

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Dismissed in part; Approved in part | Appeal Number: | 2305203 |
| Decision Date: | 4/5/2024 | Hearing Date: | 02/02/2024 |
| Hearing Officer: | Emily Sabo | | |

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, Optum



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

APPEAL DECISION

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|---------------------------|--|--------------------------|---|
| Appeal Decision: | Dismissed in part; Approved in part | Issue: | Prior Authorization; Personal Care Attendant Services |
| Decision Date: | 4/5/2024 | Hearing Date: | 02/02/2024 |
| MassHealth's Rep.: | Kelly Rayen, RN | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Quincy Harbor South (Telephone) | 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 May 22, 2023, MassHealth modified the Appellant's prior authorization request for personal care attendant (PCA) services from the requested 29 hours weekly for 43.28 school weeks and 31 hours, 45 minutes weekly for 9 vacation weeks, to 28 hours, 30 minutes weekly for 43.28 school weeks and 29 hours for 9 vacation weeks. Exhibit 1. The Appellant filed this appeal with the Board of Hearings in a timely manner on June 26, 2023. 130 CMR 610.015; Exhibit 2. Modification of a prior authorization request is valid grounds for appeal to the Board of Hearings. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization request for PCA services.

Issue

Was MassHealth correct, pursuant to 130 CMR 422.410(A), (B), and (C), and 130 CMR 450.204(A), to modify the Appellant's prior authorization request for PCA services from the requested 29 hours

weekly for 43.28 school weeks and 31 hours, 45 minutes weekly for 9 vacation weeks, to 28 hours, 30 minutes weekly for 43.28 school weeks and 29 hours for 9 vacation weeks?

Summary of Evidence

The hearing was conducted by telephone. The MassHealth representative, who is a Registered Nurse and clinical appeals reviewer, testified that the Appellant is ■ years old, and his primary diagnosis is autism. The MassHealth representative testified that on May 9, 2023, ARC of the South Shore, a personal care management services agency, submitted a re-evaluation request to MassHealth on the Appellant's behalf for 29 hours weekly for 43.28 school weeks and 31 hours, 45 minutes weekly for 9 vacation weeks. The MassHealth representative testified that by notice dated May 22, 2023, MassHealth modified the request to allow for 28 hours, 30 minutes weekly for 43.28 school weeks and 29 hours for 9 vacation weeks. The time period for this prior authorization request is August 31, 2023, through August 30, 2024. Exhibits 1 & 5.

The MassHealth representative testified that MassHealth modified the request in two activities of daily living: Grooming and Other Healthcare Needs (PCA assistance with excessive laundry). During the hearing, after the presentation of testimony, the MassHealth representative agreed to restore the requested 30 minutes weekly under Other Healthcare Needs for PCA assistance with excessive laundry.

The MassHealth representative testified that MassHealth had modified the request for grooming in the area of shaving during vacation weeks.¹ During school weeks, ARC of the South Shore requested 20 minutes once a week for shaving, which MassHealth did not modify. During vacation weeks, ARC of the South Shore requested 20 minutes for shaving daily. The MassHealth representative testified that MassHealth modified the requested 140 minutes for shaving weekly during vacation weeks to 20 minutes of PCA assistance weekly for shaving.

The Appellant was represented by his mother and guardian, who verified the Appellant's identity. The Appellant's representative testified that her son also has seizures, epilepsy, obsessive compulsive disorder, and self-injury. The Appellant's representative said that she was not sure if ARC of the South Shore had made a mistake in their request, but that the Appellant's need for 20 minutes for shaving occurs on a daily, not weekly basis. The Appellant's representative testified that it is very difficult for the Appellant to remain still, and for the shaving to be performed safely. The Appellant's representative testified that the Appellant needs many more PCA hours than he has been getting and that the Appellant's needs are significantly greater during vacation weeks.²

¹ MassHealth did not modify the requested time for nail care and oral care in the category of grooming, and so it is not in dispute or further discussed.

² As discussed at hearing, if the Appellant's representative believes that the Appellant requires more PCA services, she should contact ARC to ask for an adjustment in the Appellant's PCA hours. MassHealth does not have the authority to increase the PCA hours beyond what was requested by ARC.

Upon inquiry from the hearing officer, the MassHealth representative testified that in 2021, MassHealth allowed for 20 minutes daily for the Appellant's shaving during vacation weeks, for 140 minutes total weekly. The MassHealth representative testified that MassHealth was more generous regarding PCA services during COVID, but that those flexibilities have ended. The Appellant's representative testified that the Appellant's hair growth and need to shave has increased since 2021. The MassHealth representative testified that she could increase the time approved for shaving during vacation weeks to 35 minutes weekly, representing 5 minutes, 7 times a week.

Findings of Fact

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

1. The Appellant is an [REDACTED] year-old man who lives with family members (Testimony, Exhibit 4).
2. The Appellant's primary diagnosis is autism. He also has seizures, epilepsy, obsessive compulsive disorder, and self-injury. His medical history involves developmental delays which inhibit his ability to initiate, follow through, or complete activities of daily living (Testimony, Exhibit 5).
3. On May 9, 2023, ARC of the South Shore submitted a re-evaluation request for PCA services to MassHealth on the Appellant's behalf for 29 hours weekly for 43.28 school weeks and 31 hours, 45 minutes weekly for 9 vacation weeks (Testimony).
4. By notice dated May 22, 2023, MassHealth modified the request to allow for 28 hours, 30 minutes weekly for 43.28 school weeks and 29 hours for 9 vacation weeks 27 hours, 30 minutes of PCA assistance per week (Testimony).
5. The time period for this prior authorization request is August 31, 2023, to August 30, 2024 (Testimony, Exhibit 1).
6. ARC of the South Shore requested, on the Appellant's behalf, PCA assistance with Other Healthcare Needs for 30 minutes weekly (Testimony, Exhibit 5).
7. MassHealth modified the requested time for Other Healthcare Needs to 0 minutes weekly (Testimony, Exhibit 5).
8. ARC of the South Shore requested, on the Appellant's behalf, PCA assistance with the Appellant's grooming, specifically shaving for 140 minutes weekly during school weeks (Testimony, Exhibit 5).

9. MassHealth modified the requested time for shaving during school weeks to 20 minutes weekly (Testimony, Exhibit 5).
10. At the hearing, MassHealth agreed to restore the time for Other Healthcare Needs to 30 minutes weekly and to increase the time for shaving during vacation weeks to 35 minutes weekly (Testimony).
11. In 2021, MassHealth authorized 20 minutes daily for the Appellant's shaving during vacation weeks, for 140 minutes total weekly (Testimony).

Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living and instrumental activities of daily living as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member requires physical assistance with two or more of the following activities of daily living as defined in 130 CMR 422.410(A): (a) mobility including transfers; (b) medications; (c) bathing or grooming; (d) dressing or undressing; (e) range-of-motion exercises; (f) eating; and (g) toileting; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Pursuant to 130 CMR 450.204(A), MassHealth will not pay a provider for services that are not medically necessary; and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary. A 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C),

503.007, or 517.007.

130 CMR 450.204(A).

At the hearing, MassHealth agreed to restore the 30 minutes requested for Other Healthcare Needs weekly. Therefore, this matter is no longer in dispute before the Board of Hearings, and the appeal is DISMISSED IN PART regarding that category. 130 CMR 610.035(A)(8).

There is one area of modification which remains in dispute and requires resolution: grooming, specifically PCA assistance time for shaving during vacation weeks. The MassHealth regulations describe grooming as “physically assisting a member with . . . personal hygiene, or grooming.” 130 CMR 422.410(A)(3). I credit the Appellant’s representative’s testimony that due to the Appellant’s condition it is very difficult for the Appellant to remain still, and for the shaving to be performed safely. I credit the Appellant representative’s testimony that the Appellant’s need for shaving occurs on a daily, not weekly basis. I also note MassHealth’s testimony that in 2021, MassHealth authorized 20 minutes daily for the Appellant’s shaving during vacation weeks, for 140 minutes total weekly. Accordingly, based on this testimony, I find the request for 140 minutes weekly during school vacation weeks to be justified and medically appropriate, and I will APPROVE the requested time for this activity.

Order for MassHealth

Adjust notice of May 22, 2023, to authorize 30 minutes of PCA assistance weekly for Other Healthcare Needs and 140 minutes for shaving weekly during vacation weeks for the prior authorization period of August 31, 2023, to August 30, 2024.

Send notice to Appellant of implementation only; do not include appeal rights.

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.

Emily Sabo
Hearing Officer
Board of Hearings

cc:

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

