

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part Denied in part	Appeal Number:	2312799
Decision Date:	6/12/2024	Hearing Date:	04/19/2024
Hearing Officer:	Kenneth Brodzinski		

Appearances for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN



*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
Decision Date:	6/12/2024	Hearing Date:	04/19/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Guardian
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated there under.

Jurisdiction

Through notice dated November 20, 2023, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed for this appeal in a timely manner on December 4, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. Prior to hearing, MassHealth submitted a packet of documents that includes a copy of the prior authorization request and accompanying nurse's evaluation (Exhibit B). Prior to hearing Appellant filed two packets of documents which included letters from Appellant's providers and copies of medical records (collectively, Exhibit C). Appellant did not directly refer to the records during the hearing, but the hearing officer did review and consider them prior to issuing this decision.

MassHealth was represented by a clinical nurse reviewer who testified that Appellant is an adult female in her early ■■■ with primary diagnosis of: Rett Syndrome (severe condition of the nervous system), autism and developmental delay. She attends a day school Monday through Friday 8 am to 3 pm year-round.

A Prior Authorization (PA) request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on October 13, 2023, by Ethos for 47 hours and 0 minutes/week for one year. Appellant received 28 hours and 0 minutes per week last year.

MassHealth modified the request on November 20, 2023, to 33 hours and 0 minutes/week for one year extending on and between November 20, 2023, to November 19, 2024.

MassHealth made 12 modifications which decreased time for assistance with the following: mobility/bus transfers; weekend leisure walk; mobility/transfer; bathing; grooming – oral care; grooming – hair; grooming – shaving; dressing; undressing; eating; bladder care; bowel care.

After exchanging testimony, MassHealth agreed to restore time as requested for mobility – bus transfers; mobility/transfers; and grooming – shaving. Appellant did not dispute denial of time to assist with the weekend leisure walk. By the end of the hearing, the following modifications remained in dispute:

BATHING

Appellant requested: 45 minutes 1x per day, 7 days per week, and 25 minutes, 1x per day, 7 days per week; MassHealth modified to 30 minutes, 1x per day 7 days per week, and 10 minutes 1x per day, 7 days per week noting that last year Appellant was approved for 30x1x7 and 10x1x7. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with bathing is longer than ordinarily required for someone with Appellant's physical needs. The MassHealth representative also cited the nurse reviewer's written comment that Appellant requires frequent redirection and prompting (Exhibit B, page 17).

Appellant's Guardian testified that Appellant requires two to three showers per day because of her incontinence. The Guardian testified that Appellant cannot focus and has to be constantly redirected. She stated that Appellant has no attention span, so it is very difficult to bathe her and 30 minutes is not sufficient.

GROOMING/ORAL

Appellant requested 5x2x7; MassHealth modified to 3x2x7 noting that last year Appellant was approved for 3x2x7. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with oral care is longer than ordinarily required for someone with Appellant's physical needs.

Appellant's Guardian restated that Appellant has a very short attention span, so she has to be constantly redirected and convinced to allow the assistance. The Guardian testified that Appellant is resistant and non-cooperative throughout the activity.

GROOMING/HAIR

Appellant requested 6x1x7; MassHealth modified to 5x1x7 noting that last year Appellant was approved for 5x1x7. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with hair is longer than ordinarily required for someone with Appellant's physical needs. The MassHealth representative testified that 5 minutes is the customary maximum for someone requiring maximum assistance with hair grooming.

Appellant's Guardian asserted that 6 minutes was required. She did not provide an explanation as to why 5 minutes was not sufficient.

DRESSING

Appellant requested: 20x1x7, 8x1x7; MassHealth modified to 15x1x7 total noting that last year Appellant was approved for 7x1x7. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(4) asserting that the time requested for assistance with dressing is longer than ordinarily required for someone with Appellant's physical needs.

Appellant's Guardian again relied on Appellant's short attention span and resistance to the assistance to justify the time requested. She also noted that due to her incontinence, Appellant requires two showers every day, sometimes three.

UNDRESSING

Appellant requested 10x1x7, 5x1x7; MassHealth modified to 10x1x7 total noting that last year Appellant was approved for 5x1x7. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(4) asserting that the time you requested for assistance with undressing is longer than ordinarily required for someone with Appellant's physical needs.

Appellant's Guardian again relied on Appellant's short attention span and resistance to the assistance to justify the time requested. She also noted that due to her incontinence, Appellant requires two showers every day, sometimes three.

EATING

Appellant requested 15x3x5, 15x3x2; MassHealth modified to 10x2x5, 10x3x2 noting that last year Appellant was independent for this task. MassHealth cited regulations 130 CMR 422.410(A)(5) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with eating is longer than ordinarily required for someone with Appellant's physical needs. The MassHealth representative also noted that the frequency was reduced by one during school days because Appellant receives lunch in school.

Appellant's Guardian testified that Appellant has a snack when she returns from school. She also explained that the PCA has to prompt Appellant to eat and has to make sure that Appellant eats all that she is supposed to eat.

BLADDER CARE

Appellant requested 10x4x5, 10x6x2; MassHealth modified to 10x3x5, 10x5x2 noting that last year Appellant was approved for 5x5x5, 5x7x2. MassHealth cited regulations 130 CMR 422.410(A)(7) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with bladder care is longer than ordinarily required for someone with Appellant's physical needs.

Appellant's Guardian testified that the number of times Appellant urinates each day varies.

BOWEL CARE

Appellant requested 15x2x5, 15x2x2; MassHealth modified to 10x1x5, 10x2x2 noting that last year Appellant was approved for 7x1x5 and 7x2x2. MassHealth cited regulations 130 CMR 422.410(A)(7) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with bowel care is longer than ordinarily required for someone with Appellant's physical needs.

Appellant's Guardian testified that Appellant sometimes has three bowel movements per day – more if she is experiencing diarrhea which often occurs because of the medications Appellant takes. Appellant's Guardian explained that Appellant can have more than one bowel

movement at home during school days. Appellant's Guardian also testified that Appellant has PICA so she has to be restrained from placing things in her mouth during the activity.

MassHealth agreed to restore the frequency to the requested amount, but maintained that 10 minutes per incident of assistance with bowel care was sufficient.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant is an adult female in her early [REDACTED] with primary diagnosis of: Rett Syndrome (severe condition of the nervous system), autism and developmental delay.
2. Appellant attends a day school Monday through Friday 8 am to 3 pm year-round.
3. A Prior Authorization (PA) request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on October 13, 2023, by Ethos for 47 hours and 0 minutes/week for one year.
4. Last year, Appellant was approved for 28 hours and 0 minutes for one year.
5. MassHealth modified the request on November 20, 2023, to 33 hours and 0 minutes/week for one year extending on and between November 20, 2023, to November 19, 2024.
6. MassHealth made 12 modifications which decreased time for assistance with the following: mobility/bus transfers; weekend leisure walk; mobility/transfer; bathing; grooming – oral care; grooming – hair; grooming – shaving; dressing; undressing; eating; bladder care; bowel care.
7. After exchanging testimony, MassHealth agreed to restore time as requested for mobility – bus transfers; mobility/transfers; and grooming – shaving.
8. Appellant did not dispute denial of time to assist with the weekend leisure walk.
9. Bathing - Appellant requested: 45 minutes, 1x per day, 7 days per week, and 25 minutes 1x per day, 7 days per week.
10. MassHealth modified bathing to 30 minutes, 1x per day, 7 days per week, and 10 minutes, 1x per day, 7 days per week noting that last year Appellant was approved for 30x1x7 and 10x1x7.

11. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with bathing is longer than ordinarily required for someone with Appellant's physical needs.
12. In the comments pertaining to bathing, the nurse reviewer wrote that Appellant requires frequent redirection and prompting (Exhibit B, page 17).
13. Appellant requires two showers per day because of her incontinence.
14. Grooming/oral care - Appellant requested 5x2x7; MassHealth modified to 3x2x7 noting that last year Appellant was approved for 3x2x7.
15. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with oral care is longer than ordinarily required for someone with Appellant's physical needs.
16. Grooming/hair - Appellant requested 6x1x7; MassHealth modified to 5x1x7 noting that last year Appellant was approved for 5x1x7.
17. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with hair is longer than ordinarily required for someone with Appellant's physical needs.
18. 5 minutes is the customary maximum for someone requiring maximum assistance with hair grooming.
19. Dressing - Appellant requested: 20x1x7, 8x1x7; MassHealth modified to 15x1x7 total noting that last year Appellant was approved for 7x1x7.
20. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(4) asserting that the time you requested for assistance with dressing is longer than ordinarily required for someone with Appellant's physical needs.
21. Undressing - Appellant requested 10x1x7, 5x1x7; MassHealth modified to 10x1x7 total noting that last year Appellant was approved for 5x1x7.
22. MassHealth cited regulations 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(4) asserting that the time you requested for assistance with undressing is longer than ordinarily required for someone with Appellant's physical needs.

23. Eating - Appellant requested 15x3x5, 15x3x2; MassHealth modified to 10x2x5, 10x3x2 noting that last year Appellant was independent for this task.
24. MassHealth cited regulations 130 CMR 422.410(A)(5) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with eating is longer than ordinarily required for someone with Appellant's physical needs.
25. MassHealth reduced the frequency by one during school days because Appellant receives lunch in school.
26. Bladder care - Appellant requested 10x4x5, 10x6x2; MassHealth modified to 10x3x5, 10x5x2 noting that last year Appellant was approved for 5x5x5, 5x7x2.
27. MassHealth cited regulations 130 CMR 422.410(A)(7) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with bladder care is longer than ordinarily required for someone with Appellant's physical needs.
28. Bowel care - Appellant requested 15x2x5, 15x2x2; MassHealth modified to 10x1x5, 10x2x2 noting that last year Appellant was approved for 7x1x5 and 7x2x2.
29. MassHealth cited regulations 130 CMR 422.410(A)(7) and 130 CMR 450.204(A)(1) asserting that the time requested for assistance with bowel care is longer than ordinarily required for someone with Appellant's physical needs.
30. Appellant can have more than one bowel movement at home during school days.
31. Appellant has PICA so she has to be restrained from placing things in her mouth during the activity.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity [REDACTED] v. *Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 [REDACTED]

In each instance where an increase from the amount approved last year was sought, Appellant failed to identify or explain any change in Appellant's condition which would warrant the increase.

Appellant's Guardian based the request for more time for assistance with each modification (entirely or in part) on the need for frequent redirection and prompting due to Appellant's

short attention span and lack of focus. These factors were echoed by the comments provided by the nurse reviewer in the written re-evaluation (Exhibit B). However, the MassHealth PCA program does not cover assistance provided in the form of ***“cueing, prompting, supervision, guiding, or coaching”*** (130 CMR 420.422(C)).

BATHING and GROOMING – Oral Care – **modifications upheld**

MassHealth properly applied 130 CMR 420.422(C) insofar as Appellant’s request in time from last year was based solely on the need for redirection and prompting arising from Appellant’s lack of focus and short attention span.

GROOMING/HAIR – **modification upheld**

MassHealth allowed 5 minutes which is the customary time allowed for someone requiring maximum assistance with hair grooming. Appellant’s Guardian provided no basis for why 6 minutes was required or why the allowed 5 minutes was not sufficient.

DRESSING and UNDRESSING – **modifications upheld in part reversed in part**

130 CMR 420.422(C) cited above, supports the reduction in time per incident, but it does not justify the reduction in frequency. The record shows that Appellant experiences daily incontinence and two showers daily. Accordingly, dressing and undressing are supported twice per day. MassHealth is to restore the second incident of dressing (8x1x7) and undressing (5x1x7) as requested.

EATING – **modification upheld**

Frequency was properly adjusted to reflect that during the week, Appellant receives lunch in school. Per the written evaluation, no time to prepare a snack was requested. Time per incidence was properly reduced pursuant to 130 CMR 420.422(C).

BLADDER CARE – **modification upheld**

MassHealth properly reduced the frequency for bladder care by one during the weekday to reflect the fact that Appellant would be at school for at least one incident of bladder care during the weekday.

BOWEL CARE – **modification reversed**

At hearing, MassHealth restored the frequency but maintained the reduction in time to 10 minutes per incident of assistance with bowel care. MassHealth failed to address Appellant’s PICA which was raised by the Guardian. The PICA was confirmed by the letter from Appellant’s

treating MD (Exhibit C). Responding to the PICA would require more hands-on assistance from the PCA throughout the activity, justifying the requested 15 minutes per instance of assistance with bowel care.

For the foregoing reasons, the appeal is approved in part and denied in part.

Order for MassHealth

In addition to time for assistance with mobility – bus transfers; mobility/transfers; and grooming – shaving and the frequency of bowel care restored at hearing, also restore time requested for second incidences of dressing (8x1x7) and undressing (5x1x7) as well as time for task requested for bowel care (15 minutes). All changes effective back to the start of the PA period.

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 the Enrollment Center gives you any problems with implementing 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.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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

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