

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2310309
Decision Date:	01/25/2024	Hearing Date:	11/28/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:

Via telephone

Irene Kimotho, Mother

Appearance for MassHealth:

Via telephone

Kelly Rayen, R.N.

Donna Burns, R.N. (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	Issue:	Prior Authorization – PCA Services
Decision Date:	01/25/2024	Hearing Date:	11/28/2023
MassHealth's Rep.:	Kelly Rayen, R.N.; Donna Burns, R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South 5 (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 September 26, 2023, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services from the requested 40 hours and 30 minutes of PCA assistance per week for 42.28 school weeks, and 32 hours and 15 minutes of PCA assistance per week for 10 vacation weeks to 35 hours and 15 minutes per week for 42.28 school weeks and 27 hours and 0 minutes per week for 10 vacation weeks (Exhibit 1). The appellant filed a timely appeal on October 30, 2023 (130 CMR 610.015; Exhibit 4).¹ Modification of a PA request is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

¹ The appellant's initial request for a fair hearing was received by the Board of Hearings on October 23, 2023. (Exhibit 2). The Board of Hearings (hereinafter "BOH") dismissed the appeal for failure to include a signature. (Exhibit 3). Upon submission of a signed fair hearing request, BOH vacated the dismissal and scheduled a hearing. (Exhibit 7).

The appeal issue is whether MassHealth was correct in modifying the appellant's PA request for personal care services.

Summary of Evidence

The MassHealth representative, who is a registered nurse and clinical appeals reviewer, testified that the appellant is a teen male. His primary medical diagnoses are autism and allergies (Testimony, Exhibit 8, p. 8). The MassHealth representative testified that [REDACTED], a Personal Care Management ("PCM") services agency submitted a PA re-evaluation request to MassHealth on the appellant's behalf on August 31, 2023, seeking the following:

1. 26 hours, 30 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, each night for a total of 40 hours and 30 minutes per week for 42.28 school weeks, and,
2. 25 hours, 15 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night for 2 nights per week for a total of 32 hours and 15 minutes per week for 10 vacation weeks.

The MassHealth representative testified that by notice dated September 26, 2023, MassHealth modified the requested time to the following:

1. 21 hours, 15 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance each night, for a total of 35 hours and 15 minutes per week for 42.28 school weeks, and
2. 23 hours, 0 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance 2 nights per week, for a total of 27 hours and 0 minutes per week for 10 vacation weeks.

The time period for this PA request is September 26, 2023 through September 25, 2024 (Testimony, Exhibit 1, p. 2).

The appellant's representative appeared at the hearing telephonically. She inquired about the 2 hours of PCA assistance for 2 nights per week for 10 vacation weeks. The appellant's representative explained that the PCM agency mistakenly requested 2 nights as the request should have been for 2 nighttime hours of PCA assistance, 7 nights per week for 10 vacation weeks. She stated that the PCM agency has since corrected the error. The MassHealth representative stated that MassHealth contacted the appellant's PCM agency for clarification regarding the nighttime hours (2 nights per week for 10 vacation weeks). The PCM agency stated to MassHealth that an adjustment would be submitted later to rectify the number of nighttime hours requested for vacation weeks. The appellant's representative stated that she believed the issue was rectified. The MassHealth representative testified that the appellant received 2 nighttime hours of PCA assistance, 7 nights per week for 10 vacation weeks last year. Here, the appellant's PCM agency submitted an adjustment.

She explained that an adjustment is only used for certain situations though and was not applicable in this instance. The appellant's representative asked if the MassHealth representative would correct this error because the appellant received 2 nighttime hours of PCA assistance, 7 nights per week for 10 vacation weeks last year, as the MassHealth representative just stated. The MassHealth representative agreed to modify the 2 nighttime hours, 2 nights per week to 2 nighttime hours 7 nights per week (for an additional 10 hours per week) for 10 vacation weeks, after hearing additional testimony from the appellant's representative. This adjustment resolved this appeal issue. Next, the appellant's representative made inquiry as to the modifications made.

The MassHealth representative stated that there were 2 modifications made.² First, MassHealth modified washing hair, from the requested amount of 15 minutes, once per day, 7 days a week to 10 minutes, once per day, 7 days a week because the time requested for assistance for washing hair is longer than ordinarily required (Testimony). Further, the MassHealth representative explained that the appellant received 5 minutes last year for PCA assistance with washing his hair. Because the appellant is a little older now, MassHealth approved an additional 5 minutes for a total of 10 minutes, once per day, 7 days a week. The appellant's representative testified the appellant may be older, but his sensory issues remain the same. She explained that the appellant's hair is hard to brush so it must be wet and conditioned to be brushed thoroughly. She testified that she would like the requested time of 15 minutes because it takes her and the PCA longer than 15 minutes to wash the appellant's hair because the appellant does not comply, so it is a struggle. The MassHealth representative stated that with the PCA's hands-on assistance, washing the appellant's hair should not take longer than 10 minutes per day, especially given that in this case, 2 people are performing the task. The appellant's representative disagreed.

The second modification made was in the "other health care needs" category. MassHealth modified the requested amount of 20 minutes, 2 times per day, 7 days a week to 0 because the requested service does not meet professionally recognized standards of health care. The MassHealth representative stated that last year MassHealth denied this request as well. The PCM agency documented that the appellant suffers from "eczema breakouts and needs special skin care routine after shower/sponge bath per MD instructions; after shower/sponge: apply Vani cream to all eczema sites, cover with damp cloth for 15 minutes, apply coat of petroleum jelly and leave in place for 15 minutes, wipe off residual ointment; apply medicated creams/ointments and allow to absorb into skin. Consumer with eczema of hands, legs, toes, neck, and groin and history of infections to sites when exacerbations and scratching result in loss of skin integrity. Skin conditions flare when skin care routine is reduced in frequency. Requires hands-on direction to prevent interruption of skin care program" (Testimony, Exhibit 8, pp. 25, 26). The MassHealth representative stated that anything to do with medications is a parental responsibility and not a task for the PCA. She explained that was the reason the same request was denied last year. The appellant's representative testified that she needs to be able maintain her job. The MassHealth representative explained that the PCA

² The MassHealth representative explained that the 2 modifications made applied to both school weeks and to vacation weeks.

program does not cover babysitting services and a parent or legal guardian must be present to supervise the PCA. The appellant's representative stated that she disagreed with both modifications that were made.

Findings of Fact

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

1. The appellant is a teen male and a MassHealth member (Testimony).
2. The appellant's medical diagnoses include autism and allergies (Testimony, Exhibit 8, p. 8).
3. [REDACTED] a PCM agency, submitted a re-evaluation request to MassHealth on the appellant's behalf on August 31, 2023, seeking the following: 26 hours, 30 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, each night for a total of 40 hours and 30 minutes per week for 42.28 school weeks, and 25 hours, 15 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night for 2 nights per week for a total of 32 hours and 15 minutes per week for 10 vacation weeks. (Testimony, Exhibit 8).
4. By notice dated September 26, 2023, MassHealth modified the requested PCA assistance time to: 21 hours, 15 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance each night, for a total of 35 hours and 15 minutes per week for 42.28 school weeks, and 23 hours, 0 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance 2 nights per week, for a total of 27 hours and 0 minutes per week for 10 vacation weeks. (Testimony, Exhibit 1).
5. The PA request at issue covers the time period September 26, 2023 through September 25, 2024. *Id.*
6. [REDACTED] requested, on the appellant's behalf, 15 minutes per day, once per day, every day for washing hair (Exhibit 8, p. 15).
7. MassHealth modified requested PCA assistance time for washing the appellant's hair to 10 minutes, once per day, seven days per week. *Id.*
8. Last year, MassHealth authorized 5 minutes per day for PCA assistance with washing the appellant's hair.
9. The appellant's mother confirmed that she participates in the hair washing task.

10. [REDACTED]. requested, on the appellant's behalf, 20 minutes, 2 times per day, every day for applying medication/lotion due to eczema (other health care needs) (Exhibit 8, p. 25).
11. MassHealth modified requested PCA assistance time for the appellant's other health care needs to 0 hours. *Id.*
12. At hearing, MassHealth agreed to restore 10 nighttime hours (totaling 2 nighttime hours each night) for 10 vacation weeks. (Testimony).

Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (IADLs) as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member 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; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the instrumental activities of daily living (130 CMR 422.402).

Pursuant to 130 CMR 422.410(C), in determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.

(1) When 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.

(2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

Further, pursuant to 130 CMR 422.412, "Non-Covered Services:"

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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

Pursuant to 130 CMR 450.204(A), 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

At issue in this appeal were modifications of time requested for PCA assistance for the appellant with the following ADLs: bathing (washing hair) and other healthcare needs (applying medication to skin).

Washing Hair

██████████. requested on the appellant's behalf, 15 minutes of assistance, every day for shampooing his hair. MassHealth modified the request to 10 minutes of assistance, every day. The appellant's mother disagreed with this modification, arguing that because of the appellant's sensory issues, it takes the full 15 minutes to complete this task. The record does not sufficiently support the appellant's position. The appellant's mother clarified at hearing that two people are assisting with this task – the mother and the PCA. This team approach should help to streamline the process. Further, although the appellant undoubtedly has sensory issues that impact his behavior, as the MassHealth representative noted at hearing, the PCA program only covers the time for actual hands-on assist. Behavior management tasks such as waiting, cueing, and redirecting are not covered services. MassHealth has provided adequate support for its determination here, and this portion of the appeal is denied.

Other healthcare needs (applying skin care)

██████████. requested on the appellant's behalf, 20 minutes, 2 times per day, 7 days a week. MassHealth denied the request on the basis that this task is the responsibility of a parent or legal guardian. The appellant, however, is a teen and but for his disability, would likely be capable of independently applying medicated cream. I conclude that in this circumstance, assistance with this task should not be considered a parental responsibility. MassHealth's PCA program specifically includes assistance with medication as a covered task, and in this instance, the appellant has demonstrated that assistance with this task is warranted. This portion of the appeal is approved.

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

Order for MassHealth

Restore the 10 nighttime hours each week for 10 vacation weeks, as agreed upon at hearing.

Restore time requested for assistance with other healthcare needs (20 minutes, 2 times per day, 7 days a week).

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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