

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Dismissed in part

Appeal Number: 2409495

Decision Date: 7/29/2024

Hearing Date: 7/25/2024

Hearing Officer: David Jacobs

Appearances for Appellant:



Appearances for MassHealth:

Robin Brown, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in part; Dismissed in part	Issue:	Prior Authorization (PCA Services)
Decision Date:	7/29/2024	Hearing Date:	7/25/2024
MassHealth Rep:	Robin Brown, RN	Appellant Rep:	Appellant's Mother
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through notice dated June 6, 2024, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410) (Exhibit 1). The appellant filed a timely appeal on June 17, 2024. (Exhibit 2 and 130 CMR 610.015(B)). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a female under the age of [REDACTED] whose provider, [REDACTED] submitted an initial request for PCA services on her behalf. The record reflects that the appellant has a primary diagnosis of autism, developmental delays, seizure, incontinence, decreased muscle tone, and poor coordination (Exhibit 7, pg. 9). On June 3, 2024, MassHealth received an initial prior authorization request for PCA services. The appellant seeks PCA services in the amount of 18 hours, 15 minutes per week. On June 11, 2024, MassHealth modified the request and authorized 17 hours per week. Three modifications were made by MassHealth. The appellant's mother appeared on behalf of the appellant.

1. Mobility Transfers (Exhibit 4, pg. 11-12)

For the mobility transfers, the evaluating nurse's notes indicate that "consumer needs assistance with transfers d/t low tone, poor balance, assist in/out of home, up/down stairs, on/off bus" (Exhibit 4, pg. 12). The appellant requested 7 minutes, 2 times a day, 5 days a week (Exhibit 4, pg. 11). MassHealth modified this requested to 5 minutes, 2 times a day, 5 days a week (Exhibit 1). The MassHealth representative testified that this was more time than usually allowed as it is understood that the appellant needs this time for stairs and to board the van to school. The appellant's mother affirmed that purpose but added that due to her daughter's reduced muscle tone it takes her a very long time to descend the stairs from their second-floor townhouse. She testified that it often takes more than 7 minutes to make the journey as her daughter can only take one step at a time. The MassHealth representative responded that she did not think there would be enough stairs from a second-floor townhouse to require up to 7 minutes to descend them even considering the appellant's condition.

2. Grooming (hair) (Exhibit 4, pg. 16)

The parties were able to resolve the dispute regarding the grooming task of hair. MassHealth agreed to approve the time as requested. Therefore, the appeal is dismissed as to this issue.

3. Bowel Care (Exhibit 4, pg. 20)

For Bowel Care, the evaluating nurse's notes indicate that "Dependent with all toileting on toileting schedule with incontinence, DX chronic diarrhea, in diapers, does not notify need to void, incontinence through the night. D for thorough hygiene and hand washing" (Exhibit 4, pg. 20). The appellant requested 12 minutes, 2 times a day, 7 days a week (Exhibit 4, pg. 20). MassHealth modified this requested to 10 minutes, 2 times a day, 7 days a week (Exhibit 1). The MassHealth representative testified that this was more time than usually allowed as it is understood that time is needed for changing the appellant's diapers due to incontinence. She argued that in her experience as a nurse, 10 minutes is enough time to change an adult diaper. The appellant's mother conceded that the time is used to change the appellant's diaper but argued that it can take anywhere from 13-15 minutes to change the appellant's diaper. She testified that the appellant is

getting bigger and is often hard to handle due to her autism. She further testified that sometimes due to “crazy accidents” the appellant needs to be washed in the tub.

Findings of Fact

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

1. The appellant is female under [REDACTED] with primary diagnosis of autism, developmental delays, seizure, incontinence, decreased muscle tone, and poor coordination.
2. On June 3, 2024, the appellant submitted an initial request for PCA services in the amount of 18 hours and 15 minutes.
3. On June 11, 2024, MassHealth modified the request and authorized 17 hours.
4. At hearing, the parties were able to resolve disputes regarding time for PCA assistance for the grooming of the appellant’s hair.
5. The parties were unable to resolve the dispute regarding mobility transfers and bowel care.
6. The appellant requested time for PCA assistance with mobility transfers as follows: 7 minutes, 2 times a day, 5 days a week; MassHealth modified this time to: 5 minutes, 2 times a day, 5 days a week.
7. The appellant lives in a town house on the second floor.
8. The appellant requires PCA assistance to descend the stairs to the ground level and board the van to school.
9. The appellant has decreased muscle tone and takes the stairs slowly, one at a time. This most often takes more than 7 minutes.
10. The appellant requested time for PCA assistance with bowel care as follows: 12 minutes, 2 times a day, 7 days a week; MassHealth modified this time to: 10 minutes, 2 times a day, 7 days a week.
11. The appellant is incontinent and wears diapers that need to be changed as a part of bowel care.
12. The appellant is autistic and is becoming more difficult to change as she grows older.
13. The appellant often has bad accidents that require her to be washed in the tub.

14. It often takes 13-15 minutes to change the appellant's diaper.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and 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 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 MassHealth as being instrumental to the health care of the member.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

Mobility Transfers

The appellant disputes MassHealth’s modification of the time modified for PCA assistance with mobility transfers to get the appellant down the stairs and into the school van.

The appellant has demonstrated that 7 minutes, 2 times a day, 5 days a week for assistance with mobility transfers on stairs and getting into the school van is medically necessary. The evaluating nurse’s notes indicate that the appellant has reduced muscle tone which slows her movement (Exhibit 4, pg. 11). Furthermore, the appellant’s mother indicated that due to her daughter’s condition she takes the stairs very slowly, one step at a time, which often causes the time to get to the school van to exceed 7 minutes each instance. The MassHealth representative was dubious that it would take 7 minutes for the appellant to descend two flights of stairs even considering her condition. However, it is found that the mother’s testimony is more persuasive as she has firsthand experience going down the stairs with the appellant. Moreover, it is credible that the appellant’s reduced muscle tone could cause such an increased requirement of time. Therefore, it is found that the appellant’s request for 7 minutes, 2 times a day, 5 days a week is medically necessary.

Bowel Care

The appellant disputes MassHealth’s modification of the time modified for PCA assistance with bowel care.

The appellant has demonstrated that 12 minutes, 2 times a day, 7 days a week for assistance with bowel care is medically necessary. The evaluating nurse’s notes indicate that the appellant is

dependent for all toileting needs due to incontinence and chronic diarrhea, and thus reliant on diapers (Exhibit 4, pg. 20). The MassHealth representative testified that in her personal experience as a nurse, 10 minutes is usually enough time to change an adult's diaper. However, the appellant's mother argued it can take anywhere from 13-15 minutes to change the appellant's diaper as her autism makes her harder to handle and she often has bad accidents that require her to be put into the tub. Here, it is found that the appellant's mother's testimony is more persuasive as she is more aware of her daughter's specific needs due to her autism. Furthermore, it is credible that a growing child with autism, incontinence, and chronic diarrhea that requires washing could take an average of at least 12 minutes to change each instance. Therefore, it is found that the appellant's request for 12 minutes, 2 times a day, 7 days a week is medically necessary.

Order for MassHealth

Rescind notice on appeal, and approve time requested for PCA assistance with mobility transfers and bowel care.

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 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.

David Jacobs
Hearing Officer
Board of Hearings

cc: Optum