body. This totals an extra 9.5 hours per week of approved day/evening hours.

The appellant's mother testified that it takes two people to ensure the appellant is properly fed. She receives three full meals and two small meals per day. The PCA assists the appellant's mother in mashing up the food, giving it to the appellant in small amounts, and holding up her head and body. They also have to manage any seizures that the appellant has while she is eating, make sure she is safe and to remove any food from her mouth to avoid choking. It takes about 40 minutes to feed the appellant one of her larger meals and 25 minutes for one of her smaller meals.

Findings of Fact

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

1. The appellant is a minor child over the age of 5. She receives MassHealth Standard benefits and is categorically eligible for PCA services. Testimony, Exhibit 5.
2. The appellant suffers from a primary diagnosis of [REDACTED]. The appellant has profound developmental disabilities, is blind, non-verbal, non-ambulatory, and has selective hearing. She has no purposeful movements of her own. She also has at least 20 seizures per day that range in severity. Finally, she has dysphagia, poor chewing ability, drooling, and incontinence of the bladder and bowel. Exhibit 6 at 8.
3. MassHealth received a prior authorization request filed on the appellant's behalf for 44 hours of day and evening PCA hours per week and 2 nighttime hours per day. Exhibit 6 at 3.
4. On March 9, 2023, MassHealth reviewed the appellant's prior authorization request and approved PCA hours totaling 30 day/evening hours per week and 2 nighttime hours per day. Exhibit 1.
5. The only modification made to the appellant's request was in the area of eating. The appellant's request was for 30 minutes, three times per day, seven days per week for large meals, and 15 minutes, two times per day, seven days per week for small meals. MassHealth denied the request in full, stating that this is a task that should be performed by a parent or guardian. Exhibit 1, Exhibit 6 at 19.
6. Feeding the appellant is a two-person task. The PCA assists the appellant's mother in mashing up the food, giving it to the appellant in small amounts, and holding up her head and body. They must also manage any seizures that the appellant has while she is eating, make sure she is safe and to remove any food from her mouth to avoid choking. Testimony
7. Standard of care dictates that children who are at high risk of aspiration should be fed by a

skilled clinician or a parent or guardian. MassHealth will not pay for PCAs to feed children with high aspiration risks. Testimony, PCA Operating Standards (see Exhibit 7 at 63).

8. The MassHealth representative was willing to approve the appellant for 20 minutes, three times a day, seven days a week and 10 minutes, two times a day, seven days a week for feeding for the time that the PCA spends holding the appellant's head and body. Testimony.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.²
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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

² ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

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...

...Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality.

130 CMR 450.204(A)-(B). Certain services MassHealth does not cover as part of the PCA program include “medical services available from other MassHealth providers...assistance in the form of cueing, prompting, supervision, guiding, or coaching...[and] services provided by family members.” 130 CMR 422.412.

The MassHealth representative, a registered nurse, reported that MassHealth also relies upon the PCA Operating Standards when reviewing a prior authorization request for PCA services. These Operating Standards establish the standard of care in helping determine that requests meet the definition of medical necessity under the MassHealth rules and regulations. The standards state, and the MassHealth representative confirmed, that certain services must be performed by “a skilled clinician, parent, legal guardian or designee,” and among such services is “feeding a child with a high aspiration risk.” PCA Operating Standards, Exhibit 7 at 63.

At issue here is whether MassHealth was within its discretion to modify the appellant’s request for PCA hours in assistance with feeding. As the MassHealth representative offered to reinstate 9.5 hours per week for that task, I will decide whether the appellant is entitled to more than what was offered at hearing.

The MassHealth representative stated at hearing that the reason for the denial of feeding hours was due to the appellant’s risk of aspiration. She reported that the PCA Operating Standards indicate that such a task would be considered a skilled service that must be performed either by a skilled clinician, such as a nurse, or a parent/guardian and cannot be covered under the PCA program. This is supported by the regulations, which do not allow payment for services which can be performed by another MassHealth provider or a parent/guardian.³ Further, the regulations require medically necessary services to follow a particular standard of care. See 130 CMR 450.204(A)-(B).

Although there was testimony that the appellant has no history of aspiration and has had a negative swallow test in the past, her mother made frequent reference to the fact that the appellant is at risk of choking when she eats, especially because she suffers from seizures. As such,

³ MassHealth has a Home Health Agency program that includes coverage of skilled nursing visits. See *generally*, 130 CMR 403.415.

the evidence before me is clear that the appellant is a high aspiration risk, and that standard of care requires her to be fed either by a skilled clinician or by a parent/guardian. Because the regulations state that MassHealth will not cover PCA services for tasks that can be performed by another MassHealth provider or that are expected parental tasks, MassHealth was within its discretion to modify the appellant's prior authorization request for payment of PCA services for feeding.

At hearing, the MassHealth representative offered a modification of coverage to 20 minutes, three times per day, seven days per week for large meals and 10 minutes, two times per day, seven days per week for small meals, totaling 9.5 day/evening hours weekly. Therefore, I order MassHealth to modify the appellant's approved PCA hours to reflect that change. The appeal is thereby APPROVED in part and DENIED in part.

Order for MassHealth

Issue a new notice approving the appellant for an extra 9.5 day/evening hours, or 39.5 hours total. Such hours should be retroactive to the start date of March 20, 2023.

Notification of Your Right to Appeal to Court

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

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

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