

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed-in-part	Appeal Number:	2313003
Decision Date:	03/12/2024	Hearing Date:	01/09/2024
Hearing Officer:	Casey Groff		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, R.N., Clinical Reviewer, 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-in-part; Dismissed-in-part	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	03/12/2024	Hearing Date:	01/09/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Reps.:	Parents
Hearing Location:	BOH (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 11/15/23, MassHealth informed Appellant, a minor, that it modified his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant's mother filed a timely appeal on behalf of Appellant on 12/13/23. See 130 CMR 610.015(B); Exhibit 2. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant, a minor, was represented by his mother and father. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a [REDACTED] boy with a primary diagnosis of Cerebral Palsy. See Exh. 4, p. 11. On 10/27/23, MassHealth received an initial prior authorization (PA) request from Appellant's personal care management (PCM) agency, [REDACTED], seeking approval for 47 hours and 15 minutes of PCA services per week (for 42.28 school weeks) and 53 hours and 45 minutes per-week (for 10 vacation weeks) from 11/15/2023 to 11/14/2024. See Exh. 1, p. 3 and Exh. 4 at 2-4.

The request was made pursuant to a 10/6/23 initial evaluation of Appellant, performed by a [REDACTED] registered nurse (nurse evaluator) and occupational therapist (OT evaluator) at the Appellant's home. See Exh. 4. At hearing, the MassHealth R.N. reviewed the PCM nursing assessment and evaluation which indicated that, in addition to his diagnosis of Cerebral Palsy, Appellant is non-verbal and non-ambulatory; he has high/low muscle tone, spasticity, flaccidity, weakness, poor endurance, no fine motor coordination, weak grasp, bilateral foot drop, auditory and tactile sensitivities, and poor sitting balance; he has impaired motor control and is at risk for harm; he is cognitively impaired with cognitive development delays; he has dual incontinence and is not toilet trained; he is unable to support his own weight, unable to follow directions, and unable to complete age appropriate tasks. See Exh. 4. P. 11.

Through a letter dated 11/15/23, MassHealth notified Appellant that it modified his PA request to 23 hours and 30 minutes per-week for 42.28 school weeks and 27 hours and 15 minutes per-week for 10 vacation weeks. See Exh. 1, p. 2. The decision was based on modifications to the following activities of daily living (ADLs): (1) mobility; (2) transfers; (3) repositioning; (4) bathing; (5) grooming/nailcare; (6) grooming/oral care; (7) grooming/other; (8) dressing; (9) undressing; (10) bladder care; (11) bowel care; and (12) other healthcare needs.

The R.N. representative testified that MassHealth did not approve the full amount of time requested for these ADLs because the time requested: (1) was longer than ordinarily required for someone with Appellant's physical needs; and/or (2) was deemed a "parental responsibility" and thus not a reimbursable PCA service. In support of its determination, MassHealth cited regulations 130 CMR 450.204(A)(1) (regarding medical necessity) and 130 CMR 422.410 (regarding the scope of ADL assistance that is reimbursed under the PCA program).

After timely appealing the notice, Appellant's parents submitted a letter of medical necessity, dated 12/27/23, from [REDACTED], Appellant's pediatrician, and primary care provider (PCP). As discussed below, [REDACTED] reviewed each modification in detail to explain why Appellant requires more assistance than approved by MassHealth.

At the hearing, the parties were able to resolve 4 of the 12 modifications. Specifically, MassHealth agreed to approve the amount of assistance requested for (1) mobility at 5x8x2/5x5x5 (school weeks) and 5x8x7 (vacation weeks), and (2) bowel care at 15x1x7.¹ See Exh. 4. Additionally, Appellant's parents accepted MassHealth's modifications to (1) repositioning at 1x8x2 and 1x5x5 (school weeks) and 1x8x7 (vacation weeks); and (2) grooming/other/lotion application at 2x1x7.² See Exh 1. The remaining eight (8) modifications, which remain in dispute, were addressed as follows:

(1) Transfers

The MassHealth representative explained that Appellant's PCM agency requested three (3) minutes of assistance for each transfer episode (3x8x2, 3x5x5; 3x8x7). See Exh. 4. at 15-16. MassHealth modified the request by approving two (2) minutes per episode, but at the same frequency requested by Appellant (2x8x2, 2x5x5; and 2x8x7).

According to the PA request, Appellant is totally dependent for transfers and must be lifted and carried when being transferred. See id. at 16.

Appellant's pediatrician, [REDACTED] agreed with the PCM agency's request, stating that:

[Appellant] requires extra time to be transferred in and out of his wheelchair due to his inability to hold his body upright and his tendency to buck his head backward when being physically manipulated. When being transferred, [Appellant's] high tone is activated through his legs, and when he is in this stiff position he cannot be placed into the wheelchair. A caregiver must hold [Appellant] and physically prompt him to soften his legs by applying pressure to the thighs and behind the knees. When [Appellant's] legs soften, the caregiver must physically place him in the wheelchair and then use one hand to hold him upright while navigating the lap belt and harness straps. Once [Appellant's] lap belt has been fastened, the caregiver must soften his legs again in order to slide his bottom into an appropriate position on the wheelchair seat. Once positioned, [Appellant] must be physically restrained and walked through harnessing. Due to extreme tactile sensitivity, [Appellant's] high tone activates when his hands and arms are manipulated, and caregivers must apply the same technique (moving slowly, applying pressure to soften tone) in order to get his arms through the harness straps. [Appellant] often slides out of position at least once, if not

¹ By approving the requested time, MassHealth effectively rescinded its original decision to modify "mobility" to two (2) minutes per episode and "bowel care" to 10 minutes per episode. See Exh. 1.

² Appellant's PCM agency originally requested 3 minutes per episode for repositioning and 5 minutes per episode for lotion application. See Exh. 4, pp. 15-21.

several times, during this process. For these reasons, [Appellant] requires additional time for attentive, hands-on assistance when being transferred.

See Exh. 5.

At hearing, Appellant's parents testified that safety is a large element in transferring their son and that he requires more than two minutes of assistance for each transfer episode. Due to his tactile sensitivities, Appellant resists care which causes his high tone to activate and causes his limbs to stiffen. Any time the caregiver has to physically maneuver Appellant's body, such as securing him into a harness, it is imperative that the PCA use a slow and deliberate to reduce these tendencies. While one person is technically capable of performing the transfer, it is ideally performed by two people; typically, one parent and the PCA. Appellant's mother testified that she will often help to relieve the stiffness in Appellant's limbs so that the PCA can then physically maneuver his limbs through the harness he is transferring into, i.e. car seat, wheelchair, highchair, etc.

(2) Bathing

Next, the MassHealth representative explained that Appellant requested 40 minutes per-day for a tub bath (40x1x7) and 10 minutes for a "quick wash" (10x1x7). See Exh. 4. at 19-20. MassHealth modified the time for bathing to 15 minutes for a tub wash and five (5) minutes for the quick wash (15x1x7; 5x1x7). See Exh. 1. The MassHealth representative testified that the time requested exceeded normal limits for someone with Appellant's physical needs. She further explained that MassHealth only covers PCA services that involve "hands-on" assistance and any time spent waiting, cueing, or redirecting was not a reimbursable PCA services.

A review of the PA request showed that the PCM nurse evaluator noted that Appellant is dependent for all bathing tasks as he is unable to conceptualize, initiate, sequence, or complete any part of bathing; he must be carried to and from the bathroom, and lifted into and out of the tub; he is unable to freely, fully, safely, or successfully bend, reach, stretch, twist or grasp to retrieve supplies, or wash and dry his body. He also requires a quick wash at the end of the day related to incontinence. See Exh. 4. P. 20.

In her letter of support, entered as Exh. 5, [REDACTED] agreed with the amount of time requested for bathing, writing, in relevant part, the following:

[Appellant] needs full hands-on support while bathing. He cannot hold himself upright and will not remain steady or stable in a chair. The caregiver bathing [Appellant] must provide trunk support, assist in moving to clean all areas, and continually keep a hand behind [Appellant's] head to prevent him from head-bucking. [Appellant] requires full hands-on support while being dried after the bath as well. Due to his tendency to bang his head when he is uncomfortable,

the caregiver must place [Appellant] on a soft, padded surface and continually provide physical restraint to keep him safe throughout the drying process. Due to these requirements, [Appellant] requires additional time for physical assistance with bathing.

Appellant's parents reaffirmed the points raised in [REDACTED] letter, asserting that it requires more than 15 minutes and 5 minutes, respectively, to bathe and quick wash Appellant. Appellant's parents testified that, like all ADLs, bathing is typically and preferably performed by two people. For bathing, Appellant is transferred into an adaptive shower chair. Appellant has the tendency to squirm and buck his head backwards while in the chair. To make cleaning possible, someone has to hold his hand and trunk to support him so the other person can wash him. Once washed, Appellant must be transferred to a soft padded area where one caregiver will help Appellant soften his limbs, i.e. uncross his legs and lift his arms so that the other caregiver can access otherwise inaccessible areas for drying. Appellant's parents detailed that Appellant is incontinent of bladder and bowel and tends to get very dirty during the day, justifying the need for a quick wash in addition to a regular daily bath. They reiterated that there is no time during any of these tasks that consist of waiting and all aspects of care involve hands-on-physical assistance.

(3) Grooming/Nail Care

The parties next addressed MassHealth's modification to "nail care" which falls under the ADL category of grooming. Appellant's PCM agency requested 10 minutes per-week (10x1) for assistance with nail care. See Exh. 4 at 21. MassHealth did not approve any time for assistance with nail care (0x0) because a child at Appellant's age is not expected to trim nails on their own, and therefore it is considered a parental responsibility.

According to the PCM agency's submission, Appellant is dependent for all grooming activities due to his inability to conceptualize, initiate, sequence, or complete any part of the task. See Exh. 4, pp. 21-22. He is unable to grasp or retrieve supplies, or clip and clean fingernails or toenails. Id.

In her letter of support, [REDACTED] agreed with PCM's request for nail care, writing, in relevant part, the following:

Due to extreme tactile sensitivity, [Appellant] does not tolerate others touching or manipulating his hands. He fights nail care and needs to be restrained and distracted or entertained in order to cut his nails and keep them at an appropriate length. Additionally, [Appellant] has a tendency to scratch his face/head while engaging in self-stimulating behavior. Regular nail care is important to prevent him from breaking the skin on his face/head when he

scratches. Because of his tactile sensitivity and resistant behavior, [Appellant] requires extensive hands-on assistance to maintain nail care.

At hearing, Appellant's mother testified that the process of nail care takes significantly longer than one would reasonably expect for a child of Appellant's age. Appellant has sensitivity to being touched, especially when his hands are being manipulated, and resists his caregiver's efforts to trim his nails. Both Appellant's parents expressed their understanding that nail care is a parental responsibility; however, the process is a two-person job that typically one parent will share with the PCA: one to trim the nails and one to keep Appellant calm and prevent him from scratching at himself or his caregiver(s).

(4) Grooming/Oral Care

The parties next addressed the modification to the time requested for "oral care" which also falls under the ADL category of grooming. For this task, Appellant's PCM agency requested 5 minutes per-episode, 2 times per day (5x2x7). See Exh. 4 at 21. MassHealth modified the request and approved 2 minutes per episode (2x2x7) because the time requested was longer than ordinarily expected.

In support of the requested time, the PCM agency again noted Appellant's functional limitations which render him unable to help retrieve, open, or apply toothpaste to a toothbrush, hold a toothbrush, or clean his teeth. See Exh. 4, pp. 21-22.

██████████ wrote in support of the PCM's request for oral care, as follows:

In order to receive the ADA-recommended 2 minutes of brushing twice per day, [Appellant] requires at least 5 minutes of direct, hands-on support and assistance. Due to extreme oral sensitivities, [Appellant] does not easily tolerate others putting things in his mouth, including a toothbrush. When the toothbrush is placed in his mouth, he has a tendency to bite down, pull his head away, or use his hands to swat the brush away. Parents use a timed electric toothbrush and within the two minutes of brushing they only get 1 minute of actual brushing time in. They have to run the timed toothbrush twice to make sure that [Appellant]'s teeth are being cleaned for the full two minutes. Additionally, [Appellant] needs occasional breaks to breathe and gather himself during this process. He thus requires at least five minutes of hands-on support per brushing [episode].

Reiterating the factors cited by ██████████, Appellant's parents explained how their son needs help holding the toothbrush, and that once the toothbrush is in his mouth, he tends to bite down. Again, the process typically involves one person holding the toothbrush and one person touching his jaw to encourage him to loosen his bite. to

**(5) Dressing/
(6) Undressing**

Next, MassHealth testified that Appellant's PCM agency requested 23 minutes daily for dressing (23x1x7), and 20 minutes daily for undressing (20x1x7). See Exh. 4, pp. 23-24. MassHealth modified the time for dressing to 10 minutes daily (10x1x7) and modified the time for undressing to 7 minutes daily (7x1x7). See Exh. 1.

The PCM nurse evaluator noted that Appellant is dependent for dressing and undressing and described that Appellant must be lifted on and off a changing table or bed for clothing changes, and that he requires as-needed clothing changes during the day related to incontinence. See Exh. 4, pp. 23-24.

██████████ wrote in support of the time requested by the PCM agency, as follows:

Due to high tone in his arms and legs, [Appellant] requires extra time to be dressed/[undressed]. He has a strong aversion to getting dressed/[undressed] and caregivers often have to make several attempts to get his arms into shirt sleeves, legs into pants, etc. During this process, [Appellant] resists, fights, and bangs his head if he is not properly restrained. When possible, parents dress [Appellant] together with one person restraining and the other handling clothes. If a single caregiver is to change him, they must do so in a soft, padded area and talk him through the process slowly, giving him time to understand, calm, and process at each step.

See Exh. 5.

██████████ also described how Appellant requires physical prompting when he is given a verbal cue to participate in certain aspects of getting dressed and undressed, such as tapping him on the arm to get him to push or bring his arm through a sleeve. Id.

Appellant's parents testified that dressing and undressing take longer than the respective 10 and 7 minutes approved by MassHealth. This is based on Appellant's tactile sensitivities which cause him to fight through each dressing/undressing episode; as well as the high tone in his extremities, which makes it difficult to bend and unbend his limbs comfortably. It takes several attempts to successfully get his limbs through, or out of, his clothes, and it is preferable to have two people assisting at once. In addition to his regular clothing, Appellant wears ankle braces that are placed/removed during dressing/undressing.

(7) Bladder care:

Next, MassHealth testified that Appellant requested assistance with bladder care at 15 minutes, 6 times daily for 5 school days per-week; and 15 minutes, eight times daily for weekend and vacation days, as follows: 15x6x5 and 15x8x2; and 15x8x7. See Exh. 4, pp. 27-28. MassHealth modified both the time per-episode and the daily frequency by approving 7 minutes, 4x daily on school days and 6x daily on weekend and vacation days, as follows: 7x4x5, 7x6x2; and 7x6x7. See Exh. 1.

At hearing, Appellant accepted MassHealth's modification to the frequency of episodes; but disagreed with MassHealth's decision to modify the time per-episode to 7 minutes.

According to the PA report, the PCM agency noted that Appellant is dependent for all toileting tasks and that assistance involves lifting Appellant onto, and off of, the changing table change his diaper. See Exh. 4, pp. 27-28.

██████████ wrote in support of the PCM agency's request for assistance with bladder care as follows:

[Appellant] is completely dependent upon his caregivers for bladder care. He wears diapers and needs to have them changed for bladder care 6 times per day on average. When assisting [Appellant] through diaper changes, caregivers must first transport him to a safe place. [Appellant] has a strong aversion to being changed, including having his diaper changed, and he resists and fights during the process. When he does this, he has a tendency to violently bang his head, and caregivers must be careful to properly restrain him and change him in an area where he will not harm himself. To minimize the risk of harm and to help reduce fighting, caregivers must slowly talk [Appellant] through the diapering process. This consists of giving him verbal cues, e.g., "Okay [Appellant], now we're going to change your diaper. First we'll remove your pants," then wait for [Appellant] to process and calm. High tone in the legs makes the diapering process especially challenging as [Appellant] tends to kick, straighten, and cross his legs. Caregivers often need to re-fasten the diaper several times during the process to get it secure, as [Appellant] kicks and writhes throughout the process. Due to these factors, [Appellant] requires additional time to be assisted with bladder care.

See Exh. 5.

Appellant's parents testified that bladder care takes longer than 7 minutes for each episode, mainly due to the tightness in, and crossing of, his legs which prevent the PCA from being able to change his diaper. The PCA cannot physically force his legs apart, but rather, must assist Appellant in relaxing by applying pressure to the thighs which allows his body to downregulate. Sometimes the cycle of tightening and relaxing can reoccur several times per episode.

(8) Other Healthcare Needs/Gait Trainer

For the final modification, Appellant's PCM agency requested 40 minutes per-day (40x1x7) for assistance in using a gait trainer. See Exh. 4, p. 31-32. MassHealth modified the request and approved 5 minutes, 2x daily (5x2x7). The MassHealth representative noted that MassHealth also approved time requested for passive range of motion (PROM) exercises. See Exh. 4, pp. 17-18.

Pursuant to its nursing assessment, the PCM agency noted that Appellant was entirely dependent getting in and out of the gait trainer. See Exh. 4, pp. 31-32.

In her letter of support, [REDACTED], described that in addition to assisting Appellant into and out of the device, the PCA must provide hands-on assistance while Appellant is using the gait trainer, as follows:

[Appellant] is completely dependent upon his caregivers to access his gait trainer for physical exercise and development. [Appellant] requires full physical support when getting into the gait trainer, while using the gait trainer, and when getting out of the gait trainer. When getting into the gait trainer, the caregiver must physically place him into the harness while lying on the floor. [Appellant] has high tones in his legs and arms, which makes it difficult to get him into the harness. When his high tone is activated, he tends to resist and fight, which requires the caregiver to restrain him and walk him slowly through the harnessing process. The process here is similar to that described above in dressing/undressing (...). Once [Appellant] is in the harness, he requires further constant hands-on support throughout the standing and walking process in order to promote weight bearing through his legs and feet, weight shifting through the hips. Additionally, caregivers must provide physical assistance to get [Appellant] to initiate the walking process, including providing physical prompts to initiate the process by applying pressure to the thighs and physical touch to the backs of the knees. When [Appellant] begins walking, caregivers must keep their hands on his inner thighs or calves to prevent crisscrossing due to high tone; this is important for [Appellant] to develop the posturally-correct muscle memory required for walking. Thus, [Appellant] requires full hands-on assistance throughout the entire duration of using the gait trainer.

See Exh. 5.

Appellant's parents also testified that, to use the gait trainer properly, the PCA must assist while Appellant is in the gait trainer, in addition to getting him in and out of the trainer. Several physical therapists have directed Appellant's parents and caregivers to use physical prompts to

initiate walking in the trainer. Without this assistance, Appellant will not apply enough pressure through his legs to obtain the intended physical benefits, such as development of appropriate body awareness and walking posture. The PCA also provides assistance by realigning Appellant's legs if/when they cross and repositioning his feet to the floor when needed.

Findings of Fact

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

1. Appellant is a minor child and has a primary diagnosis of Cerebral Palsy; he is non-verbal and non-ambulatory; he has high/low muscle tone, spasticity, flaccidity, weakness, poor endurance, no fine motor coordination, weak grasp, bilateral foot drop, auditory and tactile sensitivities, and poor sitting balance; he has impaired motor control and is at risk for harm; he is cognitively impaired with cognitive development delays; he has dual incontinence and is not toilet trained; he is unable to support his own weight, unable to follow directions, and unable to complete age appropriate tasks.
2. On 10/27/23, MassHealth received an initial PA request from LifePath, Inc., seeking approval for 47 hours and 15 minutes of PCA services per week (for 42.28 school weeks) and 53 hours and 45 minutes per-week (for 10 vacation weeks) from 11/15/2023 to 11/14/2024.
3. Through a letter dated 11/15/23, MassHealth modified the PA request by approving 23 hours and 30 minutes per-week for 42.28 school weeks and 27 hours and 15 minutes per-week for 10 vacation weeks.
4. MassHealth modified Appellant's request for the following categories of care: (1) mobility; (2) transfers; (3) repositioning; (4) bathing; (5) grooming/nailcare; (6) grooming/oral care; (7) grooming/other; (8) dressing; (9) undressing; (10) bladder care; (11) bowel care; and (12) other healthcare needs.
5. At the hearing, MassHealth agreed to approve the amount of assistance requested for (1) mobility at 5x8x2/5x5x5 (school weeks) and 5x8x7 (vacation weeks), and (2) bowel care at 15x1x7.
6. Appellant did not dispute the modifications to (1) repositioning, thus accepting 1x8x2 and 1x5x5 (school weeks) and 1x8x7 (vacation weeks), and (2) grooming other/lotion application, thus accepting two minutes per-episode (2x1x7).

Transferring/Bathing/Dressing/Undressing/Bladder Care

7. Appellant's PCM agency requested three (3) minutes of PCA assistance for each transfer episode at 3x8x2, 3x5x5; 3x8x7.
8. MassHealth modified the request for transfers to 2x8x2, 2x5x5; and 2x8x7.
9. Appellant's PCM agency requested 40 minutes per day for a tub bath (40x1x7) and 10 minutes for a "quick wash" (10x1x7).
10. MassHealth modified the time for bathing to 15 minutes for a tub wash and five (5) minutes for the quick wash (15x1x7; 5x1x7).
11. Appellant requested 23 minutes daily for dressing (23x1x7), and 20 minutes daily for undressing (20x1x7).
12. MassHealth modified the time for dressing to 10 minutes daily (10x1x7) and modified the time for undressing to 7 minutes daily (7x1x7).
13. Appellant requested assistance with bladder care at 15x6x5 and 15x8x2; and 15x8x7.
14. MassHealth modified the request for bladder care to 7x4x5, 7x6x2; and 7x6x7.
15. Appellant did not dispute MassHealth's modification to the approved frequency of bladder care.
16. Appellant is dependent for all aspects of care, including transferring, bathing, dressing, undressing, and bladder care/toileting/diaper changes.
17. The PCA must physically lift Appellant when completing transfers, including transfers to his wheelchair, in and out of the bathroom for bathing, onto a changing table for bladder care/diaper changes, and onto a soft surface for dressing/undressing and post-shower drying.
18. Appellant is unable to hold his body upright requires someone to support his trunk when performing ADLs if not yet harnessed.
19. Appellant tends to buck his head backward and resist care when being transferred, bathed, dressed, undressed, or getting his diaper changed.
20. Due to extreme tactile sensitivity, Appellant's high tone activates when his body is manipulated to complete an ADL, and thus requires the PCA to apply slow and gentle pressure to soften his tone.

21. Assistance with transferring, bathing, dressing, undressing, and bladder care is preferably performed by two individuals, so that one person can address the high tone activation, resistance, and trunk support, while the other person physically assists Appellant in completing the specific ADL.

Grooming/Nail Care/Oral Care

22. Appellant's PCM agency requested 10 minutes per-week (10x1) for assistance with nail care.
23. MassHealth did not approve any time for assistance with nail care (0x0)
24. Appellant's PCM agency requested oral care at 5x2x7.
25. MassHealth modified the request for oral care to 2x2x7.
26. Appellant is dependent for all grooming activities due to his inability to conceptualize, initiate, sequence, or complete any part of the task.
27. Due to extreme tactile sensitivity, Appellant does not tolerate others touching or manipulating his hands, or placing items, such as a toothbrush, in his mouth.
28. Assistance with all grooming activities is preferably performed by two individuals so that one person can address the resistive behaviors while the other physically assists to complete the ADL being performed.

Other Healthcare Needs/Gait Trainer

29. Appellant's PCM agency requested 40 minutes per-day (40x1x7) for assistance in using a gait trainer.
30. MassHealth modified the request and approved 5x2x7 to allow the PCA to assist Appellant in and out of the gait trainer.
31. Appellant's PCA must provide hands-on assistance, not only to get Appellant in and out of the gait trainer, but also to assist Appellant while using the device, such as physically prompting his legs to walk and realigning his legs when they cross.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:³ First, the services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair the member’s functional ability to perform [at least two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). A service is “medically necessary” if:

- (1) 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; 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 MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive assistance with activities of daily living (ADLs) to meet his care needs. MassHealth cover’s PCA assistance for the following ADLs:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL.

- (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

³ PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.002.

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.

See 130 CMR 422.410.

MassHealth will reimburse for the “activity time performed by a PCA in providing assistance with the ADL.” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Transfers

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that the request for three (3) minutes per-episode of transferring is medically necessary and consistent with the regulatory standards above. According to Appellant’s physician, Appellant requires more than two (2) minutes of assistance due his inability to hold his body upright and his tendency to buck his head backward when being transferred.⁴ In addition, Appellant’s high tone is activated during transfers thereby preventing the caregiver from being able to secure him in the harness straps. Therefore, the caregiver must make efforts to help relax and soften his limbs before he can be transitioned appropriately. The evidence demonstrates that MassHealth’s approval of (2) minutes for each transfer episode does not provide sufficient time for the PCA to perform the numerous steps involved in transferring. Given Appellant’s unique medical needs, the PCM agency’s request for three minutes for each transfer episode (requested as: 3x8x2, 3x5x5; 3x8x7) is appropriate and medically necessary.

The appeal is APPROVED as to transfers.

Bathing approval

⁴ MassHealth did not modify the daily/weekly frequency of episodes. For transfers, MassHealth approved the following: 2x8x2 and 2x5x5 (school weeks) and 2x8x7 (vacation weeks).

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that the requests for 40 minutes and 10 minutes per-day, respectively, for a tub bath and quick wash, is necessary and consistent with the regulatory standards above. In its modification, MassHealth authorized only 15 minutes for a daily tub bath and 5 minutes for a daily quick wash (15x1x7; 5x1x7).

The totality of evidence demonstrates that bathing involves not only washing Appellant's body and hair thoroughly, but also providing simultaneous trunk support. Additional complicating factors include Appellant's tendency to stiffen his body and resist care making it more difficult and time consuming to transfer him into the adaptive shower chair, perform all washing functions, transferring him out of the bath, and drying him. The caregiver must ensure he is thoroughly cleaned, both through his daily bath and quick wash, as Appellant is incontinent of both bladder and bowel.

The evidence demonstrates that MassHealth's approval of 15 minutes and 5 minutes does not give the PCA adequate time to perform all necessary steps required in assisting Appellant with a bath and quick wash. Given Appellant's unique medical needs, the PCM agency's request for 40 minutes for bathing and 10 minutes for quick wash is appropriate and medically necessary.

The appeal is APPROVED as to bathing.

Grooming/Nail Care

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that 10 minutes per-week, as requested, is necessary for physical assistance with nail care. Because Appellant is a minor, MassHealth denied any time for this task because it is considered a parental responsibility. At hearing, Appellant's parents credibly testified that they do, in fact, assume this parental responsibility; however, due to their son's condition, they require additional assistance from the PCA to complete the task. The process of trimming nails takes longer than ordinarily expected due to Appellant's tactile sensitivities, causing him to resist care. As such, the PCA will typically trim Appellant's nails while one parent helps calm or redirect Appellant from pulling away or scratching at himself or the caregiver. The evidence shows that both roles require direct hands-on assistance. Because nail care is a two-person task and takes longer than ordinarily required for a child of Appellant's age, the requested time of 10 minutes per week (10x1) is appropriate based on program regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410(A)(3).

The appeal is APPROVED as to nail care.

Grooming/Oral Care

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that five minutes, two times per-day (5x2x7), as requested, is necessary for the PCA to assist Appellant with oral care. MassHealth modified the request by approving only two minutes, twice daily (2x2x7). The PCM agency documented that Appellant is dependent in all aspects of oral care and that additional time is required due to Appellant's tactile sensitivities and resistive behaviors. Appellant's PCP and parents similarly described that it takes five minutes of hands-on assistance to ensure Appellant's teeth are brushed for the full two-minutes, twice a day, as recommended by the ADA. In addition to the physical act of brushing teeth, the caregiver must provide Appellant with a significant amount of redirection, calming, and prompting (via hands) to loosen his jaw. This evidence shows that Appellant's request for five (5) minutes of oral care, 2x per-day is necessary and supported under MassHealth regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410(A)(3).

The appeal is APPROVED as to oral care.

Dressing/Undressing

For the same reasons discussed above, Appellant demonstrated that MassHealth's modification of dressing and undressing to 10 and 7 minutes, respectively, is insufficient to meet his care needs. The PCM agency requested 23 minutes per-day (23x1x7) for dressing and 20 minutes per-day (20x1x7) for undressing. The requested time and level of assistance is adequately supported by the PCM evaluation, the PCP's written submission, and testimony from Appellant's parents. According to these sources, Appellant must first be lifted onto a padded changing table to ensure he is safe. Once on the table, he will resist being changed due to tactile sensitivities. The PCA must take a slow and gentle approach when changing Appellant as his high tone, which causes limb stiffness, makes it difficult to bend his joints comfortably. Additional "as needed" changes are required throughout the day related to his incontinence. The evidence shows that nearly all aspects of dressing and undressing involve physical hands-on assistance and therefore warrant approval of the times requested for each task.

For these reasons, the appeal is APPROVED with respect to dressing at 23x1x7 and undressing at 20x1x7.

Bladder Care Approval

For the same reasons discussed above, Appellant demonstrated that MassHealth's modification of bladder care from 15 minutes per-episode to 7 minutes per-episode, is insufficient to meet his care needs.⁵ The requested time and level of assistance is adequately supported by the PCM evaluation, Appellant's PCP written submission, and oral testimony from Appellant's parents.

⁵ At hearing, Appellant accepted MassHealth's modification to the frequency of daily bladder care episodes from 6x per-day (as requested) to 4x per-day for school days; and from 8x per-day (as requested) to 6x per-day for weekend and vacation days.

According to these sources, Appellant must first be lifted and brought to a designated diapering area for safety. During the changing process, Appellant's legs will tighten and cross frequently. Because Appellant's legs cannot be physically forced apart, the PCA must use a gentle and slow approach to get Appellant to relax his legs, usually by applying some pressure to his thighs to downregulate his system. It is not uncommon for the tightening/relaxing cycle to occur several times in one episode. Only once his legs are relaxed can the PCA perform all the necessary steps to change his diaper and ensure he is adequately cleaned. Appellant thus demonstrated that the time requested, which is comprised almost entirely of hands-on assistance by the PCA, is medically necessary.

Based on the foregoing, the appeal is APPROVED-in-part with respect to Appellant's request for bladder care at 15 minutes per-episode; and is DISMISSED-in-part as Appellant accepted the modification in frequency to 4x per-day on school days and 6x per-day on weekend and vacation days. Accordingly, the appropriate time for bladder care, as detailed in the Order section below is 15x4x5 and 15x6x2 for school weeks; and 15x6x7 for vacation weeks.

Other HealthCare needs/Gait Trainer

For the same reasons discussed above, Appellant demonstrated that his request for 40 minutes of daily PCA assistance with the gait trainer is medically necessary and supported by the aforementioned regulations. See 130 CMR 450.204(A). MassHealth modified the request by authorizing five minutes, 2x per-day (5x2x7) which was intended to cover the time to assist Appellant in and out of the gait trainer. The time approved does not provide the PCA with sufficient time to complete all necessary steps in this process. The evidence shows that the PCA encounters the same complicated factors, as previously detailed, when attempting to secure Appellant into the gait trainer via a harness. Furthermore, the need for assistance is not limited to getting Appellant in and out of the gait trainer, but also the need to assist Appellant when using the gait trainer. At the direction of Appellant's physical therapists, and as recommended by Appellant's physician, Appellant requires physical prompts to initiate walking; as well as periodic efforts to realign and reposition his legs and feet when needed. Appellant has presented sufficient evidence to support his request for 40 minutes of daily assistance with a gait trainer.

The appeal is APPROVED with respect to Appellant's request for "other healthcare needs" at 40x1x7.

Resolved Modifications

The appeal is DISMISSED with respect to the remaining modifications, which the parties stipulated to at hearing, as follows:

- ***Mobility:*** 5x8x2/5x5x5 (school weeks) and 5x8x7 (vacation weeks), as requested by

Appellant

- **Bowel care:** 15x1x7, as requested by Appellant;
- **Repositioning:** Appellant accepted modification to: 1x8x2 and 1x5x5 (school weeks) and 1x8x7 (vacation weeks),
- **Grooming other/lotion application:** Appellant accepted modification to 2x1x7.

Order for MassHealth

For the PA period beginning from 11/15/2023 to 11/14/2024, approve Appellant for PCA services as follows:

1. Transfers: 3x8x2 and 3x5x5 (school weeks); 3x8x7 (vacation weeks);
2. Bathing: 40x1x7 (tub wash) and 10x1x7 (quick wash);
3. Nail Care: 10x1x1;
4. Oral Care: 5x2x7;
5. Dressing 23x1x7;
6. Undressing 20x1x7;
7. Bladder Care 15x4x5 and 15x6x2 (school weeks); 15x6x7 (vacation weeks);⁶
8. Other Healthcare Needs/Gait Trainer: 40x1x7, as requested.

As agreed at the hearing, rescind modifications and restore requested time for the following ADLs:

9. Mobility: 5x8x2/5x5x5 (school weeks) and 5x8x7 (vacation weeks),
10. Bowel care: 15x1x7

Modifications to repositioning and lotion application may remain in place, as agreed to by Appellant.

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.

Implementation of this Decision

⁶ This order applies only to the time per-episode, which was approved for 15 minutes as requested. The modification in frequency was not disputed and therefore requires no change.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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