

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2407959
Decision Date:	7/29/2024	Hearing Date:	06/18/2024
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown, OTR/L Clinical Reviewer (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	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	7/29/2024	Hearing Date:	06/18/2024
MassHealth's Rep.:	Robin Brown, OTR/L	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South 2	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 24, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.410(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on May 17, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

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

Summary of Evidence

The appellant is a MassHealth member between the ages of [REDACTED] and was represented at hearing by her mother. MassHealth was represented by a clinical reviewer for Optum, which manages MassHealth's PCA program. All parties appeared by telephone. The following is a summary of the testimony and evidence presented at the hearing.

The appellant suffers from a primary diagnosis of autism spectrum disorder and chromosomal anomaly, with medical history including grand mal seizures, Nissen fundoplication, global developmental delay, reflux, gastritis, delayed gastric emptying, surgical repair of esophageal/hiatal hernia, esophageal stricture, severe constipation, menorrhagia, urinary and fecal incontinence, scoliosis with spinal fusion, and self-injurious behaviors. (Testimony, Exhibits 6 and 7). The appellant is categorized as requiring the maximum level of assistance to accomplish toileting activities, including with the removal of her wet/soiled brief, with all hygiene and all clothing management needed. (Exhibit 7).

On April 12, 2024, MassHealth received an annual renewal prior authorization request submitted by the personal care management agency (PCM), [REDACTED], on the appellant's behalf requesting 40 hours and 15 minutes of weekly PCA services during 43.1 school weeks, and 42 hours and 30 minutes of weekly PCA services during 9 vacation weeks. On April 24, 2024, MassHealth modified the request and approved the appellant for 39 hours and 45 minutes of weekly PCA services during the 43.1 school weeks, and 41 hours 15 minutes of weekly PCA services during 9 vacation weeks, with services being provided for the period May 5, 2024-May 4, 2025.

The MassHealth representative asserted that she was very familiar with the appellant's situation, as she had previously served as the appeal reviewer for a separate appeal related to absorbents for the appellant. She testified that the only modification to the prior authorization request was made in the area of bladder care.

The requested services for the school weeks were as follows: 5 minutes for each bladder episode, 6 times a day during school days; and 5 minutes for each bladder episode, 8 times a day on weekends. This request was modified by MassHealth as follows: 5 minutes for each bladder episode with 4 episodes per day during school days, and 5 minutes for each bladder episode, 6 times per day on the weekends. The MassHealth representative testified that the big picture for the appellant is that 12 total episodes of toileting are approved per day for both bladder and bowel care during the school week, and that 14 total episodes were requested. This frequency of episodes is beyond the standard of care, according to the MassHealth representative.

The MassHealth representative further testified that a large number of absorbents have been approved for the appellant already, that the appellant has enough absorbents for 9 diaper

changes, and that the appellant has more time approved for changes than she does for absorbents. The MassHealth representative testified that the modification is reasonable, and that especially since the end of the COVID-19 public health emergency, MassHealth must adhere to medical necessity when making these decisions. She asserted that in this case, 14 episodes of diaper changes/toileting per day is too many. She added that the standard of care in a medical facility for toileting is every 2 hours, and this standard is carried out in long-term care facilities and hospital intensive care units. She testified that what the appellant has requested exceeds the standard of care “by a fair amount.” The MassHealth representative testified that the approved services must meet the standard of care for medical necessity as defined in the MassHealth regulations as 130 CMR 450.204: Medical Necessity¹. Testimony.

The appellant’s mother/representative reported that the appellant is not an ordinary person due to her multiple, chronic, and lifelong medical issues. The appellant goes to the bathroom a lot, and she is on a toileting program at school. She stated that the requested time for toileting is identical to the previous year. The appellant’s mother referenced a letter from the appellant’s primary care provider that documented the appellant’s medical issues (Exhibit 6). The letter states that “The typical amount [of absorbents] allowed is not sufficient as [the appellant] has large volume of urine and feces, frequent leakage through/around the products, frequent watery stools related to bowel regimen, breakthrough bleeding and heavy menses with overflow.” (*Id.*) The appellant’s mother agreed that the appellant has a lot of time for bowel care, but it is difficult to separate bowel from urine. The appellant is on a toileting program during the school year and goes to the bathroom frequently. The appellant’s representative/mother reported that the appellant is heavily incontinent at night and that the appellant has at least 4 bowel movements per day due to the bowel medication that she takes daily. (Testimony, Exhibit 7). The appellant’s representative/mother testified that the appellant is not always compliant when being assisted with hygiene after a bowel movement and that each episode varies in degree of assistance needed to clean the appellant and perform the necessary hygiene for the appellant.

Findings of Fact

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

1. Appellant is a MassHealth member between the ages of [REDACTED]
2. Appellant has primary diagnosis of autism spectrum disorder and chromosomal anomaly, with medical history including grand mal seizures, Nissen fundoplication, global

¹ 130 CMR 450.204(B) states “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...” (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

developmental delay, reflux, gastritis, delayed gastric emptying, surgical repair of esophageal/hiatal hernia, esophageal stricture, severe constipation, menorrhagia, urinary and fecal incontinence, scoliosis with spinal fusion, and self-injurious behaviors

3. On the appellant's behalf, on April 12, 2024, [REDACTED] submitted to MassHealth a request for 40 hours and 15 minutes of weekly PCA services for 43.1 school weeks, and 42 hours and 30 minutes of weekly PCA services for 9 vacation weeks.
4. The dates of service are from 5/5/2024 to 5/4/2025.
5. The appellant requested 5 minutes for each bladder episode, 6 times a day during school days; and 5 minutes for each bladder episode, 8 times a day on weekends.
6. MassHealth modified the request to 5 minutes for each bladder episode with 4 episodes per day during school days, and 5 minutes for each bladder episode 6 times per day on the weekends. MassHealth modified these requests because the time requested is longer than ordinarily required for someone with the appellant's needs.
7. Appellant requires maximum assistance for bladder care activities.
8. Appellant's need for frequent bladder care assistance results from her long history of reflux, gastritis, delayed gastric emptying, surgical repair of esophageal/hiatal hernia, esophageal stricture, and urinary incontinence.

Analysis and Conclusions of Law

MassHealth covers personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:² First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." See 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). A service is "medically necessary" if:

- (1) it is reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate,

² PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the prerequisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive PCA assistance to meet her care needs.

The MassHealth PCA program covers medically necessary assistance with the following ADLs:

(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 bathing, personal hygiene, or grooming;
- (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.

See 130 CMR 422.410 (emphasis added).

MassHealth will approve time in accordance with the “activity time performed by a PCA in providing assistance with the [task].” See 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with his or her ADL/IADL. See 130 CMR 422.402.

MassHealth does not, however, pay for those services it considers “non-covered” PCA services, which include, but are not limited to, the following:

(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

.....

See 130 CMR 422.412.

Appellant requested 5 minutes for each bladder episode, 6 times a day during school days; and 5 minutes for each bladder episode, 8 times a day on weekends for each bladder episode. See Exh. 7, p. 21. MassHealth modified the frequency of bladder care episodes to 5 minutes for each bladder episode with 4 episodes per day during school days, and 5 minutes for each bladder episode 6 times per day on the weekends. With respect to the frequency, MassHealth determined that 6 bladder care episodes, in addition to 4 toileting episodes for bowel care on school days, and 8 bladder care episodes in addition to the 4 toileting episodes and nighttime toileting assistance, exceeded the amount of care ordinarily required for someone with Appellant’s physical needs. MassHealth asserted that its modification to 4 bladder care episodes per day would result in a total of 12 toileting episodes within a 24-hour period, or once every two hours, which was consistent with standard bladder programs.

Appellant’s representative, her mother, demonstrated that the modification to the frequency of bladder care episodes is insufficient to meet the appellant’s needs. As noted by her representative and primary care physician, the appellant is incontinent of urine and bowel, experiences frequent, watery stools, and requires maximum assistance with toilet hygiene, clothing management/realignment, changing of absorbent product, management of her menstrual cycle, and toileting transfers. Testimony, Exhibits 6 and 7. Appellant’s mother

persuasively testified that the standard bladder protocol is not an appropriate standard to hold her to, given her age and permanent medical conditions. Appellant's representative persuasively testified that the time requested for toileting activities accurately reflects the appellant's needs for assistance with toileting.

MassHealth erred in their decision to modify the appellant's allotted time for bladder care.

For the foregoing reasons, the appeal is hereby APPROVED.

Order for MassHealth

For the PA period beginning 5/5/2024 and ending 5/4/2025, approve the time for bladder care at 5 minutes for each bladder episode, 6 times a day during school days; and 5 minutes for each bladder episode, 8 times a day on weekends.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

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