

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305250
Decision Date:	9/18/2023	Hearing Date:	08/03/2023
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Interpreter:


Appearance for MassHealth:

Donna Burns, R.N., Optum
Robin Brown, Occupation Therapist, 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:	Denied	Issue:	PA-PCA Services
Decision Date:	09/18/2023	Hearing Date:	08/03/2023
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	
Hearing Location:	Remote (phone)	Aid Pending:	Yes

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 June 7, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on June 19, 2023. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

¹ Appellant did not designate an appeal representative on the Fair Hearing Request Form but at hearing verbally assented to her stepfather to be her appeal representative.

Summary of Evidence

The appellant appeared telephonically and was represented by her stepfather. Her mother also appeared as a witness. MassHealth was represented by a registered nurse who testified telephonically to the following: the appellant's primary diagnosis is Encephalomyelitis. Other medical history includes Hemiparesis, spasticity, dual incontinence, depression, frequent UTI's, chronic headaches and back pain and neuropathic pain. (Ex. 4, p. 9; Testimony).

Stavros Center for Independent Living, the appellant's Personal Care Management ("PCM") Agency, submitted a request on behalf of the appellant for 77 hours and 0 minutes per week, and 2 hours per night. MassHealth modified the request to 69 Hours and 45 minutes per week and approved the 2 hours per night. (Testimony; Ex. 4, p. 3, 8). There were modifications to the Activities of Daily Living (ADLs): Grooming, (physical assist), Eating and Other HealthCare Needs. (Testimony; Ex. 4, p. 18-25).

Regarding Grooming, the PCM agency requested 216 minutes a week. MassHealth modified this to 160 minutes a week. (Testimony; Ex. 4, p. 14). The area modified under Grooming was Total dependence. It was requested for 1 minute an episode, 8 episodes a day, 7 days a week. MassHealth did not give any time to Total dependence because there was no valid explanation why this time was requested. (Testimony; Ex. 4, p. 18). Eating was requested for 630 minutes a week at 25 minutes an episode, 3 times a day, 7 days a week. MassHealth modified this to 420 minutes a week at 15 minutes an episode, 3 times a day, 7 days a week. MassHealth based this modification on the fact appellant was observed sitting up in bed finishing a fine chopped/pureed meal set up in lipped plate and was observed effectively using a spoon and picking up a lightweight bottle with lid/straw to drink. (Testimony; Ex. 4, p. 10, 21). The PCM agency, for the ADL of Other Healthcare Needs, requested time under two categories labeled "other". In one of the "other" categories, time was requested at 2 minutes an episode, 5 episodes a day, 7 days a week. MassHealth modified this to 0, stating time for this "other" task was given under the ADL of Eating. In the second "other" category, time was requested at 7 minutes an episode, 2 times a day, 7 days a week. MassHealth modified this to 0, stating this requested time was duplicative for time approved under Mobility and Passive Range of Motion. (Testimony; Ex. 4, p. 25-26).

Appellants mother and stepfather testified. Each answered questions for each modification when asked by the MassHealth representative. Regarding the time modified to 0 under Grooming, the stepfather stated it was for "this and that" and that if it was in the PCM agency request, appellant probably needs it. He stated he couldn't pinpoint what the requested time was for that was modified under Grooming. Regarding Eating, the stepfather stated appellant cannot pick up a cup and drink with a straw. He said he did not remember appellant eating at the reevaluation. He testified appellant's right hand works but her left hand does not. Appellant's mother testified that appellant has to be told to slow down or to stop. The stepfather said appellant needs care while eating and he sees it as a safety issue. Regarding Other Healthcare Issues, the stepfather stated

not enough time has been allowed because appellant drinks throughout the day and it is unfair.

Findings of Fact

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

1. The appellant is a female in her [REDACTED] who lives in the community. (Testimony; Ex. 4, p. 3).
2. Appellant's primary diagnosis is Encephalomyelitis. Other medical history includes Hemiparesis, spasticity, dual incontinence, depression, frequent UTI's, chronic headaches and back pain and neuropathic pain. (Ex. 4, p. 9; Testimony).
3. Stavros Center for Independent Living, the appellant's Personal Care Management ("PCM") Agency, submitted a request on behalf of the appellant for 77 hours and 0 minutes per week, and 2 hours per night. (Testimony; Ex. 4, p. 3, 8).
4. MassHealth modified the request to 69 Hours and 45 minutes per week and approved the 2 hours per night. (Testimony; Ex. 4, p. 3, 8).
5. The appellant filed this appeal in a timely manner on June 19, 2023. (Ex. 2).
5. There is aid pending. (Ex. 6).
6. MassHealth modified the ADL's of Grooming, Eating and Other Healthcare Needs. (Testimony; Ex. 4, p. 18, 21 and 25).

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

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 or grooming;
- (d) dressing or undressing;
- (e) range-of-motion exercises;
- (f) eating; and
- (g) toileting.

(4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.

(B) 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. A provider must make

those records, including medical records, available to the Division upon request.
(See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 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;
- (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 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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.

See 130 CMR 422.412 (emphasis added).

With the above regulations in mind, the analysis will turn to the disputed activities of Grooming, Eating and Other Healthcare Needs.

Grooming:

In the Tasks column, in the last box with Other and Total dependence, the PCM agency requested 1 minute an episode, 8 episodes a day, 7 days a week next to Total dependence. (Ex. 4, p. 18). The MassHealth representative explained that the tasks that were described in the Comments section were covered by what was approved in the other categories under Grooming, nail care, oral care, hair, shaving, lotion and deodorant. The 1 minute an episode, 8 episodes a day, 7 days a week request was not approved because there was no explanation for the requested time. The appeal representative was asked why the time was requested. He stated that if the nurse wrote it down it was probably needed. In the end, he stated "I can't pinpoint the specifics of it." Since no activity was described or associated with this requested time, there is no medical necessity and therefore the appeal as to Grooming is denied.

Eating:

The PCM agency requested 25 minutes an episode, 3 times a day, 7 days a week for meals. (Ex. 4, p. 21; Testimony). MassHealth modified this time to 15 minutes an episode, 3 times a day, 7 days a week. (Testimony). The MassHealth representative testified the time was modified because during the in person evaluation, appellant was observed "sitting up in bed finishing a fine chopped/pureed meal set up in lipped plate and was observed effectively using a spoon and

picking up lightweight bottle with lid/straw to drink.” (Ex. 4, p. 10). The MassHealth representative stated that this indicated appellant could do some of the Eating activity on her own. The MassHealth representative stated that allotting 25 minutes an episode is a lot of time for someone who can do some eating activities on her own. The appeal representative testified that appellant could pick up a cup and drink with a straw. He expressed a concern that appellant eats too fast and has to be told to slow down. He also stated that he and the appellant’s mother try to let her eat by herself. He testified appellant’s left hand works but her right hand does not. Appellant’s mother stated when appellant has a cup of water, when she puts it down, it spills everywhere. The MassHealth representative stated that the appeal representative’s testimony described the cueing of appellant. This hearing officer agrees. Assistance provided in the form of cueing is not covered. (130 CMR 422.412 (C)). I find the descriptions given by the appeal representative and appellant’s mother of making sure appellant does not eat too fast describes supervising appellant while she eats. Assistance in the form of supervising is not covered by the PCA program. (Id). The appeal representative also testified he and the mother picked a spoon up and give it to appellant, the reasonable inference being appellant then proceeds to use the spoon to eat on her own. MassHealth modifying the time for eating was reasonable. Appellant was observed eating on her own and it was documented. Appellant’s witnesses admitted she can pick up a cup and drink through a straw. They let the appellant try to eat by herself. Appellant has the use of her left hand. Some of the concerns raised by appellant’s mother and appeal representative, such as encouraging appellant to slow down while eating, are supervision of appellant while she eats. This is specifically not covered by the PCA program. MassHealth’s modification to eating was reasonable and supported by the documentary and oral testimony. Appellant’s appeal regarding Eating is denied.

Other Healthcare Needs:

MassHealth modified two areas under this ADL. They are both labeled as Other. (Ex. 4, p. 25). The first Other is for 2 minutes an episode, 5 episodes a day, 7 days a week, for a total of 70 minutes a week. The MassHealth representative testified this time was requested for assistance to bring/set up and maintain fluids, as shown in the comments. (Ex. 4, p. 26). MassHealth modified this time to 0. It is MassHealth’s position this request for time is duplicative of the time approved for Eating, fluids and snacks. (See Ex. 4, p. 21; Testimony). The time under Eating for fluids was approved for 5 minutes an episode, 3 episodes a day, 7 days a week, for a total of 105 minutes a week. (Ex. 4, p. 21). The appeal representative stated he was concerned because the appellant has fluids all day, to keep her hydrated. The MassHealth representative asked if the appellant can drink herself. The appeal representative stated if it is not a real heavy cup, appellant can do it herself. (Testimony). This is similar to what was observed at the in-home evaluation, that appellant was seen drinking on her own while using a straw. (Ex. 4, p. 10). I find the activity where the intake of fluids should be addressed is the ADL of Eating. MassHealth approved time in the amount of 105 minutes a week for fluids. (Ex. 4, p. 21). Requesting more time for fluids under Other Healthcare Needs is unnecessary repetition, where fluids is addressed under Eating. If the evaluator of appellant reasoned more fluids were necessary for appellant, perhaps more time should have been requested under Eating. MassHealth’s modification was reasonable, and appellant has not met

her burden that more fluids under this ADL is medically necessary. Appellant's appeal regarding Other under Other Healthcare Needs, for fluids, is denied.

The second modification MassHealth made under Other Healthcare Needs involves a second category, or task, also labeled Other. The request was for 7 minutes an episode, 2 episodes a day, 7 days a week, for a total of 98 minutes a week. The MassHealth representative testified this was for "Max 2 person assist to stand in place to strengthen core, prevent hip contracture," as reflected in the comments section. (Ex. 4, p. 25-26; Testimony). The MassHealth representative stated the time for this task was modified to 0 because the request was duplicative of the time that was approved under Mobility. (Ex. 4, p. 13). She stated that the total time approved under Mobility was 714 minutes a week. (Testimony; Ex. 4, p. 13-14). The activities covered under the time for Mobility are shown in the comments under Mobility. (Ex. 4, p. 14). A witness for MassHealth, an Occupational Therapist and Registered Nurse with Optum, testified that the concerns raised by appellant's mother and appeal representative were addressed under Mobility. The MassHealth witness stated she has 43 years of experience as an Occupational Therapist in many different settings of home care and rehabilitation. (Testimony). I find this testimony credible and appellant's needs for assistance in standing in place to strengthen core are covered under Mobility. The 714 minutes a week approved under Mobility include 1 person physical assist with mobility; 1 person physical assist with transfers, (Ex. 4, p. 13), and physical assist with repositioning. (Ex. 4, p. 14). The MassHealth witness also testified that there was extra time under Mobility dedicated to walking 15-20 feet; repositioning several times a day; assisted transfers of appellant, when she stands, 6 times a day; time was approved to stand up and sit on toilet, several times a day. (Testimony). The MassHealth witness stated that the concerns of the appellant's mother and appeal representative were approved in other ADL's. I find the testimony of the MassHealth witness credible and logical and the modifications made to this "Other" category under Other HealthCare Needs by MassHealth to be sound. Appellant's appeal regarding this second "Other" under Other Healthcare Needs is denied.

For all the reasons stated above, the appeal is 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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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

Appeal Representative [REDACTED]