

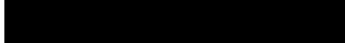
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part, Denied in part	Appeal Number:	2406483
Decision Date:	6/27/2024	Hearing Date:	05/22/2024
Hearing Officer:	Emily Sabo		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN, 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:	Approved in part, Denied in part	Issue:	Prior Authorization; Personal Care Attendant (PCA) Services
Decision Date:	6/27/2024	Hearing Date:	05/22/2024
MassHealth's Rep.:	Kelly Rayen	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South (Telephone)	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 April 4, 2024, MassHealth denied the Appellant's request for prior authorization of personal care attendant (PCA) services on the basis that the Appellant does not need PCA assistance with two or more activities of daily living. 130 CMR 422.403(C)(3) and Exhibit 1. The Appellant filed this timely appeal on April 24, 2024. Exhibit 2 and 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B)(2) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the Appellant's request for prior authorization of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A), in denying the Appellant's prior authorization request for PCA services.

Summary of Evidence

The hearing was held by telephone. A registered nurse and clinical appeals reviewer represented MassHealth at hearing and submitted records in support. Exhibit 5. The Appellant is a minor child and was represented by her mother at the hearing, who verified the Appellant's identity.

A summary of testimony and record evidence follows: The Appellant's primary diagnosis is autism. The Appellant attends school for seven hours a day, five days a week. The Appellant also participates in an afterschool applied behavioral analysis program. The Appellant can speak some words but has difficulty communicating and "needs explicit direction for tasks." Exhibit 5 at 5.

The Appellant's personal care management agency is [REDACTED] and as part of a reevaluation, they requested, on the Appellant's behalf, 88 minutes for PCA services weekly. The time period for the request for services is March 16, 2024, to March 15, 2025. Exhibit 1. [REDACTED] requested assistance for activities of daily living in the following categories:

Activity of Daily Living	Specific Request	Time Requested per week:
Grooming	Applying lotion	14 minutes
Dressing	Physical assist with dressing extremities	28 minutes
Toileting	Bowel Care (needs assistance with thoroughly wiping after bowel movement)	21 minutes
Other Healthcare Needs	Menses Care	25 minutes

The MassHealth representative testified that while MassHealth approved the requested time for bowel and menses care, it denied the overall request, because MassHealth considered them to be a single activity of daily living: toileting. The MassHealth representative testified that MassHealth did not authorize time for dressing because the assessment indicated that the Appellant was able to dress independently. The MassHealth representative explained that the PCA program only provides hands-on assistance and any verbal cues with dressing that the Appellant required were not covered by the PCA program. The MassHealth representative testified that the request for time for applying lotion was denied because there was no documentation that it was medically necessary.

The Appellant's representative testified that she disagreed with the time that [REDACTED] requested and that the Appellant needs assistance with all her activities. The Appellant's representative expressed frustration that her contact at [REDACTED] had not been responsive to her inquiries. The Appellant's representative testified that the Appellant needs to be monitored so that she does not hurt herself. The Appellant's representative testified that the Appellant also has seizures. The Appellant's representative questioned why, if the Appellant required assistance with bowel care, time was not provided for assistance with bathing. The MassHealth representative explained that

██████ had not requested PCA time for bathing and that MassHealth could not authorize PCA time that had not been previously requested by the personal care management agency.

The Appellant's representative testified that the Appellant has very dry skin and the PCA applies Eucerin lotion for the Appellant. The Appellant's representative testified that the Appellant needs assistance with dressing daily, including setting out the clothes and adjusting and straightening them once the Appellant dresses.

Upon inquiry from the hearing officer, the MassHealth representative stated that the Appellant had been receiving PCA services since ██████. The MassHealth representative stated that what was approved in the past might not be appropriate now, and that MassHealth can only make a determination based on the present request and evaluation.

Findings of Fact

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

1. ██████ submitted a reevaluation request for PCA services on behalf of the Appellant, for 88 minutes per week in the following categories:

Activity of Daily Living	Specific Request	Time Requested per week:
Grooming	Applying lotion	14 minutes
Dressing	Physical assist with dressing extremities	28 minutes
Toileting	Bowel Care (needs assistance with thoroughly wiping after bowel movement)	21 minutes
Other Healthcare Needs	Menses Care	25 minutes

The time period for the request for services is March 16, 2024, to March 15, 2025. Exhibits 1 & 5.

2. MassHealth denied the request on April 4, 2024. Testimony, Exhibits 1 & 5.
3. MassHealth approved the requested time for bowel and menses care but denied the overall request, because MassHealth considered them to be a single activity of daily living: toileting, such that the Appellant did not require assistance with two or more activities of daily living. Testimony.
4. MassHealth denied the time requested for grooming (applying lotion) on the basis that there was no documentation that it was medically necessary. Testimony.

5. MassHealth denied the time requested for dressing because the assessment indicated that the Appellant could dress independently. Testimony and Exhibit 5.
6. The Appellant filed a timely appeal on April 24, 2024. Exhibit 2.
7. The Appellant is a minor child. Testimony and Exhibit 4.
8. The Appellant's primary diagnosis is autism, and she experiences seizures. Testimony and Exhibit 5.
9. The Appellant can speak some words but has difficulty communicating and needs explicit direction for tasks. Testimony and Exhibit 5.

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 PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

Pursuant to 130 CMR 450.204(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.

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 categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

The MassHealth regulations at 130 CMR 422.412 provide:

422.412: Non-covered Services

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, or a resident of a provider-operated residential facility

subject to state licensure, such as a group home;
(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;
(G) surrogates, as defined in 130 CMR 422.402; or
(H) PCA services provided to a member without the use of EVV as required by the MassHealth Agency.

Here, MassHealth denied the Appellant's request because it determined the Appellant does not require physical assistance with two or more activities of daily living, because it considered both bowel care and menses care to be a single category: toileting. In reviewing the regulation, toileting is defined as "physically assisting a member with bowel or bladder needs." 130 CMR 422.410(A)(7). As such, I find that menses care does not fall into that category as it is not part of the bowel or bladder. I find that menses care falls into the category of personal hygiene as provided for in 130 CMR 420.410(A)(3), "bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming." Accordingly, as MassHealth approved the requested time for bowel care and menses care, I find that the Appellant requires assistance with two activities of daily living. Thus, the appeal is approved regarding the time requested for 21 minutes for bowel care and 25 minutes for menses care.

Regarding the 14 minutes requested for applying lotion, while I credit the Appellant's representative's testimony that the Appellant has dry skin, there is no documentation in the record that the Appellant has a skin condition, or that the application of lotion "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). Therefore, the service is not medically necessary, and MassHealth did not err in modifying the request. Consequently, the appeal regarding applying lotion is denied.

Regarding the 28 minutes for dressing, 130 CMR 422.412(C) states that MassHealth does not cover "assistance provided in the form of cueing, prompting, supervision, guiding, or coaching" as part of the PCA program. Based on the testimony and evidence in the record, the assistance that the Appellant requires with dressing is a noncovered service, as it involves cueing, prompting, supervision, and guiding. Hence, MassHealth was correct in modifying this request, and the appeal is denied.

In conclusion, as bowel and menses care fall into two different activities of daily living, the appeal is approved regarding those activities. The appeal is denied regarding time for dressing and applying lotion.

Order for MassHealth

Approve the time requested for PCA services for 21 minutes for bowel care and 25 minutes for menses care weekly, retroactive to the requested time period of March 16, 2024, to March 15, 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.

Emily Sabo
Hearing Officer
Board of Hearings

cc:

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