

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2312570
Decision Date:	3/1/2024	Hearing Date:	01/04/2024
Hearing Officer:	Thomas Doyle		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, R.N. (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:	Dismissed in part; Denied in part	Issue:	Prior Authorization – PCA Services
Decision Date:	3/1/2024	Hearing Date:	01/04/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 November 20, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on December 3, 2023. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant is a minor who was represented at hearing via telephone by his mother.

The MassHealth representative testified appellant has a primary diagnosis of Down Syndrome. (Ex. 4, p. 7; Testimony). Appellant demonstrates cognitive and behavioral disabilities indicating he is autistic. (Ex. 7, p. 35). The appellant's personal care management (PCM) agency, Tempus Unlimited, Inc., submitted a prior authorization request for PCA services requesting 20 hours/30 minutes per week. MassHealth modified the request to 4 hours/15 minute per week. (Ex. 4, 11-29; Testimony).

There were six modifications based upon MassHealth regulations. MassHealth modified Mobility, taking appellant to and from the bus, from 5 minutes an episode, 2 times a day, 5 days a week to 3 minutes, 2 times a day, 5 days a week. Mobility for nighttime was requested at 1 minute a night, 7 days a week. MassHealth denied any time for this nighttime request. Bathing was requested at 30 minutes an episode, 1 time a day, 7 days a week. MassHealth modified Bathing to 20 minutes an episode, 1 time a day, 7 days a week. Grooming, combing hair, was requested at 3 minutes an episode, 1 time a day, 7 days a week. MassHealth modified this to 1 minute an episode, 1 time a day, 7 days a week. Grooming, shaving, was requested for 5 minutes an episode, 1 time a day, 4 days a week. MassHealth modified this to 2 minutes an episode, 1 time a day, 4 days a week. Dressing was requested at 3 minutes an episode, 1 time a day, 7 days a week. MassHealth modified this to 1 minute an episode, 1 time a day, 7 days a week.

After testimony by the mother of appellant and discussion between the parties, the parties were able to resolve the dispute related to Mobility, to and from the bus, and agreed to 3 minutes an episode, 2 times a day, 5 days a week for this task. (Testimony). Therefore, this part of the appeal is dismissed. Regarding Grooming, hair, after testimony from the mother, MassHealth agreed to reinstate the requested time and the parties agreed on 3 minutes an episode, 1 time a day, 7 days a week. (Testimony). Therefore, this part of the appeal is dismissed. Regarding Dressing, after testimony of the mother of appellant and discussions between the parties, the parties agreed on 2 minutes an episode, 1 time a day, 7 days a week for this task. (Testimony). Therefore, this part of the appeal is dismissed.

Appellant's mother testified that appellant goes to the bathroom at night and then he is given a drink and something to eat before being guided back to bed. She testified that he flops on the floor at night because he does not want to go back to bed and he has to be picked up and put back to bed. She requested this time remain as requested. Regarding bathing, the mother confirmed appellant is a two person assist for bathing. In testifying about shaving, the mother confirmed appellant has a small mustache. She testified 5 minutes is needed because appellant pulls away and needs to be calmed down.

Findings of Fact

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

1. The appellant is a ■-year-old MassHealth member with a primary diagnosis of Down Syndrome. (Testimony; Ex. 4, pp. 7, 34).
2. Appellant is Autistic due to demonstrating cognitive and behavioral disabilities. (Ex. 7, p. 35).
3. MassHealth received a prior authorization request for PCA services requesting 20 hours/30 minutes per week. (Testimony; Ex. 4).
4. MassHealth modified the request to 4 hours/15 minutes per week. (Testimony; Ex. 1).
5. The appellant filed this appeal in a timely manner on December 3, 2023. (Ex. 2).
6. At hearing, the parties were able to resolve disputes related to PCA assistance with Mobility, to and from the bus; Grooming, hair; and Dressing. (Testimony).
7. The appellant seeks time for PCA assistance with Bathing, as follows: 30 minutes an episode, 1 time a day, 7 days a week. (Testimony; Ex. 4, p. 14).
8. MassHealth modified the requested time for Bathing to 20 minutes an episode, 1 time a day, 7 days a week and appellant is a two person assist for bathing. (Testimony).
9. Appellant requested PCA time assistance with Grooming, shaving, as follows: 5 minutes an episode, 1 time a day, 4 day a week and appellant has a small mustache. (Ex. 4, p. 17; Testimony).
10. MassHealth modified the time requested for Grooming, shaving, to 2 minutes an episode, 1 time a day, 4 days a week. (Testimony).
11. Appellant requested time for Mobility, nighttime, at 1 minute an episode, 7 days a week and appellant is independent with ambulation. (Ex. 7, p. 11; Testimony).
12. MassHealth modified the time requested for Mobility, nighttime, to 0. (Testimony).
13. Appellant is independent in ambulating and toileting (Testimony).
14. Appellant's mother and/or his PCA guide him back to bed at night after he goes to the bathroom (Testimony).

15. Appellant is a two-person assist for bathing, and is resistive when being bathed (Testimony).

16. Appellant has small mustache, and is resistive when being assisted with shaving (Testimony).

Analysis and Conclusions of Law

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 personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.

(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) medications,

(c) bathing or grooming;

(d) dressing or undressing;

(e) range-of-motion exercises;

(f) eating; and

(g) toileting.

(4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 the Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), activities of daily living include the following:

- (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 basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: 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 and bladder needs.

Pursuant to 130 CMR 422.410(B), instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving personal care services; and
 - (c) other special needs approved by the Division as being instrumental to the health care of the member.

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

See 130 CMR 422.412 (emphasis added).

The appeal is dismissed as to the following ADL's. At hearing, the parties were able to resolve the dispute related to PCA assistance with Mobility, to and from the bus. The parties agreed on 3 minutes an episode, 2 times a day, 5 days a week for this task. (Testimony). Regarding Grooming, hair, the parties agreed to the time of 3 minutes an episode, 1 time a day, 7 days a week. (Testimony). The parties agree on the time for Dressing as 2 minutes an episode, 1 time a day, 7 days a week. (Testimony).

Mobility (nighttime):

Appellant requested 1 minute a night, 7 days a week. MassHealth denied time for this nighttime request. Appellant's mother testified that appellant goes to the bathroom at night and then he is given a drink and something to eat before being guided back to bed. She testified that he flops on the floor at night because he does not want to go back to bed and he has to be picked up and put back to bed. She requested this time remain as requested. The MassHealth nurse stated this case was previously deferred for clarification on the nighttime request. (Ex. 4, p. 38). The response of the evaluating nurse is in the record. (Ex. 4, p. 40). The evaluating nurse explained the guidelines to appellant's mother regarding hands on need for the nighttime request. (Id.). The MassHealth nurse noted there is no mention in the clarification about appellant flopping at night, contradicting the mother's testimony. (Id.). The MassHealth nurse noted appellant is independent in ambulating. (Testimony; Ex. 4, p. 12). He is also independent for toileting. (Testimony; Ex. 4, p. 19). The MassHealth nurse stated what was described by the mother is considered babysitting and not covered by the PCA regulations. I find appellant has not met his burden in requesting nighttime hours. Appellant is independent in ambulating and toileting. The mother testified they are guiding appellant back to bed. Assistance provided in the form of guiding and supervision is not covered by the PCA program. (130 CMR 422.012 (C)). The request for nighttime hours is denied.

Bathing:

Appellant requested 30 minutes an episode, 1 time a day, 7 days a week for bathing. MassHealth modified this to 20 minutes an episode, 1 time a day, 7 days a week. The MassHealth nurse testified that appellant was allotted five more minutes this year than last year due to him being bigger. Appellant needs moderate assistance for bathing activities. (Ex. 4, p. 14). Appellant needs assistance getting into the tub. (Id.; Testimony). The reviewer nurse comments that appellant requires a lot of cueing and monitoring. (Ex. 4, p. 15). Appellant's mother states, "we are physically washing him" and due to his autism, the water poured over appellant's head causes him to resist and this resistance draws out the process so they place a towel over his face while washing his hair. (Testimony). The MassHealth nurse asked the mother if appellant is actively participating in bathing but not thoroughly and the mother responded "yeah." (Testimony). The mother confirmed appellant is a two-person assist for bathing. The MassHealth nurse stated that a parent would be the second person and it should not take the PCA more than 20 minutes to bath appellant. The reviewing nurse stated appellant requires "a lot of cueing" and is a moderate level of assist for bathing. (Ex. 4, p. 14-15). The act of cueing is not covered by the PCA regulations. With a two-person assist for bathing, the second person being a parent, MassHealth modification to 20 minutes an episode is not unreasonable based upon the record. The request for 30 minutes for bathing is denied.

Grooming (shaving):

Under Grooming, shaving, appellant's PCM agency requested 5 minutes an episode, 1 episode a day, 4 days a week. MassHealth modified this task to 2 minutes an episode, 1 episode a day, 4 days a week. (Testimony; Ex. 4, p. 16). This ADL involves physically assisting a member in shaving. The mother confirmed appellant has a small mustache. (Testimony; Ex. 4, p. 16). She testified 5 minutes is needed because appellant pulls away and needs to be calmed down. (Testimony). Any time appellant pulls away and needs to be calmed down is not equivalent to his PCA "physically assisting" him with shaving. Appellant has not met his burden for the allocation of 5 minutes for this task, and this part of the appeal is denied.

Therefore, the appeal is dismissed in part and denied in part.

Order for MassHealth

None.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

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