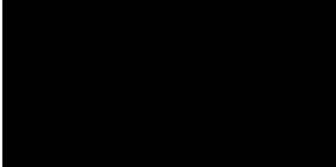


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2306205
Decision Date:	9/13/2023	Hearing Date:	09/01/2023
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

 Mother

Appearance for MassHealth:

Via telephone:

Donna Burns, RN

Nelsy DePaula, RN (Observing)



*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; Dismissed in part	Issue:	Prior Authorization – PCA (Pediatric)
Decision Date:	09/13/2023	Hearing Date:	09/01/2023
MassHealth's Rep.:	Donna Burns, RN; Nelsy DePaula, RN (observing)	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South 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 July 17, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on July 26, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 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.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant, a minor, was represented at hearing via telephone by his mother.

The MassHealth representative testified that the documentation submitted shows the appellant is a minor child with a primary diagnosis of autism. Relevant medical history shows cognitive deficit, developmental delays, unable to initiate, unable to follow through or complete tasks, difficulty with one-step instructions, and hands-on assistance required tasks are time consuming due to resistive, aggressive behavior.

On July 7, 2023, the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services requesting 17 hours and 45 minutes per week of day/evening hours and 2 nighttime hours per night for the dates of service of August 7, 2023 through August 6, 2024. On July 17, 2023, MassHealth modified the request to 14 hours and 30 minutes per week of day/evening hours and 2 nighttime hours per night. MassHealth made modifications related to PCA assistance with the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): mobility (transfers to and from the school bus), oral care, and laundry. At hearing, parties were able to resolve the dispute related to transfers to and from the school bus. Based on testimony, MassHealth fully restored the time as requested for transfers to 5 minutes, 2 times per day, 5 days per week. PCA assistance with oral care and laundry remain at issue.

Oral Care

The appellant requested 10 minutes, 3 times per day, 7 days per week for oral care. MassHealth modified the request to 5 minutes, 3 times per day, 7 days per week because the time requested is longer than ordinarily required. The MassHealth representative stated that 10 minutes, 3 times per day was an excessive amount of time. The American Dental Association recommends brushing teeth twice per day for 2 minutes. Additionally, oral care was discussed at hearing last year and approved at 5 minutes.

The appellant's mother explained that the appellant gets bad build up on his teeth and has to brush them multiple times per day. He gets them brushed after every time he eats, including when he is at school. He also needs to floss after eating, or at least 3 times per day. He is not cooperative with flossing and it takes a long time and they need to take breaks.

MassHealth responded that breaks are not included in time for PCA assistance. MassHealth only approves time for hands-on assistance.

After hearing, the appellant provided a letter from his dentist from a January 20, 2023 appointment. The letter stated that the appellant needs the following dental care: routine dental check-ups once every 6 months; minimize frequency of snacking on sugary/carbohydrate-rich snacks and beverages (water recommended); brush two times per day with fluoride toothpaste, brush after snacks, and floss one time per day; and brush thoroughly along gumline and all surfaces for two minutes to reduce build-up.

Laundry

The appellant requested 30 minutes per week for laundry. MassHealth did not approve any time for it because he lives with a legally responsible family member and it is a parent's responsibility. When a member lives with family members, the family member is expected to provide assistance with most IADLs, which include laundry.

The appellant's mother testified that the appellant's laundry needs to be done separately because he has accidents and gets very messy. He has multiple accidents per day and, between accidents and being messy, changes clothing four to six times per day. He also has an accident at least one time per night, necessitating the sheets being changed daily. The appellant's mother works full-time.

MassHealth responded that the appellant has two nighttime hours which can be used to do the soiled linens.

Findings of Fact

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

1. The appellant is a minor child with a diagnosis of autism (Testimony and Exhibit 4).
2. On July 7, 2023, MassHealth received a prior authorization request for PCA services requesting 17 hours and 45 minutes per week of day/evening hours and 2 nighttime hours per night for the dates of service of August 7, 2023 through August 6, 2024 (Testimony and Exhibit 4).
3. On July 17, 2023, MassHealth modified the request to 14 hours and 30 minutes per week of day/evening hours and 2 nighttime hours per night (Testimony and Exhibit 4).
4. At hearing, the parties were able to resolve the dispute related to PCA assistance with mobility (transfers to and from the school bus). MassHealth fully restored the time as requested for transfers to 5 minutes, 2 times per day, 5 days per week. (Testimony and Exhibit 4).

5. The appellant seeks time for PCA assistance with oral care as follows: 10 minutes, 3 times per day, 7 days per week (Testimony and Exhibit 4).
6. MassHealth modified the request to 5 minutes, 3 times per day, 7 days per week (Testimony and Exhibit 4).
7. The appellant's dentist recommended brushing for two minutes, two times per day and after snacks and flossing one time per day (Exhibit 6).
8. The appellant seeks time for PCA assistance with laundry as follows: 30 minutes per week (Testimony and Exhibit 4).
9. MassHealth did not approve any time for laundry because it is parental responsibility (Testimony).
10. The appellant has multiple accidents during the day, requiring four to six clothing changes every day. Additionally, he has an accident in bed every night, requiring daily linen changes. (Testimony).

Analysis and Conclusions of Law

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).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to PCA assistance with mobility (assistance with transfers to and from the school bus) because at hearing the parties were able to resolve the dispute. MassHealth fully restored the time as requested to 5 minutes, 2 times per day, 5 days per week.

As to the appellant’s request for PCA assistance with oral care, the appeal is denied. MassHealth approved 5 minutes, 3 times per day, 7 days per week for PCA assistance with oral care. The appellant has not demonstrated that additional PCA assistance with oral care should be authorized. The ADA recommends brushing teeth two times per day for two minutes, as did the appellant’s own dentist. The appellant’s dentist also recommended the appellant floss one time per day and brush after snacks. Oral care involves the hands-on activity of brushing and/or flossing. The appellant’s mother testified that the appellant can be uncooperative and they need to take breaks; however, the time allowed for PCA assistance is the hands-on time only. It does not include time for breaks since assistance provided in the form of cueing, prompting, supervision, guiding, or coaching are not covered services in the PCA program and cannot be included in the calculation for PCA assistance (130 CMR 422.412(C)). For this reason, the appellant has not demonstrated that any further PCA assistance is medically necessary with the ADL of oral care.

As to the appellant’s request for PCA assistance with laundry, the appeal is approved. The appellant requested 30 minutes per week for assistance with laundry, but MassHealth did not allow any time because the appellant lives with a responsible family member and laundry, as an IADL, is the parent’s responsibility. The regulation requires family members to provide “**routine laundry**” and “household management” assistance. The appellant’s need for laundry services related to his medical and behavioral conditions exceeds the laundry services anticipated through “household management” or “routine laundry.” The appellant’s mother testified credibly that the appellant’s medical conditions and behaviors result in an excessive amount of laundry being generated daily, including bed linens and four to six clothing changing every day. MassHealth considers individual circumstances in determining the number of hours of PCA services. Not only

does the appellant have excessive laundry needs, but the appellant's mother works full time. Therefore, the appellant's medical condition results in the need for laundry assistance in excess of the routine laundry assistance that would be expected for regular household maintenance. For this reason, the appellant is approved for 30 minutes per week for PCA assistance with laundry, as requested.

For these reasons, the appeal is approved in part, denied in part, and dismissed in part.

Order for MassHealth

Approve 30 minutes per week for laundry and implement the agreement made at hearing for mobility (transfers to and from the school bus).

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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