

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part	Appeal Number:	2407399
Decision Date:	8/6/2024	Hearing Date:	06/11/2024
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:

Via telephone



Appearance for MassHealth:

Via telephone

Kelly Rayen, 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; Approved in part	Issue:	Prior Authorization- PCA Services
Decision Date:	8/6/2024	Hearing Date:	06/11/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South 4 (Remote)	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 April 23, 2024, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services from the requested hours of 22 hours and 15 minutes of PCA assistance per week to 13 hours and 30 minutes per week (Exhibit 1). The appellant filed this appeal in a timely manner on May 5, 2024 (130 CMR 610.015(B); Exhibit 2). Modification of a PA request is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

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

Summary of Evidence

The MassHealth representative, who is a registered nurse and clinical appeals reviewer, testified that the appellant is a minor child. Her primary medical diagnoses include trisomy 18 and global developmental delay. She recently completed chemotherapy for [REDACTED]. The appellant was assessed to be at the developmental stage of approximately a [REDACTED]-month-old and is completely dependent on all Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) (Exhibit 6, p. 10). The MassHealth representative testified that ADLIB, Inc., a Personal Care Management (PCM) services agency submitted a PA initial evaluation request to MassHealth on the appellant's behalf on April 2, 2024, seeking the following: 22 hours and 15 minutes per week. According to a notice dated April 23, 2024, MassHealth modified the requested time to 13 hours and 30 minutes per week (Exhibit 1, p. 3).

The time period for this PA request is April 23, 2024 through April 22, 2025. *Id.*

The MassHealth representative testified that there were 9 modifications made. First, MassHealth modified the category of "Mobility-transfers" from the requested amount of 3 minutes, 5 times per day, 5 days per week to 2 minutes, 5 times per day, 5 days per week. MassHealth's rationale for the modification is that the time requested for assistance with mobility transfers is longer than ordinarily required for someone with her physical needs. The documentation submitted on behalf of the appellant states that the consumer is unable to walk and unable to follow direction. She is completely dependent and must be carried everywhere (Testimony; Exhibit 6, p. 13). The MassHealth representative testified that the documentation submitted does not support the requested time for this task.¹

The appellant was represented by her mother at the hearing, who testified telephonically. She explained that she does not work full-time because she must take care of the appellant. The appellant's mother stated that the appellant requires more than 2 minutes, 5 times per day, 5 days per week for mobility transfers. She explained that the appellant does not walk nor ambulate on her own. Thus, every time the appellant needs to move, she must be picked up and carried. The MassHealth representative inquired as to the length of time the appellant requires to be transferred from one space to another within their house. The appellant's mother explained that it depends on the circumstances. For example, the appellant may need to be carried a few feet within the home. Conversely, the appellant has to be carried out of the house and placed into their vehicle to get her to different places, which is longer in distance. The MassHealth representative stated that the PCA program will only cover tasks within the home. She stated that it is reasonable to think that it would only take 2 minutes to transfer the appellant from the bedroom to the bathroom, for example. The appellant's mother explained that, within the home, it takes longer than 2 minutes to reposition the appellant during simple tasks such as moving her from the couch to standing upwards, with support, or placing her into her highchair. She reiterated that the

¹ At the hearing, the MassHealth representative noted that the requested time in each category was for 5 days per week, thereby excluding Saturdays and Sundays. Additionally, she noted that the documentation submitted on behalf of the appellant states that both of her parents work full-time (See, Exhibit 6, p. 10).

appellant lacks independent mobility and is not capable of moving on her own.

The second modification made was in the “Repositioning” category. MassHealth modified the requested amount of 5 minutes, twice per day, 5 days per week to 2 minutes, twice per day, 5 days per week because the time requested for repositioning is longer than ordinarily required for someone with the appellant’s physical needs. The MassHealth representative testified that the documentation submitted states that the appellant requires repositioning during a nap (Exhibit 6, p. 14).

The appellant’s mother stated that she is unaware of the request made for repositioning the appellant while she is napping. She clarified that her daughter does not need to be repositioned when she is napping. Thus, the appellant’s mother agreed with the modification made by MassHealth in this category. The MassHealth representative agreed to keep the modified time for PCA assistance in place for this category.

The third modification made was in the “Passive Range of Motion (PROM)” category. MassHealth modified the requested amount of 10 minutes, 2 times per day, 5 days per week for each extremity, right and left, lower and upper, to 20 minutes, 2 times per day, 5 days per week in total for all extremities. MassHealth modified the request for PROM because the time requested for PROM is longer than ordinarily required for someone with the appellant’s physical needs. The MassHealth representative testified that the documentation submitted states that PROM is requested to help relieve chronic pain, prevent contractures, and prevent skin break-down for the appellant (Exhibit 6, p. 15). She explained that PROM does not prevent skin break-down, though it can help prevent contractures and relieve any pain if the appellant expresses that she is in pain.

The appellant’s mother stated that she agrees with the modification made by MassHealth in the PROM category.

The fourth modification made was in the “Bathing” category. MassHealth modified the requested amount of 45 minutes, once per day, 5 days per week to 20 minutes, once per day, 5 days per week (Exhibit 6, p. 16). MassHealth modified the request for bathing because the time requested for bathing is longer than ordinarily required for someone with the appellant’s physical needs. The MassHealth representative testified that the documentation submitted states that the appellant is unable to sit unsupported, she is unable to follow directions, and is unable to participate at all as her developmental age is approximately [REDACTED] months old (Exhibit 6, p. 17). The appellant has a bath chair that was noted by the occupational therapist. Additionally, the MassHealth representative testified that it is not unreasonable for a minor child to need assistance with bathing from a parent. Thus, the PCA would be the second person assisting the parent with bathing the appellant.

The appellant’s mother stated that she agrees with the modification made by MassHealth in the bathing category.

The fifth modification made was in the “Grooming (nail care)” category. MassHealth denied the requested time of 5 minutes per week because the time requested for assistance with the appellant’s nail care is a service that is provided by a parent or a family member. The MassHealth representative testified that the documentation submitted on the appellant’s behalf states that she is unable to participate in any care (Exhibit 6, p. 18). She explained that it is not reasonable to think that the appellant, given her age, would clip her own nails or provide her own nail care.

The appellant’s mother stated that she agrees with MassHealth’s denial of PCA assistance in the grooming (nail care) category. She explained that the appellant’s nail care is already performed by her parents and therefore the appellant does not require PCA assistance for her nail care.

The sixth modification made was in the “Grooming (hair care)” category. MassHealth modified the requested time of 5 minutes, once per day, 5 days per week to 3 minutes, once per day, 5 days per week because the time requested for assistance with hair care is longer than ordinarily required for someone with the appellant’s physical needs. The MassHealth representative testified that the documentation submitted on the appellant’s behalf states that she is unable to participate in any care. *Id.* She explained that there was no additional documentation submitted to support the request of 5 minutes for the appellant’s hair care, given her age.

The appellant’s mother stated that she agrees with the modification made by MassHealth in the grooming (hair care) category.

The seventh modification made was in the “Dressing” category. MassHealth modified the requested time of 10 minutes, once per day, 5 days per week to 7 minutes, once per day, 5 days per week because the time requested for assistance with dressing is longer than ordinarily required for someone with the appellant’s physical needs. The MassHealth representative testified that the documentation submitted on the appellant’s behalf states that she is unable to participate in any of her own care (Exhibit 6, p. 20). The MassHealth representative stated that it is unclear why it would take longer than 7 minutes to dress the appellant, given her age.

The appellant’s mother stated that she agrees with the modification made by MassHealth in the dressing category.

The eighth modification made was in the “Undressing” category. MassHealth modified the requested time of 10 minutes, once per day, 5 days per week to 5 minutes, once per day, 5 days per week because the time requested for assistance with undressing is longer than ordinarily required for someone with the appellant’s physical needs. The MassHealth representative testified that the documentation submitted on the appellant’s behalf states that she is unable to participate in any of her own care. *Id.* The MassHealth representative stated that it is reasonable to believe that it would take a less amount of time to undress the appellant than to dress her.

The appellant’s mother stated that she agrees with the modification made by MassHealth in the

dressing category.

The ninth modification made was in the “Meal Preparation” category. MassHealth denied the requested time of 20 minutes, once per day, 5 days per week because the appellant lives with a parent who is responsible for providing this assistance. The MassHealth representative testified that the documentation submitted on the appellant’s behalf states that her mother and father work full time and PCA assistance was requested in this category to prepare the appellant’s lunch each day, 5 days per week (Exhibit 6, p. 30). She explained that it appeared, based on the documentation submitted, that the PCA is alone with the appellant during lunch preparation. The MassHealth representative explained that babysitting services are not covered by the PCA program. She testified that the appellant cannot direct in her own care. Thus, a parent must be present when the PCA is present.

The appellant’s mother inquired whether this category is separate from the eating category. The MassHealth representative confirmed that meal preparation is separate and apart from the eating category. She explained that the PCA time requested for the appellant in the eating category was approved by MassHealth in full (See, Exhibit 6, p. 21).

The appellant’s mother stated that she agrees with MassHealth’s denial of PCA assistance in the meal preparation category.

The appellant’s mother inquired about what the PCA program covers in terms of time for each task. She stated that it takes a lengthy amount of time to sit with the appellant and read to her, in addition to feeding her, bathing her and dressing/undressing her. In response, the MassHealth representative explained that the PCA program is intended for direct, hands-on care. The PCA program does not cover wait time or recreational activities. Rather, the PCA program assists consumers who are unable to complete tasks (ADLs and IADLs) on their own. The PCA program provides time for tasks, for each task that is requested. The MassHealth representative stated that for eating, as an example, the PCA program covers the time it takes the PCA to assist with putting food onto a fork or spoon and feed it to the appellant. The PCA program does not cover wait time, such as the time it takes consumers to chew the food, or the time in between the consumer taking the next bite or sip of something. Further, the PCA program does not cover guiding or coaching consumers, nor does it cover babysitting services.

The appellant’s mother testified that she has a better understanding of what the PCA program entails, given the explanation. She reiterated that she only disagrees with the modification that MassHealth made in the mobility-transfers category.

Findings of Fact

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

1. The appellant is a minor child and a MassHealth member.
2. The appellant's medical diagnoses include trisomy 18 and global developmental delay. She recently completed chemotherapy for [REDACTED]
3. The appellant was assessed to be at a developmental stage of approximately a [REDACTED] month-old. She is completely dependent on all ADLs and IADLs.
4. ADLIB, Inc., a PCM agency, submitted an initial evaluation request to MassHealth on the appellant's behalf on April 2, 2024, seeking the following: 22 hours and 15 minutes per week, for 5 days per week.
5. By notice dated April 23, 2024, MassHealth modified the requested PCA assistance time to 13 hours and 30 minutes per week, for 5 days per week.
6. The PA request at issue covers the time period of April 23, 2024 through April 22, 2025.
7. The appellant requested time for assistance with mobility transfers, as follows: 3 minutes, 5 times per day, 5 days per week.
8. MassHealth modified the requested PCA assistance time for mobility transfers to 2 minutes, 5 times per day, 5 days per week.
9. The appellant is unable to walk, she is unable to follow directions and must be carried everywhere.
10. The appellant requested time for assistance with repositioning, as follows: 5 minutes, twice per day, 5 days per week.
11. MassHealth modified the requested PCA assistance time for assistance with repositioning the appellant to 2 minutes, twice per day, 5 days per week.
12. At the hearing, the appellant's mother agreed with this modification made by MassHealth in the repositioning category.
13. The appellant requested time for assistance with PROM as follows: 10 minutes, twice per day, 5 days per week, for each extremity.
14. MassHealth modified the requested time for assistance with PROM, as follows: 20 minutes, twice per day, 5 days per week, in total, for all extremities.

15. At the hearing, the appellant's mother agreed with this modification made by MassHealth in the PROM category.
16. The appellant requested time for assistance with bathing, as follows: 45 minutes, once per day, 5 days per week.
17. MassHealth modified the requested time for assistance with bathing, as follows: 20 minutes, once per day, 5 days per week.
18. At the hearing, the appellant's mother agreed with this modification made by MassHealth in the bathing category.
19. The appellant requested time for assistance with nail care (grooming) as follows: 5 minutes, once per week.
20. MassHealth denied the requested time in this category.
21. At the hearing, the appellant's mother agreed with the denial made by MassHealth in the nail care category.
22. The appellant requested time for assistance with hair care (grooming), as follows: 5 minutes, once per day, 5 days per week.
23. MassHealth modified the requested time in this category to 3 minutes, once per day, 5 days per week.
24. At the hearing, the appellant's mother agreed with the modification made by MassHealth in the hair care (grooming) category.
25. The appellant requested time for assistance with dressing as follows: 10 minutes, once per day, 5 days per week.
26. MassHealth modified the requested time in this category to 7 minutes, once per day, 5 days per week.
27. At the hearing, the appellant's mother agreed with the modification made by MassHealth in the dressing category.
28. The appellant requested time for assistance with undressing, as follows: 10 minutes, once per day, 5 days per week.

29. MassHealth modified the requested time in this category to 5 minutes, once per day, 5 days per week.
30. At the hearing, the appellant's mother agreed with the modification made by MassHealth in the undressing category.
31. The appellant requested time for assistance with meal preparation, as follows: 20 minutes per day, 5 days per week.
32. MassHealth denied the requested time in this category.
33. At the hearing, the appellant's mother agreed with the denial made by MassHealth in the meal preparation category.

Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (IADLs) as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member 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; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the instrumental activities of daily living (130 CMR 422.402).

Pursuant to 130 CMR 422.410(C), 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.

Further, pursuant to 130 CMR 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.

Pursuant to 130 CMR 450.204(A), 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

At issue in this appeal were modifications of time requested for PCA assistance for the appellant with the following ADLs: mobility transfers, repositioning, passive range of motion, bathing, grooming (nail care), grooming (hair care), dressing, undressing, and meal preparation.

At the hearing, the appellant's parent agreed to the modifications that MassHealth made in the following categories:

Repositioning: MassHealth modified the requested time of 5 minutes, twice per day, 5 days per week to 2 minutes, twice per day, 5 days per week;

PROM: MassHealth modified the requested time of 10 minutes for each extremity, twice per day, 5 days per week to 20 minutes for all extremities, twice per day, 5 days per week;

Bathing: MassHealth modified the requested time of 45 minutes, once per day, 5 days per week to 20 minutes, once per day, 5 days per week;

Grooming (nail care): MassHealth denied the request of 5 minutes weekly;

Grooming (hair care): MassHealth modified the requested time of 5 minutes, once per day, 5 days per week to 3 minutes, once per day, 5 days per week;

Dressing: MassHealth modified the requested time of 10 minutes, once per day, 5 days per week to 7 minutes, once per day, 5 days per week;

Undressing: MassHealth modified the requested time of 10 minutes, once per day, 5 days per week to 5 minutes, once per day, 5 days per week;

Meal Preparation: MassHealth denied the request of 20 minutes, once per day, 5 days per week.

Because the appellant's representative agreed with the modifications made by MassHealth, as described above, these portions of the appeal are DISMISSED.

Mobility Transfers

The appellant requested 3 minutes of assistance with mobility transfers, 5 times per day, 5 days per week. MassHealth modified the request to 2 minutes, 5 times per day, 5 days per week. MassHealth modified the request on the basis that the time requested for mobility transfers is longer than ordinarily required for someone with the appellant's physical needs. The appellant, however, is a minor child and is incapable of independently performing mobility transfers. The record demonstrates that the appellant is unable to walk, she is unable to follow directions, and she must be carried everywhere (Exhibit 6, p. 14). I conclude that in this circumstance, the time requested is appropriate for the appellant because of her physical needs. MassHealth's PCA program specifically includes mobility transfers as a covered task, and in this instance, the appellant has demonstrated that the requested amount of 3 minutes, 5 times per day, 5 days per week of assistance with this task is warranted. This portion of the appeal is APPROVED.

For these reasons, this appeal is dismissed in part and approved in part.

Order for MassHealth

For the PA period for dates of service April 23, 2024 through April 22, 2025: (1) approve the appellant's request in full for mobility transfers at 3 minutes, 5 times per day, 5 days per week; and (2) notify appellant of updated authorized PCA hours accordingly.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

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