

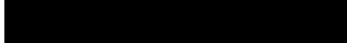
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2310574
Decision Date:	1/18/2024	Hearing Date:	12/08/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN

Mary-Jo Elliott, RN - 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	Issue:	Prior Authorization; PCA; Toileting; Anticipatory Services
Decision Date:	1/18/2024	Hearing Date:	12/08/2023
MassHealth's Rep.:	Kelly Rayen, RN; Mary-Jo Elliott, RN	Appellant's Rep.:	Mother
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 September 29, 2023, MassHealth modified the appellant's request for personal care attendant services, allowing fewer hours than were requested. (Exhibit 1; 130 CMR 450.303.) The appellant filed this timely appeal on October 30, 2023. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, 422.411, in determining that the appellant's nighttime toileting interventions are not covered by the PCA program.

Summary of Evidence

On or around September 18, 2023, the appellant's personal care management ("PCM") agency submitted a prior authorization reevaluation requesting personal care attendant ("PCA") services for the time period of October 23, 2023, through October 22, 2024. The appellant requested 14 hours per week of day/evening PCA services, and they also requested two hours per night. The appellant is a minor child with the primary diagnosis of autism, with associated developmental delays.

MassHealth made one modification, denying the appellant's request for nighttime toileting assistance. The prior authorization requested day/evening toileting assistance six times per day for Bladder Care and once per day for Bowel Care.¹ The appellant also request Bladder Care twice per night at 10 minutes per instance of assistance. MassHealth's practice is to round up nighttime hours, and the minimum amount of assistance awarded is two hours per night.

The reason given for the requested nighttime toileting assistance was: "resistive with care, cognitive deficit, cannot initiate a task-does not know how." (Exhibit 5, p. 19.) MassHealth's representative explained that the agency requested additional information and were told that the appellant is incontinent, and his parents need assistance at night because they work fulltime jobs during the day.

The appellant's mother explained that her son has worn diapers in the past, but he still had leaks that required his clothing and bed linens to be changed. He then needs to be resettled for bed. As part of a developmental plan toward independence, they have been working on potty training. During the day he receives reminders to use the bathroom, and require some assistance, but he does not wear diapers anymore. He also finds the diapers to be uncomfortable, and he will remove them during the night, which lead to more leaks. They wake the appellant up around 2 a.m. and bring him to the bathroom in an effort to control his nighttime incontinence.

MassHealth's representative felt that this was an "anticipatory" intervention, and therefore not a covered service. Further, she testified that adding clothing over a diaper will often prevent a child from being able to remove it if they are resistive to wearing it.² The appellant's mother felt that would be a developmental step backward and did not align with their clinical goals of maximizing his independence.

Findings of Fact

¹ The total number of interventions differs depending on whether the member is in school, but this distinction is irrelevant to the analysis of nighttime hours.

² MassHealth's argument is that diapers are a less costly, more conservative treatment option, and therefore nighttime services would not be "medically necessary" under 130 CMR 450.204.

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

1. The appellant is a minor child with the primary diagnosis of autism, and he has associated developmental delays. (Exhibit 5, p. 8; testimony by the appellant's mother.)
2. On or around September 18, 2023, the appellant's PCM agency submitted a prior authorization reevaluation requesting PCA services for the time period of October 23, 2023, through October 22, 2024. The request sought 14 hours per week of day/evening PCA services, and two hours per night. (Exhibit 5; testimony by MassHealth's representative.)
3. The requested day/evening interventions for Bladder Care were approved by MassHealth. The appellant sought 10 minutes, twice per night for Bladder Care to physical assist him in getting up to go to the bathroom to avoid incontinence accidents, and to help with cleaning him up when an accident occurs. (Exhibit 5, pp. 19-20; testimony by MassHealth's representative and the appellant's mother.)
4. The appellant is woken once per night and brought to the bathroom as part of a plan toward developing his independence with toilet use. (Testimony by the appellant's mother.)

Analysis and Conclusions of Law

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

(130 CMR 422.410(A).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover time waiting or downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(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 [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412.)

The daytime assistance with toileting was allowed without question, and the nighttime assistance is the same service. There is nothing in MassHealth’s rules that disallows time because it is “anticipatory.” Many of the services provided by a PCA occur irregularly, and time is allowed based upon general averages of how long the task occurs and how many times per week it is required. Further, the appellant’s nighttime toileting assistance is not “anticipatory,” it is scheduled

assistance to avoid the need for the “anticipatory” intervention of cleaning up an incontinence episode. The appellant’s mother did state that the appellant only requires one intervention per night. However, this is a distinction without a difference, as the instructions on the PCA request form indicate, any nighttime assistance of less than two hours should be rounded up to two hours. (See Exhibit 5, p. 32.)³

Finally, MassHealth provided no argument as to why using diapers at night would be an appropriate option for the appellant. Presumably, MassHealth’s theory is that diapers would be a less costly alternative to paying a PCA to wake the appellant up, but cost is only one prong of the test for “medical necessity” under 130 CMR 450.204(A). The less costly alternative must also be “comparable in effect . . . and suitable for the member” The appellant’s mother testified that his toileting schedule is part of a broader program to encourage the appellant’s development toward independence, and that using diapers would hinder this development. Therefore, MassHealth erred in denying the appellant’s requested nighttime hours, and this appeal is APPROVED.

Order for MassHealth

Restore the appellant’s two hours per night of PCA assistance from the start of the prior authorization period, October 23, 2023.

³ The PCA Operating Standards are non-published, sub-regulatory guidance regarding how PCM agencies should request services. This document is not available on MassHealth’s website, but it has been made available pursuant to a public records request. (Available at <https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf> (last visited January 9, 2024).)

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.

Christopher Jones
Hearing Officer
Board of Hearings

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