

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2403074
Decision Date:	6/13/2024	Hearing Date:	4/10/2024
Hearing Officer:	Cynthia Kopka	Record Open to:	5/1/2024

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN



*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	Issue:	Personal care attendant services
Decision Date:	6/13/2024	Hearing Date:	4/10/2024
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Guardian
Hearing Location:	Tewksbury	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

By notice dated February 12, 2024, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on February 28, 2024. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032. The hearing record was held open through May 1, 2024 for the submission of additional evidence. Exhibit 6.

Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and provided documents in support, Exhibit 4. Appellant's guardian and representative appeared in person and offered testimony and documents in support, Exhibit 5. A summary of testimony and documentation follows. Appellant is in her [REDACTED] with a primary diagnosis of Athetoid cerebral palsy with, spasticity, global developmental delay, contractures to all extremities, and dysphagia with high risk of aspiration. Appellant is non-ambulatory and non-verbal, communicating with an eye-gaze device. Exhibit 4 at 6-7.

On January 23, 2024, [REDACTED] Appellant's Personal Care Management Agency (PCMA), submitted a re-evaluation for PCA services, requesting 94.0 hours of PCA assistance per week. On February 12, 2023, MassHealth modified Appellant's request and approved 75.25 PCA hours per week. The dates of service were from February 10, 2024 through February 9, 2025. Exhibit 1.

MassHealth modified the requested PCA hours for one activity of daily living (ADL): eating. Exhibit 4 at 19. MassHealth also modified two instrumental activities of daily living (IADLs): housekeeping and shopping. *Id.* at 29-30. At hearing, MassHealth restored all of the time requested for housekeeping (45 minutes per week) and shopping (30 minutes per week) based on testimony provided. This approval is addressed in the order below.

In the area of eating, Appellant requested assistance for two types of feeding. First, Appellant requested 30 minutes, 2 times per day, 7 days per week for assistance with eating physical food from a paper cup such as soups and smoothies. MassHealth modified this to 15 minutes, 2 times per day, 7 days per week. For assistance with G-tube feedings, Appellant requested 60 minutes, 4 times per day, 7 days per week. MassHealth approved 30 minutes, 4 times per day, 7 days per week. *Id.* at 19.

The MassHealth representative testified that the requested time for both types of feeding was longer than ordinarily is required. For G-tube feeding, MassHealth will approve the time taken to set up the formula in the bag, set up the gravity drip, and clean the tube with saline flushes. The comments listed by the reviewing nurse indicate that it takes 75 minutes to complete the feeding, with much of the time requested involving continuous supervision and monitoring. *Id.* The G-tube was placed on July 1, 2023 and Appellant is not able to consume the amount of formula that was prescribed as it causes intestinal distress and vomiting. *Id.* at 7. Therefore, Appellant must supplement the gravity feedings with the soups and smoothies via a paper cup. *Id.* at 7-8. The PCA holds the cup to Appellant's mouth while she eats. *Id.* at 8.

The MassHealth representative testified that MassHealth does not cover monitoring or supervision through the PCA program. MassHealth covers the hands-on piece of the task, and 30 minutes is the appropriate amount of time for the hands-on parts of the G-tube feeding: set up, take-down, and flushing the lines. For the paper cup feeding, the MassHealth representative testified that 30 minutes for feeding by mouth is excessive.

Appellant's father, her legal guardian, testified that Appellant is nonverbal spastic quadriplegic with a startle reflex and serious physical issues with tone and spasticity. Prior to [REDACTED] Appellant was used to eating. Then, Appellant had to be anesthetized to undergo a dental procedure and it took five weeks to recover from the anesthesia. Appellant did not get out of bed for a month and stopped eating completely, losing 10% of her body weight. After the issue with anesthesia, in [REDACTED] Appellant started on a G-tube for her nutrition and calories. However, Appellant is not able to get all of her calories through the G-tube feedings and her feeding specialists recommend that Appellant continue to use her mouth to consume food when possible so she does not lose that skill. Appellant and her parents have had to balance getting Appellant her optimal caloric and nutritional intake without vomiting. Appellant also has input in what she would like to eat and recently requested some avocado, which she was able to consume successfully. The goal is to get Appellant off of the G-tube eventually.

Appellant cannot use her tongue to move food in her mouth, but can swallow very small amounts of soft food. Appellant had been approved for 30 minutes of feeding for each meal because Appellant's mother, her PCA, must hold the spoon in her mouth while Appellant chews on the spoon. Appellant enjoys eating food and loves eating sushi and salad, but it must be cut into extremely small pieces or ground until nearly pureed so she will not choke. Appellant is also capable of telling her PCA when she needs to take a break from a feeding or if it is starting to make her belly feel uncomfortable. Appellant will often rest for a few minutes and then try a smoothie. The PCA must monitor how much is going in during a G-tube feeding so as not to reach the point when it might start coming back up.

[REDACTED] reviewing nurse observed the entire G-tube set up and feeding during the [REDACTED] assessment and requested the appropriate amount of time for assistance. Appellant's guardian argued that many experts have reviewed Appellant's feeding process and approved it.

The MassHealth representative confirmed that MassHealth had approved 30 minutes for the physical hand-over-hand feeding back in [REDACTED] when Appellant did not have the G-tube. However, now that the G-tube is the primary nutrition source, it is not appropriate to approve 30 minutes for the secondary feeding method. Appellant's guardian acknowledged that the PCA program may not offer the best coverage for Appellant's feeding time given the number of hours spent daily, but needs to have as much assistance compensated as possible.

Appellant's guardian offered letters in support of Appellant's position, including from Appellant's speech language pathologists and the lead nurse reviewer from the PCMA. A letter from Appellant's occupational therapist was included in the record but did not provide insight into Appellant's eating needs.

[REDACTED] Speech Language Pathologist and Clinical Feeding Specialist discussed in an undated letter the importance of Appellant consuming food orally for

her enjoyment, for inclusion in family events, and to continue to practice swallowing and exercise secretion management. Exhibit 5 at 5. Appellant requires frequent repositioning and re-seating to help her achieve the necessary alignment of her head and neck during oral feeding. Additionally, Appellant

needs staff who are appropriately trained to position her, can modify her foods throughout her meal and provide her with proper texture of foods, spoon placement and hands-on manual support to assist with the jaw and lip control. Approximation of the lips and graded jaw control are needed to safely transport foods within the oral cavity for swallowing during all her snack times and meals. [Appellant] requires assistance specifically with bilabial closure to create appropriate intraoral pressure required for bolus collection, safe bolus transport and to initiate an effective swallow. She is unable to maintain bilabial closure and requires skilled manual support to help her manage foods and her secretions. (To fully comprehend what is required please try to take a sip of liquid or manage foods without closing your lips to create an anterior oral seal.)

Id. [REDACTED] wrote that Appellant needs to be given adequate time to motor plan and recruit muscles involved safely and effectively. [REDACTED] estimated that Appellant requires 45-60 minutes for each meal and 20 minutes for snacks. *Id.*

On March 24, 2024, [REDACTED] wrote that Appellant uses her eye-gaze communication device to direct care related to her oral and gastrostomy tube feedings, including feedback on the rate of tube feeds, modifications to oral feedings needed for her own swallow safety, and when she is going to vomit. *Id.* at 1. On [REDACTED] [REDACTED] lead nurse evaluator at [REDACTED] c, wrote that Appellant can manage 4 feedings via G-tube per day and sips creamy soups and fruit smoothies with the PCA holding the cup to her mouth. Appellant has pulled out her G-tube a few time requiring an ER visit, and so the time requested includes hands-on assistance to ensure that Appellant does not pull out her tube. *Id.* at 2.

After reviewing Appellant's submission, MassHealth wrote that it would not restore any additional time for feeding citing 130 CMR 450.204(B) (professionally recognized standards of health care for a PCA task). MassHealth wrote that the following requires a clinical assessment and is beyond the scope of a PCA:

[Appellant] needs staff who are appropriately trained to position her, can modify her foods throughout her meal and provide her with proper texture of foods, spoon placement and hands-on manual support to assist with the jaw and lip control. Approximation of the lips and graded jaw control are needed to safely transport foods within the oral cavity for swallowing during all her snack times and meals.

Exhibit 7.

Findings of Fact

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

1. On January 23, 2024, Appellant's PCMA submitted a re-evaluation for PCA services, requesting 94.0 hours of PCA assistance per week.
2. On February 12, 2024, MassHealth modified Appellant's request and approved 75.25 PCA hours per week. The dates of service were from February 10, 2024 through February 9, 2025. Exhibit 1.
3. Appellant filed a timely appeal on February 28, 2024. Exhibit 2.
4. Appellant is in her [REDACTED] with a primary diagnosis of Athetoid cerebral palsy with, spasticity, global developmental delay, contractures to all extremities, and dysphagia with high risk of aspiration. Appellant is non-ambulatory and non-verbal, communicating with an eye-gaze device. Exhibit 4 at 6-7.
5. For assistance with eating food by mouth, Appellant requested 30 minutes, 2 times per day, 7 days per week. *Id.* at 19.
6. MassHealth modified this to 15 minutes, 2 times per day, 7 days per week. *Id.*
7. MassHealth has previously approved 30 minutes of assistance for eating by mouth.
8. Appellant requires frequent repositioning and re-seating to help her achieve the necessary alignment of her head and neck during oral feeding and spoon placement and hands-on manual support to assist with the jaw and lip control.
9. Appellant's PCA, her mother, will physically hold a cup or spoon to Appellant's mouth while Appellant is eating by mouth.
10. For assistance with G-tube feedings, Appellant requested 60 minutes, 4 times per day, 7 days per week.
11. MassHealth approved 30 minutes, 4 times per day, 7 days per week. *Id.*
12. MassHealth testified that the time approved for the G-tube feeding was for setting up the gravity drip, taking it down, and cleaning/flushing the lines.

13. [REDACTED] wrote that the amount of time requested for the G-tube feeding included hands-on assistance due to Appellant pulling out her tube in the past, requiring ER visits. Exhibit 5 at 2.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program:

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

(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 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.

(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 personal care 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 personal care 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.

Under 130 CMR 422.412(C), MassHealth does not cover as part of the PCA program “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.”

Here, it is undisputed that Appellant qualifies for PCA services. The only issues in dispute are MassHealth’s modifications of G-tube feedings and eating by mouth. MassHealth restored the time requested for housekeeping and shopping at hearing, which is addressed in the order below.

Regarding G-tube feedings, this appeal is approved in part. Based on the testimony and letters submitted in support, some of 60 minutes requested for assistance at each feeding was for monitoring and supervision, which is not covered by the PCA program under 130 CMR 422.412(C). However, Appellant’s guardian’s testimony and the letter submitted from [REDACTED] demonstrate that some of the requested time is for physical assistance to prevent Appellant from pulling out her tube, which has caused her to have to go to the ER. Accordingly, Appellant has demonstrated that an additional 5 minutes per G-tube feeding is medically necessary for physical assistance to prevent Appellant from pulling on the tube.

Regarding eating by mouth, this appeal is approved. Appellant established the medical necessity of 30 minutes of assistance for each feeding by mouth with testimony and the documents submitted. MassHealth has approved this amount of time in the past, and there does not appear to have been a change in the way Appellant eats by mouth. While this task is not the primary source of Appellant’s nutrition, this is reflected in the reduced frequency of this task. Further, while MassHealth argued that the care needed to provide Appellant this assistance is beyond the scope of the PCA program, it is notable that Appellant’s PCA is her mother and caretaker, who has been assisting Appellant in this manner of feeding for years.

Order for MassHealth

Restore PCA service hours for the following tasks, effective February 10, 2024:

- G-tube feeding: 35 minutes, 4 times per day, 7 days per week;

- Eating by mouth: 30 minutes, 2 times per day, 7 days per week;
- Housekeeping: 45 minutes per week; and
- Shopping: 30 minutes per week.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]