

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2306918
Decision Date:	11/7/2023	Hearing Date:	09/21/2023
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, R.N.


Interpreter:

Carlos Duenas



*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:	PA-PCA Services
Decision Date:	11/7/2023	Hearing Date:	09/21/2023
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 June 30, 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 August 11, 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.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant is a minor who was represented at hearing via telephone by his mother. The MassHealth representative testified that the documents submitted show that the appellant has a primary diagnosis of autism, with medical history including poor/fine gross motor skills; cognitive deficits; resistive to care needs. (Ex. 4, p. 11; Testimony). The appellant's personal care management (PCM) agency, [REDACTED] submitted a prior authorization request for PCA services requesting 9 hours/30 minutes day/evening hours per week and 0 nighttime hours per night. MassHealth modified the request to 6 hours/15 minutes day/evening hours per week and 0 nighttime hours per night. (Ex. 4, 13-27; Testimony).

There were four modifications based upon MassHealth regulations. MassHealth modified Mobility, physical assist with stairs, from 5 minutes an episode, 2 episodes a day, 5 days a week to 0. MassHealth modified Grooming, nail care, from 5 minutes an episode, 1 episode a day, 1 day a week to 0. MassHealth modified Dressing from 10 minutes an episode, 1 episode a day, 7 days a week to 7 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified Toileting, Bladder Care, from 5 minutes an episode, 2 episodes a day, 7 days a week to 5 minutes an episode, 2 episodes a day, 5 days a week. MassHealth also modified Bladder Care from 5 minutes an episode, 4 episodes a day, 7 days a week to 5 minutes an episode, 4 episodes a day, 2 days a week. These changes reflect hours appellant is in school or at home.

After discussion between the parties and explanation from the MassHealth representative, appellant's mother agreed to the modifications for Dressing and Toileting, Bladder care. Therefore, these parts of the appeal are dismissed.

Regarding the task of Mobility, appellant's mother testified he is clearly a child that needs help going downstairs and why would MassHealth call that help babysitting. Appellant's witness stated that nail cutting is a little different with a child with autism.

Findings of Fact

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

1. The appellant is a minor MassHealth member with a primary diagnosis of autism. (Testimony; Ex. 4, p. 11).
2. MassHealth received a prior authorization request for PCA services requesting 9 hours/30 minutes day/evening hours per week. (Testimony; Ex. 4).
3. MassHealth modified the request to 6 hours/15 minutes day/evening hours per week. (Testimony; Ex. 1).

4. The appellant filed this appeal in a timely manner on August 11, 2023. (Ex. 2).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with Dressing and Toileting, Bladder Care. (Testimony).
6. Appellant requested PCA time assistance with Mobility, assist with stairs, as follows: 5 minutes an episode, 2 episodes a day, 5 days a week. (Testimony; Ex. 4, p. 14).
7. MassHealth modified the time requested for Mobility, assist with stairs, to 0. (Testimony).
8. Appellant requested PCA time assistance with Grooming, nail care, as follows: 5 minutes an episode, 1 episode a day, 1 day a week. (Ex. 4, p. 19; Testimony).
9. MassHealth modified the time requested for Grooming, nail care, to 0. (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**).

The appeal is dismissed as to the following ADL's. At hearing, the parties were able to resolve the dispute related to PCA assistance with Dressing. The appeal representative agreed to the MassHealth modification of 7 minutes an episode, 1 episode a day, 7 days a week for Dressing. (Testimony). Regarding Toileting, Bladder Care, the appeal representative agreed to the MassHealth modification of 5 minutes an episode, 2 episodes a day, 5 days a week and 5 minutes an episode, 4 episodes a day, 2 days a week. (Testimony). As the parties agree on time for these two tasks, the part of the appeal regarding Dressing and Toileting, Bladder Care, is dismissed.

Grooming (nail care):

Under Grooming, nail care, appellant's PCM agency requested 5 minutes an episode, 1 episode a day, 1 day a week. MassHealth modified this task to 0 minutes. (Testimony; Ex. 4, p. 19). The MassHealth nurse testified that they would not approve nail care for a [REDACTED] because that is a parental responsibility. She further testified a PCA could harm a child's nails when cutting them. (Testimony). The nurse testified that Grooming is a broad category and the evaluation breaks it down and specifies certain tasks. She stated that nail care relies on implements that could be harmful to a child if the nails are cut too short. In response to the MassHealth testimony, the appellant's witness testified appellant has autism and that is different from a child without autism. It makes cutting fingernails more difficult. Appellant has shown no medical necessity for the participation of a PCA in Grooming, nail care, of a child. On the other hand, MassHealth's testimony that a parent should be the one cutting a child's nails is valid. A parent would be much more careful with sharp instruments when cutting their own child's nails. Appellant has not met his burden for the allocation of 5 minutes for this task and this part of the appeal is denied.

Mobility:

Appellant requested 5 minutes an episode, 2 episodes a day, 5 days a week for physical assist with stairs. (Testimony; Ex. 4, p. 14). MassHealth modified this time to 0. The evaluation reports the PCA was to assist appellant downstairs out of his house to school van in the morning and afternoon while mother of appellant is working. The MassHealth representative noted that there was an Occupational Therapy Functional Status Report completed for this appellant. (Testimony). She pointed out the report indicates appellant is independent with Mobility and where it is asked if appellant can manage stairs, the answer is "Yes, with minimal assist." (Ex. 4, p. 7-8, 36). The MassHealth representative stated that the time requested is while the mother of appellant is at work and therefore the requested service would be considered "supervision" and "babysitting" and not covered by MassHealth. (See 130 CMR 422.412 (A), (C)). Appellant's mother testified that clearly her son needs help going downstairs and she did not know why the MassHealth representative called it babysitting. (Testimony). Notwithstanding his age, the record is clear, that appellant is independent with Mobility and can manage stairs with minimal assist. The issue arises

when appellant is going to and getting off his school bus. It is reasonable to assume the bus driver is watching appellant get on and off the bus. Appellant needs no help with his mobility and can manage stairs. Appellant has not met his burden why the PCA must accompany him on his walk to and from the school bus. Furthermore, that accompanying walk would be guiding or supervising appellant and that is not covered by the MassHealth regulations. (130 CMR 422.412 (A), (C)).

In summary, based on the above, appellant's request for 5 minutes an episode, 1 episode a week, 1 day a week for Grooming, nail care, is denied. The request for 5 minutes an episode, 2 episodes a day, 5 days a week for Mobility is denied. Concerning Dressing, the appeal representative agreed to the MassHealth modification of 7 minutes an episode, 1 episode a day, 7 days a week. Regarding Toileting, Bladder Care, the appeal representative agreed to the MassHealth modification of 5 minutes an episode, 2 episodes a day, 5 days a week and 5 minutes an episode, 4 episodes a day, 2 days a week. Therefore, the issues involving Grooming, Nail Care and Toileting, Bladder care, are dismissed.

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