

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2308896
Decision Date:	12/20/2023	Hearing Date:	11/03/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

 *via telephone*

Appearance for MassHealth:

Donna Burns, RN *via 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; Denied in part	Issue:	Prior Authorization (PA) Personal Care Attendant (PCA) Services
Decision Date:	12/20/2023	Hearing Date:	11/03/2023
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South		

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 September 11, 2023, MassHealth approved the appellant's request for PCA services but with modifications to the time requested for four activities of daily living (ADLs) and one instrumental activity of daily living (IADL). (See 130 CMR 422.410(A)(1),(3),(4), and B(3); 450.204(A)(1); Exhibit (Ex.) 1; and Ex. 6, pp. 4-6). The appellant filed this appeal in a timely manner on September 26, 2023. (See 130 CMR 610.015(B) and Ex. 2). Modification to a PA request is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's PA request for PCA services but with modifications to the time requested for four ADLs and one IADL.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(1),(3),(4), and B(3); and 450.204(A)(1) in modifying the requested times for the four ADLs and one IADL.

Summary of Evidence

The appellant is an individual under the age of 10 with diagnoses that include autism spectrum disorder and ADNP disorder. (Ex. 6, pp. 10, 11). The appellant's relevant medical history included intellectual disability, global developmental delays, hypotonia, ankle/feet pronation, and poor safety awareness. (Ex. 6, p. 11). On July 27, 2023, the PCM agency performed an initial evaluation for PCA services, which included a functional status report completed by an occupational therapist. (Ex. 6, pp. 7-9; 39-40). The PCM agency submitted the PA for PCA services to MassHealth, requesting 12 hours of PCA services per week for one year. (Ex. 1; Ex. 6, pp. 4-6, 38). In a notice dated September 11, 2023, MassHealth approved five hours of PCA services per week for dates of service from September 8, 2023 through September 7, 2024. (Ex. 1; Ex. 6, pp. 4-6). In approving PCA services, MassHealth modified the times requested for mobility, grooming (specifically nail care), dressing, undressing, and medical transportation. (Ex. 1; Ex. 6, pp. 4-6). During the hearing, the appellant's representative, his mother, testified that she accepted the modifications to the times for mobility, grooming, dressing and undressing.

The PCM agency requested 200 minutes per week for the "PCA to take consumer back and forth to Medical ABA Therapy Program as both parents work full-time[.]" (Ex. 6, p. 32). MassHealth denied this request stating that "YOUR REQUEST FOR PERSONAL CARE ATTENDANT SERVICES BECAUSE THE DOCUMENTATION YOU SUBMITTED INDICATES THAT SOME OF THE SERVICES YOU REQUESTED ARE SERVICES PROVIDED BY FAMILY MEMBERS" and citing to 130 CMR 422.412(F). (Ex. 1; Ex. 4, pp. 4-6).

The MassHealth Representative stated that transportation to this program should not be considered transportation to a medical appointment but, rather, transportation to schooling. She stated that even if it is a medical appointment, MassHealth would not approve time for medical transportation because the appellant is a minor child and medical transportation is an IADL. As an IADL for a minor child, it is something that parents are expected to provide for their children under the regulations.

The appellant's representative stated that the program was, in fact, a medical appointment. The appellant's representative stated that the purpose of the appellant's visits was behavioral analysis. The facility was technically a medical facility, which abided by the standards of a medical office including wearing masks. The appellant's representative stated that there were other children at the facility who received transportation as part of their health insurance. The MassHealth representative replied that this type of program was closer in nature to a training or school facility. MassHealth does not pay for PCA transportation to this type of facility for other PCA recipients.

Findings of Fact

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

1. The appellant is an individual under the age of 10 with diagnoses that include autism spectrum disorder and ADNP disorder. (Ex. 6, pp. 10, 11).
2. The appellant lives at home with his family. (Testimony of the MassHealth representative).
3. The appellant's relevant medical history included Intellectual disability, global developmental delays, hypotonia, ankle/feet pronation, and poor safety awareness. (Ex. 6, p. 11).
4. On July 27, 2023, the PCM agency performed an initial evaluation for PCA services, which included a functional status report completed by an occupational therapist. (Ex. 6, pp. 7-9; 39-40).
5. The PCM agency submitted the PA to MassHealth, requesting 12 hours of PCA services per week for one year. (Ex. 1; Ex. 6, pp. 4-6, 38).
6. In a notice dated September 11, 2023, MassHealth approved five hours of PCA services per week for dates of service from September 8, 2023 through September 7, 2024. (Ex. 1; Ex. 6, pp. 4-6).
7. In approving PCA services, MassHealth modified the times requested for mobility, grooming (specifically nail care), dressing, undressing, and medical transportation. (Ex. 1; Ex. 6, pp. 4-6).
8. During the hearing, the appellant's representative testified that she accepted the modifications to the times for mobility, grooming, dressing, and undressing. (Testimony of the appellant's representative).
9. The PCM agency requested 200 minutes per week for the "PCA to take consumer back and forth to Medical ABA Therapy Program as both parents work full-time[.]" (Ex. 6, p. 32).
10. MassHealth denied this request stating that "YOUR REQUEST FOR PERSONAL CARE ATTENDANT SERVICES BECAUSE THE DOCUMENTATION YOU SUBMITTED INDICATES THAT SOME OF THE SERVICES YOU REQUESTED ARE SERVICES PROVIDED BY FAMILY MEMBERS" and citing to 130 CMR 422.412(F). (Ex. 1; Ex. 4, pp. 4-6).

Analysis and Conclusions of Law

BOH will dismiss a request for a hearing when an appellant has withdrawn a fair hearing request. (See 130 CMR 610.035(A)(2)). During the hearing, the appellant's representative stated that she did not wish to contest the determinations concerning mobility, grooming (specifically nail care), dressing, and undressing. Therefore, with regards to these four ADLs, this appeal is DISMISSED IN

PART.

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (Id.). MassHealth can cover activity time performed by a PCA in aiding with IADLs. (130 CMR 422.411(A)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA, such as transportation to or accompanying the member to medical providers. (130 CMR 422.402; 422.410(B)(3)). When a member is living with family members, however, MassHealth will determine the number of hours of assistance with IADLs based on the assumption that the family members will provide assistance with most IADLs. (130 CMR 422.410(C)(1)). MassHealth does not cover PCA services provided by family members. (130 CMR 422.412(F)). MassHealth, also does not cover any 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. (130 CMR 422.412(A)).

The appellant lives at home with his family. The time requested for medical transportation is an IADL. It is expected and assumed that the family will provide assistance with this IADL. There was no evidence submitted that there was any reason other than the fact that both parents worked to explain why they could not perform this IADL. Both the PCM agency submission and the appellant's representative took pains to explain that the ABA program was a medical program and that transportation to this program was therefore covered by the PCA program. There was a dearth of information presented, however, explaining how this was a medical program. The description of the program from the MassHealth representative indicated that this was closer in nature to educational services. In order to overcome this evidence, the appellant's representative and the PCM agency could have presented more detailed evidence, perhaps describing the nature of the services the appellant receives at this facility, such that this hearing officer would be able to discern that it was, in fact, medical treatment and not educational services. As the evidence presented at this hearing did not indicate that it was more than educational type services, at this time it appears that transportation to this program was not be covered.

For the above stated reasons, with regard to transportation, the appeal is DENIED IN PART.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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