

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2409342
Decision Date:	08/02/2024	Hearing Date:	07/19/2024
Hearing Officer:	Alexandra Shube		

Appearances for Appellant:



Appearance for MassHealth:

Via telephone:
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; Denied in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	08/02/2024	Hearing Date:	07/19/2024
MassHealth's Rep.:	Donna Burns, RN	Appellant's Reps.:	Parents
Hearing Location:	Quincy Harbor South, 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 May 10, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on June 13, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

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

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant, a minor, was represented at the hearing via telephone by his parents.

The MassHealth representative testified that the documentation submitted shows the appellant is a [REDACTED] child with a primary diagnosis of congenital cytomegalovirus (CMV) causing global developmental delay. Relevant medical history shows developmental delays, spasticity, frequent seizure activity, and feeding through G-tube several times per day and receives all medications through same. According to the appellant's parents, he also has cerebral palsy, drug-resistant epilepsy, oral dysphagia, and single-sided deafness.

On April 26, 2024, the appellant's personal care management (PCM) agency, [REDACTED] submitted an initial prior authorization request for PCA services requesting 51 hours and 15 minutes per week, including night hours, for the dates of service of May 10, 2024 through May 9, 2025. On May 10, 2024, MassHealth modified the request to 14 hours per week with no night hours. MassHealth made modifications related to PCA assistance with the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): mobility; transfers; repositioning; passive range of motion (PROM); bathing; grooming – nail care; grooming – oral care; grooming – hair care; dressing; undressing; toileting; toileting at night; meal preparation; laundry; housekeeping; and transportation to medical appointments (MD transport). At hearing, parties were able to resolve the dispute related to all ADLs and IADLs except meal preparation, housekeeping, and MD transport.

Parties agreed to the following at hearing:

- Mobility: 5 minutes, 4 times per day, 7 days per week;
- Transfers: 5 minutes, 6 times per day, 7 days per week;
- Repositioning: 3 minutes, 6 times per day, 7 days per week;
- PROM: 2 minutes, 3 times per day, 7 days per week for each upper extremity and 3 minutes, 3 times per day, 7 days per week for each lower extremity;
- Bathing: 20 minutes; 1 time per day; 7 days per week;
- Grooming – nail care: 5 minutes, 1 time per day, 1 day per week;
- Grooming – oral care: 2 minutes, 2 times per day, 7 days per week;
- Grooming – hair care: 1 minute, 1 time per day, 7 days per week;
- Dressing: 15 minutes, 1 time per day, 7 days per week;
- Undressing: 12 minutes, 1 time per day, 7 days per week;
- Toileting: 6 minutes, 6 times per day, 7 days per week for bladder and 8 minutes, 1 time per day, 7 days per week for bowel;
- Toileting at night: 6 minutes, 2 times per night, 7 nights per week; and
- Laundry: 30 minutes per week.

Meal preparation, housekeeping, and MD transport remain at issue. The MassHealth representative explained that no time was approved for these IADLs because IADLs for a minor child are the responsibility of the parent. It is a consumer driven plan and a [REDACTED] cannot drive the program. A parent is expected to be home to drive the program. The PCA is not a babysitter.

Notes indicate that both parents work full-time jobs outside of the home and are unable to assist with ADLs/IADLs.

Meal Preparation

The appellant requested 20 minutes, 1 time per day, 7 days per week for dinner. MassHealth did not approve any time. The comments in the request state that the appellant has a pureed dinner and the PCA prepares it and feeds the appellant. The appellant is totally dependent for meal preparation due to developmental delays, spasticity, and frequent seizure activity. The appellant is fed through a G-tube several times per day and receives all medications through the same.

The MassHealth representative testified that MassHealth looks at what would be developmentally appropriate for a child of this age. Any child of the appellant's age, disabled or not, would require a parent to prepare meals.

The appellant's parents testified that the appellant eats separate food from the rest of the family. He is on a ketogenic diet for seizure prevention. His meal program is very exact and requires careful measuring. The food is measured out by milliliters and/or grams to get the correct ratio and requires some level of scientific precision. Additionally, the feeding tube requires a lot of management.

The MassHealth representative stated that it is still the parent's responsibility. Additionally, there are many children without disabilities that may have allergies and parents have to prepare specialized meals for those children. Further, the exacting requirements of his meal preparation make it a skilled task, which are not appropriate services to be completed by a PCA.

Housekeeping

The appellant requested 60 minutes per week for housekeeping. MassHealth did not approve any time. The comments in the request state that the PCA is to clean the appellant's personal space.

The appellant's parents testified that due to excessive drooling, spitting-up, vomiting, and wetting and soiling through diapers, the appellant's equipment along with rugs, furniture, floors, and couches need to be cleaned frequently. They have to wash the couch about two times per week. The clean-up and housekeeping go beyond what is normal for a typical child his age. His equipment is covered in vomit every day and requires frequent cleaning.

The MassHealth representative responded that a typical child his age is messy and spills and drops things requiring frequent clean-up. It still falls under parental responsibility. Additionally, equipment maintenance is a different category and there was no time requested for it in the prior authorization.

MD Transport

The appellant requested 39 minutes per week for transportation to medical appointments. MassHealth did not approve any time.

The MassHealth representative testified that the family is expected to take him to medical appointments at this age.

The appellant's parents explained that they do take him to medical appointments, but a second person is needed because it is hard to transfer him, especially with his spasticity and as he gets heavier. The PCA would assist with getting him in and out of the wheelchair van and during appointments, it would be helpful to have someone to assist with his ADLs. For example, he often will spit up or need a feed in the middle of an appointment.

Findings of Fact

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

1. The appellant is a minor child with primary diagnoses of CMV causing global developmental delay, cerebral palsy, drug-resistant epilepsy, oral dysphagia and single-sided deafness. Relevant medical history shows developmental delays, spasticity, frequent seizure activity, and feeding through G-tube several times per day and receives all medications through same. (Testimony and Exhibit 5).
2. On April 26, 2024, MassHealth received a prior authorization request for PCA services requesting 51 hours and 15 minutes per week, including night hours, for the dates of service of May 10, 2024 through May 9, 2025 (Testimony and Exhibit 5).
3. On May 10, 2024, MassHealth modified the request to 14 hours per week with no night hours (Testimony and Exhibit 5).
4. At hearing, the parties were able to resolve the disputes related to PCA assistance with the following ADLs and IADL:
 - Mobility: 5 minutes, 4 times per day, 7 days per week;
 - Transfers: 5 minutes, 6 times per day, 7 days per week;
 - Repositioning: 3 minutes, 6 times per day, 7 days per week;

- PROM: 2 minutes, 3 times per day, 7 days per week for each upper extremity and 3 minutes, 3 times per day, 7 days per week for each lower extremity;
- Bathing: 20 minutes; 1 time per day; 7 days per week;
- Grooming – nail care: 5 minutes, 1 time per day, 1 day per week;
- Grooming – oral care: 2 minutes, 2 times per day, 7 days per week;
- Grooming – hair care: 1 minute, 1 time per day, 7 days per week;
- Dressing: 15 minutes, 1 time per day, 7 days per week;
- Undressing: 12 minutes, 1 time per day, 7 days per week;
- Toileting: 6 minutes, 6 times per day, 7 days per week for bladder and 8 minutes, 1 time per day, 7 days per week for bowel;
- Toileting at night: 6 minutes, 2 times per night, 7 nights per week; and
- Laundry: 30 minutes per week.

(Testimony)

5. The appellant seeks time for PCA assistance with meal preparation as follows: 20 minutes per day, 1 time per day, 7 days per week for dinner (Testimony and Exhibit 5).
6. The appellant is on a special ketogenic diet for seizure prevention which involves careful measurement of his food and is prepared separately from the rest of the family (Testimony and Exhibit 6).
7. The appellant seeks time for PCA assistance with housekeeping as follows: 60 minutes per week (Testimony and Exhibit 5).
8. The appellant frequently vomits, spits up, drools, and soils through his diapers on rugs, furniture, floors, and couches, resulting in excess housekeeping, including washing the couch two times per week (Testimony and Exhibit 6).
9. The appellant seeks time for PCA assistance with MD transport as follows: 39 minutes per week (Testimony and Exhibit 5).
10. The appellant's parents take him to medical appointments, but need a second person to assist with transfers, especially with his spasticity and as he gets heavier (Testimony).
11. MassHealth did not approve any time for those IADLs because IADLs for a minor child are the responsibility of the parent (Testimony).

Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of 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 or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 Division. Services that are less

costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.

- (B) 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. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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;
- (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;** or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C). Family members include the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative. See 130 CMR 422.402.

Additionally, the PCA Operating Standards specify that special consideration may be given for “MD transportation if a second person is required to assist with medical and/or behavioral needs” and for “IADL’s if the documentation supports the reason(s) the parent(s) or legal guardian(s) cannot perform the task(s) or if the task(s) is/are above and beyond what would be expected of a non-

disabled child of the same age.” See PCA Operating Standards XXVI(A)(1)(b)(i) and (A)(1)(d).

The appeal is DISMISSED as to PCA assistance with mobility; transfers; repositioning; PROM; bathing; grooming – nail care; grooming – oral care; grooming – hair care; dressing; undressing; toileting; toileting at night; and laundry because at hearing, parties were able to resolve the disputes.

As to the appellant’s request for 20 minutes per day of PCA assistance with meal preparation, the appeal is DENIED. IADLs, including meal preparation, are the responsibility of family members. While the appellant has special dietary needs, the appellant’s parents have not demonstrated that the meal preparation goes above and beyond what would be expected of a parent to meet the needs of any child of the appellant’s age.

As to the appellant’s request for 60 minutes per week of PCA assistance with housekeeping, the appeal is APPROVED in part and DENIED in part. MassHealth did not allow any time because the appellant lives with a responsible family member and housekeeping, as an IADL, is the parent’s responsibility. The regulation requires family members to provide “household management” and “**routine** . . . housekeeping.” The appellant’s need for housekeeping services related to his medical and behavioral conditions exceeds the housekeeping services anticipated through “household management” or “routine housekeeping.” The appellant’s parents credibly testified that his medical conditions which cause frequent vomiting, spitting up, excessive drooling, and soiling through his diaper, result in excessive amount of housekeeping every day, including washing the couch two times per week. MassHealth considers individual circumstances in determining the number of hours of PCA services. Not only does the appellant have excessive housekeeping needs, but both his parents work full-time outside of the home. Therefore, the appellant’s medical condition results in the need for housekeeping assistance in excess of the routine housekeeping assistance that would be expected for regular household maintenance. For these reasons, the appellant is approved for 30 minutes per week for PCA assistance with housekeeping to meet the housekeeping needs beyond what is expected for regular household maintenance.

As to the appellant’s request for PCA assistance with MD transport, the appeal is APPROVED. The appellant requested 39 minutes per week for assistance with MD transport, but MassHealth did not allow any time because the appellant lives with a responsible family member and MD transport, as an IADL, is the parent’s responsibility. The appellant’s parents credibly testified that a second person is needed to assist with the appellant’s medical and behavior needs, particularly transfers due to his spasticity. The PCA Operating Standards specify that special consideration may be given for “MD transportation if a second person is required to assist with medical and/or behavioral needs.” For these reasons, the appellant is approved for 39 minutes per week for transportation to medical appointments.

For all the above reasons, the appeal is approved in part, denied in part, and dismissed in part.

Order for MassHealth

Approve 30 minutes per week for housekeeping; approve 39 minutes per week for MD transport; and implement the agreement made at hearing for mobility; transfers; repositioning; PROM; bathing; grooming – nail care; grooming – oral care; grooming – hair care; dressing; undressing; toileting; toileting at night; and laundry.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

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