

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part;
Dismissed in part

Appeal Number: 2402684

Decision Date: 5/15/2024

Hearing Date: 03/28/2024

Hearing Officer: Scott Bernard

Appearance for Appellant:



Appearance for MassHealth:



*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:	Denied in part; Dismissed in part	Issue:	Prior Authorization; Personal Care Attendant services
Decision Date:	5/15/2024	Hearing Date:	03/28/2024
MassHealth's Rep.:	[REDACTED]	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor	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 approved the appellant's PA request for PCA services with modifications. (See 130 CMR 422.410(A)(2),(3),(6),(7); 422.410(C); 450.204(A)(1); and Exhibit (Ex.) 1; Ex. 5, pp. 3-5). The appellant filed this appeal in a timely manner on February 21, 2024. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request for PCA services is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's request for PCA services with modifications.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(2),(3),(6),(7); 422.410(C); and 450.204(A)(1), in modifying the request for PCA services.

Summary of Evidence

MassHealth was represented by a registered nurse working as a clinical appeals reviewer for

Optum, MassHealth's agent overseeing the Personal Care Attendant (PCA) program. The appellant was represented by her mother. Both witnesses attended the hearing by telephone.

The MassHealth representative testified to the following. [REDACTED] (the PCM agency) submitted a prior authorization request for personal care attendant services reevaluation to MassHealth on December 26, 2023 for 61 hours, 15 minutes per week for 36.28 school weeks; and 69 hours, 45 minutes per week for 16 vacation weeks. (Testimony; Ex. 5, pp. 33, 62). According to the documentation submitted to MassHealth by the PCM agency for review, the appellant is under [REDACTED] years old with a primary diagnosis of Wieacker-Wolff syndrome. (Ex. 5, pp. 7-8; Testimony). The appellant has contractures, atrophy, and is wheelchair bound. (*Id.*). She has a G-tube for hydration and medication. (*Id.*). Her nutrition is by oral route. (*Id.*). She has physical therapy (PT), occupational therapy (OT), speech therapy, and adaptive physical education (PE) in school. (*Id.*). On January 12, 2024, MassHealth modified this request to 54 hours and no minutes per week for 36.28 school weeks and 61 hours 0 minutes per week for 16 vacation weeks. (Ex. 1; Ex. 5, pp. 3-5; Testimony). The dates of service are from January 29, 2024 through January 28, 2025. (*Id.*).

MassHealth made 10 modifications based on MassHealth regulations. (Ex. 1; Ex. 5, pp. 3-5; Testimony). During the course of the hearing, the MassHealth representative overturned the modifications to bathing, bladder care, bowel care, and equipment management and approved the times the PCM agency requested. (See Ex. 5, pp. 14, 20, 30, 43; Testimony). The MassHealth representative also partially overturned the modification to grooming (hair), approving 10 minutes per day, an adjustment accepted by the appellant's mother. (Testimony). Finally, the appellant's mother accepted the modifications that MassHealth made to the times for mobility (vacation), eating (school), other health care needs, and laundry. (See Ex. 5, pp. 3-5; Testimony).

The appellant's mother did contest the one remaining modification, which was for grooming (other). (Testimony). The request was specifically for ear care, or draining the appellant's ears and care for the tubes in her ears. (Testimony; Ex. 5, pp. 16, 45). The PCM agency requested two minutes per day. (*Id.*). MassHealth did not approve any time for this because the time requested for assistance was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 5, p. 4).

The appellant's mother stated that the appellant has a history of cleft palate and cranial facial issues, and her sinuses do not drain typically because of an abnormality. (Testimony). For that reason, the appellant has tubes in both of her ears to help drainage. (Testimony). She is currently on her third set. (Testimony). When the appellant is bathed, water gets in the tubes. (Testimony). The appellant needs her ears to be dried out with a tissue or carefully with a Q-Tip to remove excess fluid. (Testimony). The appellant has problems with dryness around the ears and has excess flaky ear wax. (Testimony). The appellant's mother applies a commercial brand ointment around the edges of the appellant's ear and checks them with a flashlight on a daily basis. (Testimony). The appellant's mother also has to look in the ears, and currently has to apply prescription ear drops. (Testimony). The appellant's doctor has suggested that they use a hair drier on a light setting to draw out water. (Testimony).

The MassHealth representative asked the appellant's mother why the PCA had to do this and why she could not do this. (Testimony). The appellant's mother said she did not understand what the MassHealth representative was asking. (Testimony). The MassHealth representative clarified by stating that a parent or legal guardian cannot be the PCA. (Testimony). Given the appellant's history and the complexity of her health issues, the ear care would be more of a parental responsibility because PCAs cannot administer medications to children. (Testimony). Given the fact that the appellant has these tubes, and has more complex medical needs in this area because of her craniofacial abnormalities, MassHealth did not want to put the PCA in the position of potentially risking the child's health. (Testimony). It would be appropriate for the PCA to assist by drying off the appellant's outer ears or drying her off after a shower and wiping her ears. (Testimony). It would not be appropriate for the PCA to perform ear inspections, checking for wax, and other things like that, which would be more of a parental responsibility. (Testimony). In answer to a question from the hearing officer, the MassHealth representative stated that it also may be appropriate for the PCA to apply ointment to the appellant's outer ear if it was an over the counter product. (Testimony).

Findings of Fact

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

1. The PCM agency submitted a prior authorization request for personal care attendant services reevaluation to MassHealth on December 26, 2023 for 61 hours, 15 minutes per week for 36.28 school weeks; and 69 hours, 45 minutes per week for 16 vacation weeks. (Testimony; Ex. 5, pp. 33, 62).
2. The appellant is under [REDACTED] years old with a primary diagnosis of Wieacker-Wolff syndrome. (Ex. 5, pp. 7-8; Testimony).
3. The appellant has contractures, atrophy, and is wheelchair bound. (Ex. 5, pp. 7-8; Testimony).
4. The appellant has a G-tube for hydration and medication. (Ex. 5, pp. 7-8; Testimony).
5. The appellant's nutrition is by oral route. (Ex. 5, pp. 7-8; Testimony).
6. The appellant has PT, OT, speech therapy, and adaptive PE in school. (Ex. 5, pp. 7-8; Testimony).
7. On January 12, 2024, MassHealth modified this request to 54 hours and no minutes per week for 36.28 school weeks and 61 hours 0 minutes per week for 16 vacation weeks. (Ex. 1; Ex. 5, pp. 3-5; Testimony).
8. The dates of service are from January 29, 2024 through January 28, 2025. (Ex. 1; Ex. 5, pp. 3-

5; Testimony).

9. MassHealth made 10 modifications based on MassHealth regulations. (Ex. 1; Ex. 5, pp. 3-5; Testimony).
10. During the course of the hearing, the MassHealth representative overturned the modifications to bathing, bladder care, bowel care, and equipment management and approved the times the PCM agency requested. (See Ex. 5, pp. 14, 20, 30, 43; Testimony).
11. The MassHealth representative also partially overturned the modification to grooming (hair), approving 10 minutes per day, an adjustment accepted by the appellant's mother. (Testimony).
12. The appellant's mother also accepted the modifications that MassHealth made to the times for mobility (vacation), eating (school), other health care needs, and laundry. (See Ex. 5, pp. 3-5; Testimony).
13. The appellant's mother contested the one remaining modification, which was for grooming (other). (Testimony; Ex. 5, pp. 16, 45).
14. The request was specifically for ear care, or draining the appellant's ears and care for the tubes in her ears. (Testimony; Ex. 5, pp. 16, 45).
15. The PCM agency requested two minutes per day. (Testimony; Ex. 5, pp. 16, 45).
16. MassHealth did not approve any time for this task. (Ex. 1; Ex. 5, p. 4).
17. The appellant has a history of cleft palate and cranial facial issues, and her sinuses do not drain typically because of an abnormality. (Testimony).
18. The appellant has tubes in both of her ears to help drainage. (Testimony).
19. The appellant is currently on her third set of tubes. (Testimony).
20. When the appellant is bathed, water gets in the tubes. (Testimony).
21. The appellant needs to have her ears dried out with a tissue or carefully with a Q-Tip to remove excess fluid. (Testimony).
22. The appellant has problems with dryness around the ears and has excess flaky ear wax. (Testimony).
23. The appellant's mother applies a commercial brand ointment around the edges of the appellant's ear and checks them with a flashlight on a daily basis. (Testimony).

24. The appellant's mother also applies prescription ear drops. (Testimony).
25. The appellant's doctor has suggested that they use a hair drier on a light setting to draw out water. (Testimony).
26. MassHealth does not consider the removal of fluid and solid material from a child's ears, inspection of the interior of a child's ears, and the administration of prescribed ear drops to a child, appropriate PCA tasks because of the risk of injury to the child. (Testimony).
27. The PCA could dry the exterior of the appellant's ears and apply non-prescription ointment to the exterior of the appellant's ears. (Testimony).

Analysis and Conclusions of Law

MassHealth may make an adjustment in the matters at issue before or during an appeal period and if the adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (130 CMR 610.051(B)). During the course of the hearing, the MassHealth representative overturned the modifications to bathing, bladder care, bowel care, and equipment maintenance and approved the times as requested. As the adjustments resolve the dispute in favor of the appellant with regard to these ADLs, the appeal is hereby DISMISSED.

BOH will also dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). At the hearing, the MassHealth representative partially overturned the modification to grooming (hair) and approved 10 minutes per day, an adjustment the appellant's mother accepted. The appellant's mother also stated that she did not contest the modifications MassHealth made to the time requested for mobility, eating, other health care needs, and laundry. For that reason, the request for the hearing is hereby DISMISSED as to grooming (hair), mobility, eating, other health care needs, and laundry.

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (*Id.*). MassHealth covers activity time performed by a PCA in aiding with activities of daily living (ADLs) and Instrumental Activities of Daily Living. (130 CMR 422.411(A)). ADLs include certain specified activities that are fundamental to an individual's self-care and include physically assisting a member with grooming. (130 CMR 422.410(A)(3)).

MassHealth does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if, amongst other things, 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. (130 CMR 450.204(A)(1)).

The PCM agency sought two minutes daily for grooming, specifically for ear care. The appellant has a history of complex craniofacial abnormalities, and has ear tubes aiding sinus drainage. It's crucial to keep these tubes dry to prevent blockage by fluid or solid material accumulation. Although there is an element of external ear drying and moisturizing, primarily, the requested time aims at inspecting and clearing the tubes and ear interior. Given the risk of injury, it is evident that an untrained PCAs should not perform this task on a child. MassHealth rightly denied approval, deeming it not medically necessary in these circumstances.

For the above reason, the appeal is DENIED IN PART.

Order for MassHealth

If it has not done so already, MassHealth should notify the appellant that the times for the following are approved: Bathing: 40 minutes per day, six days per week;

1. Bladder care:
 - a. School weeks: 30 minutes, nine times per day, one day per week; and nine minutes, two times per day, six days per week.
 - b. Vacation weeks: 10 minutes, six times per day, 7 days per week; and 12 minutes, two times per day, seven days per week.
2. Bowel Care: 15 minutes per day, seven days per week.
3. Equipment maintenance: 70 minutes per week.
4. Grooming (hair): 10 minutes per day, seven days per week.

The effective dates for these services are January 29, 2024 through January 28, 2025.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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