

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2402563
Decision Date:	05/07/2024	Hearing Date:	03/21/2024
Hearing Officer:	Thomas Doyle		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N.



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Prior Authorization - PCA Services
Decision Date:	05/07/2024	Hearing Date:	03/21/2024
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	Jackline Mendes
Hearing Location:	Remote (phone)	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated January 19, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on February 20, 2022. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

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

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The mother of the minor appellant appeared on his behalf by telephone. Both were sworn. Appellant is a minor male MassHealth member with a primary diagnosis of autism. (Ex. 4, p. 10; Testimony). MassHealth received a prior authorization request for PCA services on the appellant's behalf, from Independence Associates, a PCM agency, on December 28, 2023 requesting 26 hours and 30 minutes per week. (Ex. 4, p. 2; Testimony). MassHealth modified the request to 9 hours and 15 minutes per week on January 19, 2024, sending a notice to the appellant of its decision on that date (Ex. 4, p. 2; Testimony). The appellant filed this appeal in a timely manner on February 20, 2024. (Ex. 2).

At hearing, the parties were able to resolve disputes related to PCA assistance with Bathing; Grooming, nail care; Undressing; Eating and Toileting, bladder and bowel care. (Testimony). Appellant requested PCA time assistance with Dressing at 30 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 21). MassHealth modified the time requested for Dressing to 7 minutes an episode, 1 episode a day, 7 days a week. (Testimony).

There were multiple modifications based upon MassHealth regulations. MassHealth modified Bathing from 60 minutes an episode, 1 episode a day, 7 days a week to 20 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified Grooming, nail care, from 10 minutes an episode, 1 episode a day, 1 day a week to 0. MassHealth modified Dressing from 30 minutes an episode, 1 episode a day, 7 days a week to 7 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified Undressing from 20 minutes an episode, 1 episode a day, 7 days a week to 5 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified Eating from 15 minutes an episode, 2 episodes a day, 5 days a week and 15 minutes an episode, 3 episodes a day, 2 days a week to 5 minutes an episode, 1 episode a day, 7 days a week for breakfast; 5 minutes an episode, 1 episode a day, 2 days a week for lunch and 10 minutes an episode, 1 episode a day, 7 days a week for dinner. MassHealth modified the time requested for Toileting, bladder care, from 10 minutes an episode, 4 episodes a day, 5 days a week to 5 minutes an episode, 4 episodes a day, 5 days a week for school and 10 minutes an episode, 6 episodes a day, 2 days a week to 5 minutes an episode, 6 episodes a day, 2 days a week for home and weekends. MassHealth modified the time requested for Toileting, bowel care, from 15 minutes an episode, 2 episodes a day, 7 days a week to 7 minutes an episode, 1 episode a day, 7 days a week.

After explanation from the MassHealth representative, and discussion between the parties, appellant agreed to the MassHealth modifications for Bathing at 25 minutes an episode, 1 episode a day, 7 days a week; Grooming, nail care at 0; undressing was agreed to at 5 minutes a day, once a day, seven days a week; eating was agreed to at 5 minutes an episode, 1 episode a day, 7 days a week for breakfast, 5 minutes an episode, 1 episode a day, 2 days a week for lunch, and 10 minutes an episode, 1 episode a day, 7 days a week for dinner. Appellant agreed to the MassHealth modifications for Toileting, bladder cited above. Regarding Toileting, bowel, the parties agreed on 7 minutes an episode, 2 episodes a day, 7 days a week. Therefore, these parts of

the appeal are dismissed.

The MassHealth nurse stated that the requested time for dressing is longer than ordinarily required for a child of appellant's age and physical needs. She stated a [REDACTED] needs parental involvement because many [REDACTED] need help with shoes and buttons, as an example. She stated a [REDACTED] is not independent to do these tasks by themselves. She also stated that 7 minutes is the most given to a child of appellant's age and that this task does not include a diaper change, which is covered under Toileting. Appellant's mother stated she and her mother are chasing appellant around trying to put his clothes on. She said it takes a lot of time to get him dressed. The MassHealth nurse stated chasing around the [REDACTED] appellant is not a PCA task. The nurse stated this is a non-covered service, falling under the category of cueing, prompting, supervision, guiding and coaching.

Findings of Fact

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

1. Appellant is a minor male MassHealth member with a primary diagnosis of autism. (Ex. 4, p. 10; Testimony).
2. MassHealth received a prior authorization request for PCA services from Independence Associates, on the appellant's behalf, requesting 26 hours and 30 minutes per week. (Ex. 4, p. 2; Testimony).
3. MassHealth modified the request to 9 hours and 15 minutes per week by notice dated January 19, 2024 (Ex. 4, p. 2; Testimony).
4. The appellant filed this appeal in a timely manner on February 20, 2024. (Ex. 2).
5. At hearing, the parties were able to resolve disputes related to PCA assistance with Bathing; Grooming, nail care; Undressing; Eating and Toileting, bladder and bowel care. (Testimony).
6. Appellant requested PCA time assistance with Dressing at 30 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 21).
7. MassHealth modified the time requested for Dressing to 7 minutes an episode, 1 episode a day, 7 days a week. (Testimony).

Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
- 2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division pursuant to a prior authorization request, to be available to the member through

sources described in 130 CMR 450.317(C), 503.007, or 517.007.

- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

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

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

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

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;

- (b) completing the paperwork required for receiving personal care services; and
- (c) other special needs approved by the Division as being instrumental to the health care of the member.

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, **babysitting**, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;**
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (**emphasis added**).

Dressing

Appellant requested 30 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified this to 7 minutes an episode, 1 episode a day, 7 days a week. The MassHealth nurse stated that the requested time is longer than ordinarily required for a child of appellant's age and physical needs. She stated a [REDACTED] needs parental involvement because many [REDACTED] need help with shoes and buttons, as an example. She stated a [REDACTED] is not independent to do these tasks by themselves. She also stated that 7 minutes is the most given to a child of appellant's age and that this task does not include a diaper change, which is covered under Toileting. Appellant's mother stated she and her mother are chasing appellant around trying to put his clothes on. She said it takes a lot of time to get him dressed. The MassHealth nurse stated chasing around the [REDACTED] appellant is not a PCA task. The nurse stated this is a non-covered service, falling under the category of cueing, prompting, supervision, guiding and coaching. PCA time is allotted to physically assist appellant get dressed. 130 CMR 422.410 (A) (4). Chasing around the appellant is not physically assisting him to get dressed. The nurse is correct that chasing around the appellant is a non-covered service

pursuant to 130 CMR 422.412 (C). The appellant has not met his burden, and the time requested for dressing is denied shall remain at 7 minutes, once per day, seven days per week.

Order for MassHealth

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

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