

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2310867
Decision Date:	1/16/2024	Hearing Date:	12/07/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayan, RN, Optum



*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:	1/16/2024	Hearing Date:	12/07/2023
MassHealth's Rep.:	Kelly Rayan, RN, Optum	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 October 5, 2023, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1A; Exhibit 1B). The appellant filed an appeal in a timely manner on November 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 was represented telephonically by his mother who verified his identity. MassHealth was represented by a registered nurse consultant with Optum, the agent of MassHealth that

makes prior authorization determinations for personal care attendant (PCA) services. The appellant is a child who has a primary diagnosis of autism. (Testimony; Exhibit 4). The appellant is non-verbal and requires assistance with all of his personal care needs. (Testimony; Exhibit 4). The appellant does not recognize his needs, is not able to initiate care, follow simple verbal direction or sequence tasks. (Testimony; Exhibit 4). The appellant is unable to make his needs known. (Testimony; Exhibit 4). The appellant cries when something is wrong and over the past year he has begun screaming when he wants something, which can be intimidating to others due to his size. (Testimony; Exhibit 4). The appellant displays many unsafe behaviors, including bolting, and attempts to climb out of windows. (Testimony; Exhibit 4). The appellant's home is equipped with many safety features including alarms on all windows, extra locks on the doors and safety covers on the doorknobs. (Testimony; Exhibit 4). The appellant has an unsteady gait due to ataxia and poor coordination resulting in multiple falls in school and at home. (Testimony; Exhibit 4). The appellant has poor fine motor skills and is unable to grasp utensils. (Testimony; Exhibit 4). The appellant's allergy shots have resumed every four weeks after being held during the pandemic. (Testimony; Exhibit 4). The appellant's eyes often swell and itch when experiencing allergies. (Testimony; Exhibit 4). The appellant was diagnosed with GERD and often has nausea. (Testimony; Exhibit 4). The appellant requires small, frequent meals to prevent vomiting. (Testimony; Exhibit 4). The appellant has had two emergency room visits and 2 urgent care visits related to conjunctivitis. (Testimony; Exhibit 4). The appellant wears glasses and they frequently break due to agitation or outbursts. The appellant goes to school. (Testimony; Exhibit 4).

MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services. (Testimony; Exhibit 4). The appellant requested 36.5 day/evening hours for weeks when he is in school and 39.0 hours for school vacation weeks. (Testimony; Exhibit 4). MassHealth modified this request and approved 34.75 day/evening hours for weeks when the appellant is in school and 36.75 hours for school vacation weeks. (Testimony; Exhibit 4). The dates of service are October 17, 2023 to October 16, 2024. (Testimony; Exhibit 4). MassHealth modified the time requested for 2 tasks. (Testimony; Exhibit 4).

The first modification was to the time requested for eating. The appellant requested 20 minutes, 2 times each day, 5 days each week and 20 minutes, 3 times each day, 2 days each week for assistance with eating when the appellant is in school; and 20 minutes, 3 times each day, 7 days each week for school vacation weeks. MassHealth modified this request and approved 15 minutes, 2 times each day, 5 days each week and 15 minutes 3 times each day, 2 days each week for weeks when the appellant is in school; and 15 minutes, 3 times each day, 7 days each week for school vacation weeks. The MassHealth representative testified that the time is for hands-on assistance, not time for when the individual is eating or needing direction. The MassHealth representative noted that the appellant was approved for 10 minutes last year.

The appellant's mother testified that the appellant needs assistance with spoons and other utensils. The appellant's mother testified that the meal itself takes 45 minutes or longer. The appellant's mother testified that the appellant requires physical hands on hand assistance with eating. The appellant's mother testified that some of the appellant's physical, emotional and

behavioral conditions have gotten worse. The appellant has issues with fine motor skills and needs assistance with bringing utensils to his mouth. The appellant's mother has attempted to use modified utensils, but the appellant has refused to use them. The appellant's mother testified that the appellant's diet has changed from only soft foods to being able to eat more regular foods. The appellant's mother testified that the appellant is about the same physically since last year, but worse behaviorally, which makes things more difficult for the PCA in completing tasks. The appellant's mother testified that the appellant requires a great deal of hands-on physical assistance during the course of a 45-minute meal. The appellant's mother testified that the 20 minutes requested is low in comparison to what is actually needed. The appellant's mother testified that the appellant requires physical assistance with each bite of the meal as well as with drinking liquids. The appellant can use a sippy cup, but at times he also requires hands-on assistance with drinking.

The second modification was to the time requested for laundry. The appellant requested 60 minutes each week for assistance with laundry. MassHealth modified this request and approved 30 minutes each week for laundry. The MassHealth representative testified that it is the responsibility of the parent to perform instrumental activities of daily living (IADLs). The MassHealth representative noted that there are things that MassHealth takes into consideration such as incontinence when considering time for assistance with IADLs for children. The MassHealth representative noted that the appellant was approved for 30 minutes last year.

The appellant's mother testified that she thought that 30 minutes might be sufficient but the appellant's incontinence at night results in having to change bedding each morning including the blanket and comforter. The appellant's mother testified that the family does most of the laundry but the need to change the appellant's bedding each night results in having to go to the laundromat. The appellant's mother testified that they have purchased extra bedding to try and reduce the number of times they go to the laundromat, but someone goes to the laundromat at least two times each week to take care of the excess laundry.

Findings of Fact

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

1. The appellant is a child who has a primary diagnosis of autism.
2. The appellant is non-verbal and requires assistance with all his personal care needs.
3. The appellant does not recognize his needs, is not able to initiate care, follow simple verbal direction or sequence tasks.
4. The appellant is unable to make his needs known.

5. The appellant cries when something is wrong and over the past year he has begun screaming when he wants something which can be intimidating to others due to his size.
6. The appellant displays many unsafe behaviors, including bolting and attempts to climb out of windows.
7. The appellant's home is equipped with alarms on all windows, extra locks on the doors, and safety covers on the doorknobs.
8. The appellant has an unsteady gait due to ataxia and poor coordination resulting in multiple falls in school and at home.
9. The appellant has poor fine motor skills and is unable to grasp utensils.
10. The appellant was diagnosed with GERD and often has nausea.
11. The appellant requires small, frequent meals to prevent vomiting.
12. MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services.
13. The appellant requested 36.5 day/evening hours for weeks when he is in school and 39.0 hours for weeks when he is on vacation.
14. MassHealth approved 34.75 day/evening hours for weeks when the appellant is in school and 36.75 hours for weeks when the appellant is not in school.
15. The dates of service are October 17, 2023 to October 16, 2024.
16. The appellant requested 20 minutes, 2 times each day, 5 days each week and 20 minutes, 3 times each day, 2 days each week for assistance with eating for weeks that he is in school.
17. The appellant requested 20 minutes, 3 times each day, 7 days each week for school vacation weeks.
18. MassHealth approved 15 minutes, 2 times each day, 5 days each week and 15 minutes 3 times each day, 2 days each week for assistance with eating for weeks that he is in school.
19. MassHealth approved 15 minutes, 3 times each day, 7 days each week for school vacation weeks.

20. The appellant requires assistance with all utensils.
21. A meal can take 45 minutes or longer.
22. The appellant has issues with fine motor skills and needs assistance in bringing utensils to his mouth.
23. The appellant's mother has attempted to use modified utensils but the appellant has refused to use them.
24. The appellant's diet has changed from eating soft foods to being able to eat more regular foods.
25. The appellant is about the same physically since last year, but worse behaviorally.
26. The appellant's behavior impacts the ability of the PCA to perform tasks.
27. The appellant requires physical assistance with each bite of the meal as well as drinking liquids.
28. The appellant can use a sippy cup, but at times he requires hands on assistance with drinking.
29. The appellant requested 60 minutes each week for assistance with laundry.
30. MassHealth approved 30 minutes each week for assistance with laundry.
31. MassHealth determined that this was a service provided by family members which include parents of a minor member.
32. The appellant is incontinent at night and his bedding needs to be changed daily.
33. The bedding includes blankets and comforters.
34. The appellant has extra blankets and comforters, but not enough for an entire week.
35. Regular cleaning of blankets and comforters involves the use of a laundromat.
36. The PCA goes to the laundromat at least two times each week.

Analysis and Conclusions of Law

MassHealth covers personal care 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 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. assistance with medications or other health related needs;
 - c. bathing/grooming;
 - d. dressing or undressing;
 - e. passive range-of-motion exercises;
 - f. eating; and
 - g. toileting.
- (4) MassHealth 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 these conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth 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)).

Activities of daily living include physically assisting a member to eat. (130 CMR 422.410(A)(6)). This can include assistance with tube feeding and special nutritional and dietary needs. (130 CMR 422.410(A)(6)). Records and testimony demonstrate that the appellant requires the time requested for eating as the appellant's diet has changed in the past year from soft food to eating more solid foods, the appellant has poor fine motor skills, is unable to grasp utensils, and

a diagnosis of GERD and frequent nausea require the appellant to eat small, frequent meals to prevent vomiting. The appellant requires physical assistance with each bite of the meal as well as with drinking liquids. Additionally, changes in the appellant's behavior make things more difficult for the PCA in completing tasks. This part of the appeal is approved.

Instrumental activities of daily living include physically assisting a member with household management tasks that are incidental to the care of the member including: laundry, shopping and housekeeping. (130 CMR 422.401(B)(1)). The appellant's mother presented testimony to support the need for additional time for laundry due to the appellant's incontinence and need to clean all bedding more than one time each week. This part of the appeal is approved.

As noted above, the decision made by MassHealth regarding modifications made to the time requested for eating and laundry was not correct. This appeal is approved.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve the time requested for eating and the time requested for laundry as of October 17, 2023:

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