

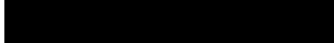
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part, Denied in part, Approved in part	Appeal Number:	2400709
Decision Date:	3/28/2024	Hearing Date:	02/05/2024
Hearing Officer:	Christine Therrien		

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, Approved in part	Issue:	PCA services
Decision Date:	3/28/2024	Hearing Date:	02/05/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South - Telephonic		

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 12/28/23, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services. (130 CMR 422.410 and Exhibit 1). The appellant filed this appeal in a timely manner on 1/16/24. (130 CMR 610.015(B) and Exhibit 2). Modifications of a request for assistance are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The issue is whether MassHealth was correct, under 130 CMR 422.410, 422.412, and 450.204, in modifying the appellant's PA request for PCA services.

Summary of Evidence

The MassHealth representative testified that a request for 9 hours and 30 minutes per week for 37.28 school weeks, and 10 hours and 15 minutes per week for 15 vacation weeks, was submitted by [REDACTED] on 11/7/23. The MassHealth representative testified that the prior authorization (PA) for PCA services is applicable for dates of service beginning 12/28/2023 and ending 12/27/2024. The MassHealth representative testified that MassHealth authorized 7 hours and 15 minutes per week for 37.28 school weeks, and 8 hours and 15 minutes per week for 15 vacation weeks. The appellant was [REDACTED] years old at the time of the PA request. The appellant's primary diagnoses are autism and ADHD. The appellant lives with his mother and has a sibling who receives PCA services. The MassHealth representative testified that modifications were made to the appellant's request for Activities of Daily Living (ADLs) which include transfers, grooming (nail care, hair, and lotion), and eating. The MassHealth representative restored the time requested for hair care, 3 minutes, once a day, seven days a week. The appellant's mother agreed to the modifications for nail care (zero minutes) and the application of lotion 2 minutes, 1 time per day, 7 days per week, so these issues are **dismissed**.

The remaining two modifications are transfers and eating. The MassHealth representative testified the appellant requested 3 minutes, 2 times a day, 5 days a week for transfers on and off the school bus. MassHealth modified this request to zero because MassHealth considers this parental responsibility. The MassHealth representative testified the appellant requested 10 minutes, 2 times per day, 5 days per week for eating and 10 minutes, 3 times per day, 2 days per week for eating. MassHealth modified the request to 5 minutes per episode. MassHealth modified these requests because they are longer than ordinarily required for someone with the appellant's needs. The MassHealth representative testified that the appellant is listed as needing minimal assistance with eating and does not require hands-on assistance. The MassHealth representative testified that the evaluation states that the appellant "prefers to pick up food with fingers and run away instead of staying seated at the table." The MassHealth representative testified that MassHealth will not pay for PCA time spent waiting between bites.

The appellant was represented by his mother. The appellant's mother testified that the appellant needs two people for the bus transfers because the appellant has a sibling who also receives PCA services and also requires assistance for bus transfers. The appellant's mother testified that she cannot manage both children because the appellant runs away. The appellant's mother testified that the appellant is in an applied behavior analysis (ABA) program that teaches him to eat, but the appellant is hungry after the ABA therapist leaves due to him taking a certain medication, which is an appetite suppressant.

The MassHealth representative noted that the sibling had an appeal for the modification of PCA hours, but at the time of the hearing, a decision had not been issued.¹

¹ The appellant's sibling has diagnoses of autism, ADHD, and PICA, per the findings of fact in appeal number 2313760.

Findings of Fact

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

1. [REDACTED] submitted a request for 9 hours and 30 minutes per week for 37.28 school weeks, and 10 hours and 15 minutes per week for 15 vacation weeks, to MassHealth on 11/7/23.
2. The dates of service are from 12/28/2023 to 12/27/2024.
3. MassHealth authorized 7 hours and 15 minutes per week for 37.28 school weeks, and 8 hours and 15 minutes per week for 15 vacation weeks, via notice dated 12/28/23.
4. The appellant was [REDACTED] years old at the time of the PA request, and the appellant's primary diagnoses are autism and ADHD.
5. The appellant lives with his mother and has a sibling who also receives PCA services.
6. Modifications were made to the appellant's request for ADLs which include transfers, grooming (nail care, hair, and lotion), and eating.
7. The MassHealth representative restored the time requested for hair care, 3 minutes, once a day, seven days a week (Testimony).
8. The appellant's mother agreed to the modifications for nail care (zero minutes) and the application of lotion, 2 minutes, 1 time per day, 7 days per week, so these issues are **dismissed**.
9. The appellant requested 3 minutes, 2 times a day, 5 days a week for transfers onto and off the school bus.
10. MassHealth modified this request to zero because MassHealth considers this parental responsibility.
11. The appellant requested 10 minutes, 2 times per day, 5 days per week of PCA assistance for eating, and 10 minutes, 3 times per day, 2 days per week of PCA assistance for eating.
12. MassHealth modified the request to 5 minutes per episode. MassHealth modified these requests because they are longer than ordinarily required for someone with the appellant's needs.

13. The documentation submitted with the PA request reflects that the appellant needs minimal assistance with eating and does not require hands-on assistance.
14. MassHealth will not pay for time for the PCA to wait for the appellant between bites of food.
15. The appellant has a sibling who also receives PCA services and requires assistance for bus transfers.

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 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.

(130 CMR 422.403(C)).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home. (130 CMR 422.401 *et seq.*). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA. (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLs). (130 CMR 422.410(A)).

120 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

- (A) Activities of Daily Living. 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.
- (B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth agency as being instrumental to the health care of the member.

The requested services must also be medically necessary for prior authorization to be approved. (130 CMR 450.204). 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) 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 MassHealth. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the MassHealth 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.

Regulations at 130 CMR 422.412 describe non-covered PCA services, as follows:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program. (130 CMR 422.412).

- (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; or²**
- (G) surrogates, as defined in 130 CMR 422.402.
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

(emphasis added)

Per 130 CMR 503.007, MassHealth is the payer of last resort and only pays for health care and related services when no other source of payment is available, except as otherwise required by federal law.

² 130 CMR 422.402 Family Member - the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.

- (A) Health Insurance. Every applicant and member must obtain and maintain available health insurance in accordance with 130 CMR 505.000: Health Care Reform: MassHealth: Coverage Types. Failure to do so may result in loss or denial of eligibility unless the applicant or member is
 - (1) receiving MassHealth Standard or MassHealth CommonHealth; and
 - (2) younger than 21 years old or pregnant.
- (B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available
 - (1) through the member's health-insurance, if any; or
 - (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.

MassHealth received a PA request for PCA services on the appellant's behalf from his PCA agency. The appellant is ■ years old, and he lives with his mother and siblings. The appellant's primary diagnoses are autism and ADHD.

The appellant requested 10 minutes, 2 times per day, 5 days per week of PCA assistance with eating, and 10 minutes, 3 times per day, 2 days per week of PCA assistance with eating. MassHealth modified the requests to 5 minutes per episode. MassHealth modified these requests because they are longer than ordinarily required for someone with the appellant's needs. The appellant is listed as needing minimal assistance with eating and does not require hands-on assistance. The appellant picks up food and runs away with it, thus requiring the PCA to wait for him. MassHealth does not pay for the time the PCA has to wait or cue the appellant to eat. For this reason, the appeal of the modification for eating is **denied**.

The appellant requested 3 minutes, 2 times a day, 5 days a week for transfers on and off the school bus. MassHealth modified this request to zero because MassHealth considers this parental responsibility. The appellant's mother needs PCA assistance getting the appellant and his sibling on and off the bus because both children are disabled. While certain tasks are not covered if they can be performed by a family member, the appellant's mother testified that she cannot hold both children at the same time because the appellant runs away. The PCA assists with ADLs that require physical assistance. The appellant's mother testified that she must hold onto both children while walking them to and from the bus. Since both children get on and off the bus at the same time, the appellant's mother can't provide physical assistance for both children simultaneously. For this reason, the request for time to assist with transfers to and from the bus is **approved at** 3 minutes, 2 times a day, 5 days a week.

Order for MassHealth

Rescind the 12/28/23 notice, and reinstate the PCA assistance time requested for transfers on and

off the bus retroactively to 12/28/23. Implement all adjustments agreed to at hearing.

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

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.

Christine Therrien
Hearing Officer
Board of Hearings

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