

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Dismissed in part	Appeal Number:	2311315
Decision Date:	02/1/2024	Hearing Date:	12/15/2023
Hearing Officer:	Scott Bernard	Aid Pending:	Yes

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN *via* telephone

Interpreter:



*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:	Denied in part; Dismissed in part	Issue:	Prior Authorization (PA) Personal Care Attendant (PCA) Services
Decision Date:	02/1/2024	Hearing Date:	12/15/2023
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Mother
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 October 31, 2023, MassHealth modified the appellant's PA request for 15.5 hours a week in PCA services and approved 12 hours a week in PCA services, because MassHealth determined that time requested for PCA assistance with five activities of daily living (ADLs) did not meet medical necessity and/or PCA criteria. (See 130 CMR 422.410 and Exhibit (Ex.) 1; Ex. 5, pp. 4-6). The appellant filed this appeal in a timely manner on November 9, 2023 and received aid pending appeal. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth determination regarding the scope and amount of assistance is valid grounds for appeal. (See 130 CMR 610.032(A)(5)).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in determining that the time requested for PCA assisted with certain ADLs should be modified.

Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, appeared telephonically and testified to the following. According to the information submitted by Northeast Arc Inc. (the PCM agency), the appellant is a male under the age of 18 with primary diagnoses of down syndrome and scoliosis. (Ex. 5, p. 8). On October 13, 2023, the PCM agency submitted a PA reevaluation request for 15 hours, 30 minutes of PCA services per week for one year. (Ex. 5, p. 36). On October 31, 2023, MassHealth issued a determination modifying the request to 12 hours per week. (Ex. 1; Ex. 5, pp. 4-6). The dates of service for are from November 10, 2023 through November 9, 2024. (*Id.*). MassHealth made modifications to five activities of daily living (ADLs): oral care, hair care, lotion application, dressing, and undressing. (Ex. 1, p. 2; Ex. 5, p. 6). The appellant's mother, who represented him telephonically during the hearing, stated that she did not contest the modifications MassHealth made to the times for oral care, hair care, dressing, and undressing.

For the one remaining ADL, the MassHealth representative stated that the PCM agency requested five minutes, one time per day, seven days per week for application of lotion. (Ex. 5, p. 17). MassHealth modified that time to three minutes, one time per day, seven days per week because the time requested was longer than ordinarily required for someone with his physical needs. (Ex. 1, p. 2; Ex. 5, p. 5). The appellant's mother stated that she required at least the amount of time the PCM agency requested. The appellant's mother explained that she applies the cream and needs the PCA to help. The appellant's mother stated that the appellant requires lotion application up to four times a day because he has severe eczema, and the mother has a shoulder injury that makes the application more difficult.

The appellant's mother stated that overall, the appellant requires more time for PCA services. The appellant's mother was told that the appeal could only address the time for activities that MassHealth modified and that she should contact the PCM agency if the appellant required more time for the other activities that MassHealth approved as the PCM agency requested.

Findings of Fact

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

1. The appellant is a male under the age of 18 with primary diagnoses of down syndrome and scoliosis. (Ex. 5, p. 8).
2. On October 13, 2023, the PCM agency submitted a PA reevaluation request for 15 hours, 30 minutes of PCA services per week for one year. (Ex. 5, p. 36).
3. On October 31, 2023, MassHealth issued a determination modifying the request to 12 hours per week. (Ex. 1; Ex. 5, pp. 4-6).

4. The dates of service for are from November 10, 2023 through November 9, 2024. (Ex. 1; Ex. 5, pp. 4-6).
5. MassHealth made modifications to five activities of daily living (ADLs): oral care, hair care, lotion application, dressing, and undressing. (Ex. 1, p. 2; Ex. 5, p. 6).
6. The appellant did not contest the modifications MassHealth made to the times for oral care, hair care, dressing, and undressing. (Testimony of the appellant's mother).
7. The PCM agency requested five minutes, one time per day, seven days per week for application of lotion . (Ex. 5, p. 17).
8. MassHealth modified that time to three minutes, one time per day, seven days per week because the time requested was longer than ordinarily required for someone with his physical needs. (Ex. 1, p. 2; Ex. 5, p. 5).
9. The appellant's mother has a shoulder injury that makes it more difficult to perform this task in the modified time. (Testimony of the appellant's mother).

Analysis and Conclusions of Law

BOH will dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). In the hearing, the appellant's mother stated that she did not dispute the modifications to oral care, hair care, dressing, and undressing. With respect to these four ADLs the request for the hearing is hereby DISMISSED.

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 covers activity time performed by a PCA in aiding with ADLs and IADLs. (130 CMR 422.411(A)). ADLs include certain specified activities that are fundamental to an individual's self-care and include physically assisting the member with grooming, which includes the application of lotions. (130 CMR 422.410(A)(3)).

MassHealth does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if, amongst other things, 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)(1)).

The record shows that the appellant requires the application of lotion to both his upper and lower body. The PCM agency requested five minutes per day, but MassHealth only approved three

minutes per day. The appellant's mother testified that the application of lotion requires the participation of both PCA and her. The appellant's mother stated that the appellant had severe eczema, which is not a diagnosis found in the material the PCM agency submitted, and that he required multiple applications of lotion per day. Although the appellant's mother testified credibly, nothing else in the record supports approving a greater amount of time for this activity than what MassHealth determined was correct, which was three minutes per day.

For the above stated reasons, the appeal is DENIED IN PART.

Order for MassHealth

Aid pending should be removed and all modifications should go into effect from the beginning of the PA period.

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