

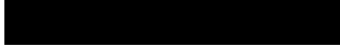
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part, Approved in part	Appeal Number:	2401563
Decision Date:	04/09/2024	Hearing Date:	3/6/24
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN

Interpreter:

N/A



*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:	PCA Services, Prior Authorization, Modification
Decision Date:	04/09/2024	Hearing Date:	3/6/24
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 January 12, 2024, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant requested assistance with various Activities of Daily Living (ADLs) and the time requested was longer than ordinarily required for someone with the Appellant's physical needs (See 130 CMR 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(4), 130 CMR 450.204(A)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on January 30, 2024 (see 130 CMR 610.015(B)). A decision regarding the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization request for personal care services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(1), 130 CMR 422.410(A)(3), and 130 CMR 450.204(A)(1) in modifying the Appellant's prior

authorization request for personal care services.

Summary of Evidence

The Appellant is a MassHealth member whose primary diagnoses includes autism disorder. Secondary diagnoses include severe intellectual disabilities, physical difficulties ambulating requiring leg braces, behavioral issues - resistance to care, among other diagnoses and challenges. (Exhibit 7, pg. 8, Testimony). MassHealth received a prior authorization request for renewal of services submitted by [REDACTED], the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) On January 12, 2024, MassHealth made 2 modifications¹ to the Appellant's prior authorization request for PCA services. (Exhibit 1, Exhibit 7 and Testimony). Specifically, MassHealth modified the following: 1) ADL – Bathing, from 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week, to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week (Exhibit 7, pg. 15-16, Testimony) and 2) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 25 minutes, 1 time a day, 7 days a week for undressing to 20 minutes, 1 time a day, 7 days a week for dressing and 15 minutes, 1 time a day, 7 days a week for undressing (Exhibit 7, pg. 19-20, Testimony).

Regarding the modification of 1) ADL – Bathing, from 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week, to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, (Exhibit 7, pg. 15-16, Testimony), MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with bathing. (Testimony) The Appellant's guardian described the Appellant's difficulty with bathing, the Appellant's braces and testified regarding the Appellant's challenges. (Testimony) In the request for Hearing, it was specifically noted that the Appellant "has great difficulty toileting, because of his braces (knees and legs), his fine motor issues, and his gross motor issues. It is important to him to be clean after he has accidents." (Exhibit 2) Additionally, in the Prior Authorization request, there is notation of "behavioral issues – resistance to care, sensory issues, inability to initiate/sequence/complete tasks, no safety awareness, decreased GMC/FMC and difficulty to bend/twist/reach...increased issues with constipation and increased behaviors requiring frequent rest periods and increased time during completion of ADLs." (Exhibit 7, pg.8) In addition to this evidence, the Appellant submitted a letter from the Appellant's treating physician which states that Appellant is under the physician's care for "Severe Intellectual Disability, Behavior Problems and Fine and Gross Motor Delays." (Exhibit 6) The letter states it is "medically necessary" for the Appellant to receive "the maximum level of support." (Exhibit 6) The letter continues, indicating that the Appellant requires "extra time bathing, dressing, and undressing." (Exhibit 6) The letter notes the Appellant "is tall and heavy, the time required for bathing, dressing, and undressing, has

¹ Optum testified that there were 3 Modifications: Bathing, Dressing, and Undressing. This Decision combines Dressing and Undressing (See 130 CMR 422.410(A)(4))

increased substantially over time.”(Exhibit 6) After consideration of the testimony, Optum agreed to APPROVE 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week for Bathing as requested. The Appellant ACCEPTED this approval for Bathing, resolving this issue of the appeal.

Regarding the modification of 2) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 25 minutes, 1 time a day, 7 days a week for undressing to 15 minutes, 1 time a day, 7 days a week for dressing and 10 minutes, 1 time a day, 7 days a week for undressing (Exhibit 7, pg. 19-20, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant’s physical needs for physical assistance with Dressing and Undressing. (Testimony) The Appellant’s guardian described the Appellant’s difficulty with dressing and undressing, the Appellant’s braces and testified regarding the Appellant’s special corn pads as prescribed by his podiatrist. (Testimony) In the request for Hearing, it was specifically noted that the Appellant “has great difficulty toileting, because of his braces (knees and legs), his fine motor issues, and his gross motor issues. It is important to him to be clean after he has accidents.” (Exhibit 2) Additionally, in the Prior Authorization request, there is notation of “behavioral issues – resistance to care, sensory issues, inability to initiate/sequence/complete tasks, no safety awareness, decreased GMC/FMC and difficulty to bend/twist/reach...increased issues with constipation and increased behaviors requiring frequent rest periods and increased time during completion of ADLs.” (Exhibit 7, pg.8) In addition to this evidence, the Appellant submitted a letter from the Appellant’s treating physician which states that Appellant is under the physician’s care for “Severe Intellectual Disability, Behavior Problems and Fine and Gross Motor Delays.” (Exhibit 6) The letter states it is “medically necessary” for the Appellant to receive “the maximum level of support.” (Exhibit 6) The letter continues, indicating that the Appellant requires “extra time bathing, dressing, and undressing.” (Exhibit 6) The letter notes the Appellant “is tall and heavy, the time required for bathing, dressing, and undressing, has increased substantially over time.”(Exhibit 6). Based upon the testimony, Optum offered to return the allotted time to the time that had been approved last year for Dressing (25 minutes, 1 time a day, 7 days a week) however, this was not amenable to the Appellant due to his current needs. No compromise was reached between the parties on this issue (Dressing/Undressing) and it is addressed in the Analysis and Conclusions of Law section below.

Findings of Fact

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

1. The Appellant is a MassHealth member whose primary diagnoses includes autism disorder. Secondary diagnoses include severe intellectual disabilities, physical difficulties ambulating requiring leg braces, behavioral issues - resistance to care, among other diagnoses and challenges. (Exhibit 7, pg. 8, Testimony).

2. MassHealth made 2 modifications to the Appellant's prior authorization request for PCA services to the ADLs of Bathing and Dressing/Undressing. (Exhibit 1, Exhibit 7, pgs. 15-16, 19-20 and Testimony).

3. Regarding the modification of 1) ADL – Bathing, from 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week, to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, (Exhibit 7, pg. 15-16, Testimony), MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with bathing. (Testimony)

4. Regarding the modification of 1) ADL – Bathing, the Appellant's guardian described the Appellant's difficulty with bathing, the Appellant's braces and testified regarding the Appellant's challenges. (Testimony) In the request for Hearing, it was specifically noted that the Appellant "has great difficulty toileting, because of his braces (knees and legs), his fine motor issues, and his gross motor issues. It is important to him to be clean after he has accidents." (Exhibit 2) Additionally, in the Prior Authorization request, there is notation of "behavioral issues – resistance to care, sensory issues, inability to initiate/sequence/complete tasks, no safety awareness, decreased GMC/FMC and difficulty to bend/twist/reach...increased issues with constipation and increased behaviors requiring frequent rest periods and increased time during completion of ADLs." (Exhibit 7, pg.8) In addition to this evidence, the Appellant submitted a letter from the Appellant's treating physician which states that Appellant is under the physician's care for "Severe Intellectual Disability, Behavior Problems and Fine and Gross Motor Delays." (Exhibit 6) The letter states it is "medically necessary" for the Appellant to receive "the maximum level of support." (Exhibit 6) The letter continues, indicating that the Appellant requires "extra time bathing, dressing, and undressing." (Exhibit 6) The letter notes the Appellant "is tall and heavy, the time required for bathing, dressing, and undressing, has increased substantially over time." (Exhibit 6) After consideration of the testimony, Optum agreed to APPROVE 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week for Bathing as requested. The Appellant ACCEPTED this approval for Bathing, resolving this issue of the appeal.

5. Regarding the modification of 2) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 25 minutes, 1 time a day, 7 days a week for undressing to 15 minutes, 1 time a day, 7 days a week for dressing and 10 minutes, 1 time a day, 7 days a week for undressing (Exhibit 7, pg. 19-20, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant's physical needs for physical assistance with Dressing and Undressing. (Testimony)

6. Regarding the modification of 2) ADL – Dressing/Undressing, the Appellant's guardian described the Appellant's difficulty with dressing and undressing, the Appellant's braces and testified regarding the Appellant's special corn pads as prescribed by his podiatrist. (Testimony)

In the request for Hearing, it was specifically noted that the Appellant “has great difficulty toileting, because of his braces (knees and legs), his fine motor issues, and his gross motor issues. It is important to him to be clean after he has accidents.” (Exhibit 2) Additionally, in the Prior Authorization request, there is notation of “behavioral issues – resistance to care, sensory issues, inability to initiate/sequence/complete tasks, no safety awareness, decreased GMC/FMC and difficulty to bend/twist/reach...increased issues with constipation and increased behaviors requiring frequent rest periods and increased time during completion of ADLs.” (Exhibit 7, pg.8) In addition to this evidence, the Appellant submitted a letter from the Appellant’s treating physician which states that Appellant is under the physician’s care for “Severe Intellectual Disability, Behavior Problems and Fine and Gross Motor Delays.” (Exhibit 6) The letter states it is “medically necessary” for the Appellant to receive “the maximum level of support.” (Exhibit 6) The letter continues, indicating that the Appellant requires “extra time bathing, dressing, and undressing.” (Exhibit 6) The letter notes the Appellant “is tall and heavy, the time required for bathing, dressing, and undressing, has increased substantially over time.”(Exhibit 6)). Based upon the testimony, Optum offered to return the allotted time to the time that had been approved last year for Dressing (25 minutes, 1 time a week, 7 days a week) however, this was not amenable to the Appellant due to his current needs. No compromise was reached between the parties on this issue (Bathing) and it is addressed in the Analysis and Conclusions of Law section below. No compromise was reached between the parties on this issue (Dressing/Undressing) and it is addressed in the Analysis and Conclusions of Law section below.

Analysis and Conclusions of Law

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(A) 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.

(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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(A) Activities of Daily Living (ADLs). 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/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 PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for

IADLs, the PCM agency must assume the following:

(1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.

(2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

Regarding the modification of 1) ADL – Bathing, from 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week, to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, (Exhibit 7, pg. 15-16, Testimony), MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with bathing. (Testimony) The Appellant's guardian described the Appellant's difficulty with bathing, the Appellant's braces and testified regarding the Appellant's challenges. (Testimony) In the request for Hearing, it was specifically noted that the Appellant "has great difficulty toileting, because of his braces (knees and legs), his fine motor issues, and his gross motor issues. It is important to him to be clean after he has accidents." (Exhibit 2) Additionally, in the Prior Authorization request, there is notation of "behavioral issues – resistance to care, sensory issues, inability to initiate/sequence/complete tasks, no safety awareness, decreased GMC/FMC and difficulty to bend/twist/reach...increased issues with constipation and increased behaviors requiring frequent rest periods and increased time during completion of ADLs." (Exhibit 7, pg.8) In addition to this evidence, the Appellant submitted a letter from the Appellant's treating physician which states that Appellant is under the physician's care for "Severe Intellectual Disability, Behavior Problems and Fine and Gross Motor Delays." (Exhibit 6) The letter states it is "medically necessary" for the Appellant to receive "the maximum level of support." (Exhibit 6) The letter continues, indicating that the Appellant requires "extra time bathing, dressing, and undressing." (Exhibit 6) The letter notes the Appellant "is tall and heavy, the time required for bathing, dressing, and undressing, has increased substantially over time." (Exhibit 6). After consideration of the testimony, Optum agreed to APPROVE 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week for Bathing as requested. The Appellant ACCEPTED this approval for Bathing resolving this issue of the appeal. This portion of the appeal is DISMISSED.

Regarding the modification of 2) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 25 minutes, 1 time a day, 7 days a week for undressing to 15 minutes, 1 time a day, 7 days a week for dressing and 10 minutes, 1 time a day, 7 days a week for undressing (Exhibit 7, pg. 19-20, Testimony) MassHealth testified that the requested times exceeded times ordinarily required for someone with the Appellant’s physical needs for physical assistance with Dressing and Undressing. (Testimony) The Appellant’s guardian described the Appellant’s difficulty with dressing and undressing, the Appellant’s braces and testified regarding the Appellant’s special corn pads as prescribed by his podiatrist. (Testimony) In the request for Hearing, it was specifically noted that the Appellant “has great difficulty toileting, because of his braces (knees and legs), his fine motor issues, and his gross motor issues. It is important to him to be clean after he has accidents.” (Exhibit 2) Additionally, in the Prior Authorization request, there is notation of “behavioral issues – resistance to care, sensory issues, inability to initiate/sequence/complete tasks, no safety awareness, decreased GMC/FMC and difficulty to bend/twist/reach...increased issues with constipation and increased behaviors requiring frequent rest periods and increased time during completion of ADLs.” (Exhibit 7, pg.8) In addition to this evidence, the Appellant submitted a letter from the Appellant’s treating physician which states that Appellant is under the physician’s care for “Severe Intellectual Disability, Behavior Problems and Fine and Gross Motor Delays.” (Exhibit 6) The letter states it is “medically necessary” for the Appellant to receive “the maximum level of support.” (Exhibit 6) The letter continues, indicating that the Appellant requires “extra time bathing, dressing, and undressing.” (Exhibit 6) The letter notes the Appellant “is tall and heavy, the time required for bathing, dressing, and undressing, has increased substantially over time.”(Exhibit 6). Based upon the testimony, Optum offered to return the allotted time to the time that had been approved last year for Dressing (25 minutes, 1 time a week, 7 days a week) however, this was not amenable to the Appellant due to his current needs.

Based upon the evidence presented at Hearing, I find that the Appellant, through his Appeal Representative Guardian, has met the burden, by a preponderance of evidence, to show that MassHealth (Optum)’s administrative determination is invalid. The Appellant’s Representative Guardian testified regarding the specific, individual difficulties presented for the Appellant during dressing/undressing supporting the requested time. This testimony is supported by the statement in the Fair Hearing Request Form (Exhibit 2), the information in the Prior Authorization Request (Exhibit 7, pg. 8), as well as the letter from the Appellant’s physician (Exhibit 6). The Appellant, through his Appeal Representative Guardian, has demonstrated by a preponderance of evidence that the Appellant requires additional time for this task beyond the time allotted by MassHealth. Therefore, regarding Dressing/Undressing, this appeal is APPROVED. MassHealth (Optum) shall allot 30 minutes, 1 time a day, 7 days a week for dressing and 25 minutes, 1 time a day, 7 days a week for undressing as requested.

Order for MassHealth

Approve the following PCA hours as requested by the Appellant:

- 1) ADL – Bathing, 35 minutes 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week as agreed at the Hearing
- 2) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 25 minutes, 1 time a day, 7 days a week for undressing

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.

Patrick M. Grogan
Hearing Officer
Board of Hearings

cc:

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