

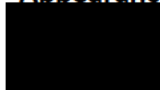
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2306370
Decision Date:	0918/2023	Hearing Date:	08/29/2023
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:	Dismissed in part; Denied in Part	Issue:	Prior Authorization; Personal Care Attendant Services; Pediatric PCA
Decision Date:	09/18/2023	Hearing Date:	08/29/2023
MassHealth's Rep.:	Mary-Jo Elliot, RN	Appellant's Rep.:	██████████
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 July 13, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on July 31, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

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

Summary of Evidence

The appellant is a minor child MassHealth member and was represented by a parent telephonically at hearing. MassHealth was represented telephonically by a clinical nurse reviewer for Optum, which 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 autism with secondary diagnoses of developmental delays, cognitive deficits, and poor gross/fine motor skills. Prior to this request, the appellant was not receiving PCA services through MassHealth. MassHealth received a prior authorization request on the appellant's behalf requesting 8.75 day and evening hours of services per week and 2 nighttime hours per day. On July 13, 2023, MassHealth modified the request and approved the appellant for 7.75 day and evening hours per week and no nighttime hours.

Modifications were made in the areas of mobility, nail care, hair care, and bladder care at night. After hearing, the MassHealth representative agreed to the following modifications:

- Nail care: approved at 5 minutes, one time per week
- Hair care: approved at 5 minutes, one time per day, seven days per week
- Bladder care at night: approved at 10 minutes, two times per night, seven nights per week

Thus, after hearing, the only dispute remained over mobility. The prior authorization request indicated that the request for mobility was necessary for the following reason: "PCA to take consumer down elevator out to school bus and back for safety while mom is at work 5 days/week." Exhibit 5 at 16.

The MassHealth representative testified that, under these circumstances, taking the appellant to the bus while her mother is at work implies that the PCA is babysitting, which is a noncovered service. In the case of pediatric PCA consumers, the parent is always the first person who is responsible for caring for their child; the PCA must be assisting in conjunction with care being provided by the parent.

The appellant's mother reported that the appellant is an autistic child that often takes off running without notice. The PCA assists the appellant's mother with getting the appellant on the bus, they will each take one of her hands, and the mother is carrying the appellant's booster seat. The appellant has low muscle tone, so it can be tough for her to board the bus and she needs assistance. Someone must always be with the appellant because she will take off if she is not directly supervised. The appellant's mother testified that if she is at work, the PCA will have her son with her; there are always two people assisting the appellant with getting on the bus.

The MassHealth representative responded that if the PCA is responsible for getting the appellant on the bus while her mother is at work, this is a one person task, which, for purposes of the PCA

program and under these circumstances, is considered babysitting. She expressed concern about the information regarding the PCA's son because there is no information regarding his age or what he is doing.

Findings of Fact

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

1. The appellant is a minor child MassHealth Standard member who suffers from autism, developmental delays, cognitive deficits, and poor fine and gross motor skills. Exhibit 4, Exhibit 5 at [REDACTED]
2. MassHealth received a prior authorization request on the appellant's behalf requesting 8.75 day and evening hours of services per week and 2 nighttime hours per day. After reviewing the appellant's application, MassHealth modified and approved 7.75 day and evening hours per week and no nighttime hours. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of mobility, nail care, hair care, and nighttime bladder care. Exhibit 1.
4. After hearing testimony, MassHealth agreed to provide the appellant with the following hours:
 - Nail care: approved at 5 minutes, one time per week
 - Hair care: approved at 5 minutes, one time per day, seven days per week
 - Bladder care at night: approved at 10 minutes, two times per night, seven nights per week

Testimony.

5. With respect to mobility, the PCA assists the appellant's mother with getting her on the bus. Each of them take one of the appellant's hands, and the appellant's mother is holding the appellant's booster seat. While the appellant experiences some physical difficulties with getting on the bus, the primary need for two people to assist the appellant with getting on the bus is due to concerns that she would take off running without supervision. Testimony.

6. MassHealth does not pay for any PCA services that could be considered to be babysitting. 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.¹
- (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 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).

¹ 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).

As the MassHealth representative reinstated the requested hours for nail care, hair care, and nighttime bladder care in full, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant's approved hours to include the following:

- Nail care: approved at 5 minutes, one time per week;
- Hair care: approved at 5 minutes, one time per day, seven days per week;
- Bladder care at night: approved at 10 minutes, two times per night, seven nights per week.

Thus, at issue in this case is whether the request of "mobility to the bus" is a service that MassHealth will cover under the PCA program. The definition for mobility can be found at 130 CMR 422.410(A)(1) and involves "physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment." Further as part of the PCA program, MassHealth does not cover "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 are considered a parental responsibility, including babysitting. Exhibit 7 at 79.

Based on the testimony and evidence, the request of "mobility to the bus" does not meet the definition of mobility under the regulations warranting services by a PCA. Although the appellant's mother made reference to some physical difficulty getting on the bus, she made it clear that the overwhelming concern and reason for the PCA's assistance is to prevent the appellant from running away on her way to the bus. The appellant does not seem to suffer from a "mobility impairment" that would prevent her from walking to the bus unassisted; her impairments are clearly cognitive. The appellant's mother and her PCA are not holding her hands to physically assist her because she cannot walk on her own, they are doing it to supervise her. There is no evidence of what the appellant's physical needs are for getting onto the bus, but the record is clear that the actions of the mother and the PCA are supervisory, not mobility.

Therefore, even if I were to find that two people are required to safely ensure the appellant makes it onto the bus, the actions taken by the PCA cannot be considered mobility pursuant to 422.410(A)(A). I find that the appellant has not met her burden of proof with respect to the task of mobility, and the appeal with respect to that task is thereby denied.

Order for MassHealth

Modify the appellant's prior authorization request to reflect the agreements reached at hearing, provide retroactive coverage of those hours to the service start date, and issue a new notice detailing those updates.

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