

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2309221
Decision Date:	12/20/2023	Hearing Date:	11/01/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:

 (mother)

Appearance for MassHealth:

Mary Jo Elliott



*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	Issue:	Prior Authorization
Decision Date:	12/20/2023	Hearing Date:	11/01/2023
MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	Mother
Hearing Location:	All Parties Appeared by Telephone	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 September 22, 2023, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant's mother filed this appeal in a timely manner on October 3, 2023. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care services.

Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services.

Summary of Evidence

The appellant has a primary diagnosis of Autism. (Testimony; Exhibit 4). The appellant is limited in communication, is under the age of 18 and lives with family members. The appellant underwent a

re-evaluation for PCA services requesting 19 day/evening hours and 14 nighttime hours each week. MassHealth approved all of the day/evening hours and denied all of the nighttime hours. The MassHealth representative testified that the nighttime hours were for assistance with toileting. The MassHealth representative testified that records show the appellant's mother reporting that the appellant can go to the bathroom on his own during the day with verbal prompts. The appellant does not use absorbency products during the day.

The MassHealth representative testified that the nurse performing the review asked for additional information regarding the need for nighttime hours and was just told that the appellant wears absorbency products at night. The MassHealth representative testified that there were no diagnoses or information presented regarding the need for absorbency products at night. The MassHealth representative testified that the agency does not have records of a recent prior authorization request or approval for absorbency products. MassHealth representative noted that agency records she can find indicate their last payment for absorbency products was in 2017. The appellant's mother testified that the appellant receives absorbency products each month and they are paid for by MassHealth. The last shipment was received in October 2023. The MassHealth representative noted that the appellant was denied nighttime services last year but did not file an appeal. The appellant's mother testified that she was out of the country at the time of that decision and the period to appeal expired when she arrived home.

The MassHealth representative testified that the PCA could do toileting right before the appellant goes to bed to prevent the need for assistance during the night. The MassHealth representative testified that if the appellant uses absorbency products at night, it is unclear why he would need assistance with toileting at night. The MassHealth representative testified that the absorbency products should keep the appellant dry and not require a change during the night.

The appellant's mother testified that even though the appellant uses absorbency products at night, he often wets the bed which requires changing both the appellant and the bed. The appellant's mother testified that even when he does not wet the bed, the appellant wakes up and needs to be changed each night due to discomfort that impacts his ability to sleep. The appellant's mother testified that she pays a PCA out-of-pocket for nighttime services at least three nights each week. On other nights, the appellant's mother or brother assists in changing the appellant's absorbency products and bedding. The appellant's mother testified that the appellant was approved for nighttime services in the past so does not understand this change as the need for nighttime services has not changed. The appellant's mother noted that the appellant's condition has become worse, not better.

Findings of Fact

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

1. The appellant has a primary diagnosis of Autism.

2. The appellant has limited communication, is under the age of 18 and lives with family members.
3. The appellant underwent a re-evaluation for PCA services requesting 19 day/evening hours and 14 nighttime hours each week.
4. MassHealth approved all of the day/evening hours and denied all of the nighttime hours.
5. The appellant requested nighttime hours primarily for assistance with toileting.
6. The appellant can toilet on his own during the day with verbal prompts.
7. The appellant does not use absorbency products during the day.
8. The appellant uses absorbency products at night.
9. The appellant wakes up at night and the absorbency product needs to be changed to prevent further sleep disruption.
10. The appellant often wets the bed requiring changing both the absorbency product and the bed.
11. The appellant's mother pays for nighttime PCA services on her own at least three nights each week.
12. Family members assist the appellant with changes in absorbency products on other nights.

Analysis and Conclusions of Law

MassHealth covers personal care attendant (PCA) services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). 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 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.

- (3) The member, as determined by the personal care 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 and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency. (130 CMR 422.411(A)).

The Personal Care Management (PCM) agency must request prior authorization from MassHealth as a prerequisite to payment for PCA services. (130 CMR 422.416). Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care. (130 CMR 422.416). The regulations define a service as “medically necessary” if 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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

In reviewing records presented by the appellant’s provider, MassHealth authorized the time requested for PCA services during day/evening hours but denied the time requested for nighttime services. The appellant requested a total of 2 hours of services each night. Pursuant to MassHealth Transmittal Letter PCA-13, MassHealth will round up the time to two billable hours when the request for nighttime services is for 120 minutes or less per night and round up to the nearest billable hour for requests for activity time over 120 minutes. In this case, the appellant requested time that was rounded up to two billable hours for nighttime assistance with bladder care.

Activities of daily living include physically assisting a member with bowel or bladder needs. (130 CMR 422.410(A)(7)). While the appellant did not request assistance with this task during the day, the appellant’s mother presented information during the evaluation and at hearing of the need for the appellant to use a pull-up at night despite his ability to toilet during the day with verbal prompts. MassHealth’s assumption that one can go an entire night without toileting or changing a diaper is not reasonable. One cannot make presumptions about the needs of an individual child based on what they consider as best practices for keeping a child clean and dry at night. The appellant’s mother presented testimony at hearing that the time

for assistance with bladder care at night is medically necessary. The decision made by MassHealth was not correct.

This appeal is approved.

Order for MassHealth

Adjust the decision and approve the time requested for nighttime services of 2 hours each night.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

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