


**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part, Approved in part, Denied in part	Appeal Number:	2305321
Decision Date:	08/17/2023	Hearing Date:	08/02/2023
Hearing Officer:	Emily T. Sabo		

Appearance for Appellant:

Appellant's mother/guardian, 
(by telephone)

Appearance for MassHealth:

Mary-Jo Elliott, R.N., clinical reviewer, Optum
(by telephone)



*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:	Dismissed in part, Approved in part, Denied in part	Issue:	Prior Authorization, Personal Care Attendant Services
Decision Date:	08/17/2023	Hearing Date:	08/02/2023
MassHealth Rep.:	Mary-Jo Elliott, R.N.	Appellant Rep.:	Appellant's mother/guardian
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 June 9, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant ("PCA") services from the requested 57 hours, 45 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night, to 48 hours, 15 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on June 29, 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 57 hours, 45 minutes of day/evening PCA assistance per week, to 48 hours, 15 minutes of day/evening PCA assistance per week?¹

Summary of Evidence

The MassHealth representative, who is a Registered Nurse and clinical appeals reviewer, testified that the appellant is a [REDACTED]-year-old man who lives in the community. The appellant's primary medical diagnosis is Down Syndrome, and includes Alzheimer's, hard of hearing, seizure disorder, a history of falls and fractures, recurrent ear and staph infections, and a history of testicular cancer. The MassHealth representative testified that, on May 18, 2023, Tempus Unlimited, Inc., a personal care management services agency ("Tempus"), submitted a re-evaluation request to MassHealth on the appellant's behalf for 57 hours, 45 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night. The MassHealth representative testified that by notice on June 9, 2023, MassHealth modified the request to allow for 48 hours, 15 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night. The appellant is currently receiving aid pending. The time period for this prior authorization request is August 5, 2023, through August 4, 2024 (Testimony, Exhibits 1 & 5).

The MassHealth representative testified that MassHealth modified the request in two activities of daily living (bathing and other healthcare needs) and four instrumental activities of daily living (meal preparation, laundry, shopping, and housekeeping) as follows:

- Bathing
 - 560 total minutes requested weekly modified to 420 minutes weekly
 - Tempus requested 35 minutes twice a day for bathing, and 10 minutes daily for hair washing
 - MassHealth granted the 10 minutes daily for hair washing, and modified the bathing request to allow for 35 minutes once a day, and 15 minutes once a day for a secondary quick wash
- Other Healthcare Needs
 - 35 minutes requested weekly modified to 0 minutes weekly
 - Tempus requested 5 minutes daily for soaking the appellant's feet in vinegar and water and applying ointment
 - MassHealth denied any time for this request

¹ As MassHealth did not modify the requested PCA night hours, that is not at issue in this appeal.

- Meal Preparation
 - 630 minutes requested weekly modified to 315 minutes weekly
 - Tempus requested 90 minutes daily for meal preparation
 - MassHealth modified to allow for 45 minutes daily for meal preparation
- Laundry
 - 90 minutes requested weekly modified to 45 minutes weekly
- Shopping
 - 60 minutes requested weekly modified to 45 minutes weekly
- Housekeeping
 - 60 minutes requested weekly modified to 45 minutes weekly

The MassHealth representative explained that, with bathing, the appellant is dependent on assistance for set-up, water temperature adjustment, and transferring in and out of the tub. The appellant is dependent on assistance for washing, rinsing, and drying due to decreased cognitive skills, attention span, and focus. She explained that due to scalp issues the appellant uses a specialized shampoo. She also explained that Tempus had requested two full “bath soaks” for the appellant daily to help with his skin issues. MassHealth authorized the time as requested for the first bath, which would include PCA assistance for all bathing tasks, including washing and rinsing, etc. The MassHealth representative explained that the time granted for the second bathing was reduced because a thorough cleansing is needed only once daily, and assistance with a soak would require less time from the PCA. She explained that MassHealth approved the requested time for hair washing.

The MassHealth representative testified that the time requested for other healthcare needs (foot soaking and applying ointment) was denied because it was duplicative. She explained that the appellant’s feet are “soaked” during his bathing time and that time already had been granted for applying lotion as part of his grooming tasks. The time allotted for the instrumental activities of daily living was modified to correspond with MassHealth’s calculated averages for those activities.

The appellant was represented by his mother, who is also his guardian. She testified that she and her son live in separate adjoining residences and that, due to her age and health status, she is unable to perform instrumental activities of daily living on his behalf. She testified that there are no other family members who can help them, her health and abilities have declined, and her son needs more PCA services than what Tempus requested. The appellant’s representative testified that due to his seizure disorder the appellant has multiple seizures daily, in which he loses control of his bladder and bowels and needs to be bathed afterward. She testified that when the appellant has ear infections, he has seizures more frequently, with three to five seizures a day. Otherwise, he typically experiences one to two seizures daily. The appellant’s representative also testified that the appellant is bathed frequently due to his recurrent skin and staph infections.

The MassHealth representative agreed to allow the requested time for the instrumental activities of daily living. She approved 90 minutes daily for meal preparation, for a total of 630 minutes weekly.

She approved 90 minutes weekly for laundry, 60 minutes weekly for shopping, and 60 minutes weekly for housekeeping. The MassHealth representative stated that because the appellant already was granted significant time for bathing as well as for bladder and bowel care, she would not increase the time given for bathing and other medical needs. The MassHealth representative also explained that if circumstances have changed and the appellant's representative believes that the appellant requires more PCA services, she should contact Tempus to ask for an adjustment in the appellant's PCA hours. The MassHealth representative explained that she did not have the authority to increase the PCA hours beyond what was requested by Tempus.

Findings of Fact

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

1. The appellant is a [REDACTED]-year-old man who lives in the community (Testimony).
2. The appellant's medical diagnoses include Down Syndrome, Alzheimer's, hard of hearing, seizure disorder, a history of falls and fractures, recurrent ear and staph infections, and a history of testicular cancer (Testimony, Exhibit 6).
3. On May 18, 2023, Tempus submitted a re-evaluation request to MassHealth on the appellant's behalf for 57 hours, 45 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night (Testimony, Exhibit 6).
4. By notice dated June 9, 2023, MassHealth modified the request to allow for 48 hours, 15 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night (Testimony, Exhibit 1).
5. The time period for this prior authorization request is August 5, 2023, to August 4, 2024 (Testimony, Exhibit 1).
6. The appellant's services are in aid pending (Testimony).
7. Tempus requested, on the appellant's behalf, PCA assistance with the appellant's bathing for 80 minutes a day, seven days per week (Testimony, Exhibit 6).
8. MassHealth modified the requested time for bathing to 60 minutes a day, seven days per week (Testimony, Exhibit 6).
9. Tempus requested, on the appellant's behalf, PCA assistance for the appellant's other healthcare needs, specifically soaking his feet and applying ointment, five minutes a day, seven days per week (Testimony, Exhibit 6).

10. MassHealth modified the requested time in this area to zero (Testimony, Exhibit 6).
11. At the hearing, MassHealth agreed to increase the time for meal preparation to 90 minutes daily, for laundry to 90 minutes weekly, for shopping to 60 minutes weekly, and for housekeeping to 60 minutes weekly (Testimony).
12. The appellant has a seizure disorder (Testimony, Exhibit 6).
13. The appellant experiences between 1 and 5 seizures daily (Testimony).
14. The appellant has a history of falls (Exhibit 6).
15. The appellant has issues with incontinence (Testimony, Exhibit 6).
16. The appellant is prone to infections (Testimony, Exhibit 6).
17. Tempus requested PCA assistance for the appellant's grooming. This included 12 minutes a day, seven days a week for "other," which was described as applying deodorant and lotion due to dry skin. MassHealth did not modify this requested time (Testimony, Exhibit 6).

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.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to

receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned instrumental activities of daily living (130 CMR 422.402).

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.

There are two areas of modification which remain in dispute and require resolution: bathing and other health care needs.

Bathing

Regarding bathing, 130 CMR 422.410(A)(3) describes bathing or grooming as "physically assisting a member with bathing, personal hygiene, or grooming." The appellant has documented diagnoses including seizures, incontinence, falls, and skin infections. I credit the appellant's mother testimony that the appellant experiences bowel incontinence during his seizures, that the appellant does not wear incontinence products because of his skin sensitivities, and that he needs to be washed afterwards. I credit her testimony that his bathing and hygiene needs related to these episodes go beyond the time that MassHealth separately authorized for toileting. Therefore, the appellant's bathing is done to "prevent the worsening of, [or] alleviate" the illness and infirmity of the appellant in accordance with 130 CMR 450.204(A)(1). Accordingly, based on this testimony and the Appellant's current medical condition, I find the request for eighty minutes for bathing to be justified and medically appropriate, and I will APPROVE the requested time for this activity.

Other Healthcare Needs

Turning to the time requested for other healthcare needs, specifically soaking the appellant's feet and applying ointment, MassHealth's representative testified that this was duplicative of time that had already been allowed in the categories of bathing and grooming. The appellant has

been authorized for two baths per day, where his feet are soaked. The appellant has also been granted grooming time including 12 minutes daily to apply deodorant and lotion. The MassHealth representative's testimony is persuasive and supported by documentary evidence. MassHealth's modification is justified and the Appellant, who has the burden, did not provide convincing evidence to support that an additional 5 minutes per day is necessary. For these reasons, this portion of the appeal is DENIED.

Instrumental Activities of Daily Living

The four modifications which MassHealth made to the instrumental activities of daily living (meal preparation, laundry, shopping, and housekeeping) were rescinded and essentially approved in full for the appellant at the hearing. As to that portion of the appeal, there is no remaining dispute to address so this appeal is DISMISSED IN PART per 130 CMR 610.051.

Order for MassHealth

Rescind "aid pending." Rescind notice of June 9, 2023. Send notice to the appellant authorizing 57 hours, 10 minutes of day/evening PCA assistance per week, and two nighttime hours per night, for the prior authorization period of August 5, 2023 through August 4, 2024.

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

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.

Emily T. Sabo
Hearing Officer
Board of Hearings

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