

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part; Dismissed in Part	Appeal Number:	2409972
Decision Date:	10/16/2024	Hearing Date:	07/22/2024
Hearing Officer:	Mariah Burns	Record Open to:	08/19/2024

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN for 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; Dismissed in Part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	10/16/2024	Hearing Date:	07/22/2024
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Remote	Aid Pending:	Yes

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 June 18, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on June 26, 2024, and Aid Pending was applied. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to modify 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 acted in accordance with the regulations in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is an adult MassHealth member under the age of 65 and was represented at hearing by her father, who is her authorized representative. MassHealth was represented by a clinical appeals reviewer and licensed occupational therapist for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from diagnoses of Down Syndrome, intellectual disability, autism spectrum disorder, developmental and cognitive delay, vision impairment, Tourette's Syndrome, and unsteady gait. On May 22, 2024, MassHealth received a prior authorization request on the appellant's behalf for re-evaluation of services, requesting 83 hours of PCA assistance per week. On June 18, 2024, MassHealth modified the request and approved the appellant for 60 hours and 30 minutes of assistance with dates of service from July 5, 2024, to July 4, 2025. As part of the appellant's Aid Pending benefit, the appellant received 78.5 hours of assistance for the duration of this appeal.

Modifications were made in the areas of lotion application, eating, nighttime feeding, and laundry. After hearing, the parties agreed to the following modifications:

- **Lotion Application:** approved for 5 minutes, 3 times per day, 7 days per week;
- **Nighttime Feeding:** appellant accepts modification;
- **Laundry:** approved for 60 minutes per week.

Thus, after hearing, a dispute remained only regarding time for assistance with eating.

The appellant requested 45 minutes, 3 times per day, 7 days per week for assistance with eating. The MassHealth representative reported that this request was denied because, based on the provided documentation, the appellant's required assistance with feeding/eating does not meet the standard of care for a PCA. She testified that the documentation indicates that the appellant has choking episodes that require serious medical intervention and is an aspiration risk whose needs do not comport with unskilled PCA assistance. The appellant's representative testified that the appellant can put a piece of food in her own mouth, but she must be constantly monitored and supervised, because if she is not then she will stuff large quantities of food in her mouth and choke. She also requires assistance with taking sips of water between bites. He reported that feeding her takes roughly 45 minutes per meal, and a parent is always present in the event of a choking incident. However, they have multiple special-needs children who require assistance. The MassHealth representative argued that the appellant's required assistance is more for cueing and supervision, which is not covered by the PCA program. She offered to increase the approved amount of assistance for feeding to 20 minutes per day for breakfast, 30 minutes, 2 times per day for lunch and dinner, and 10 minutes, 2 times per day for snacks, each for 7 days per week. The appellant's father rejected that offer and asked for time to provide letters of support for the

appellant's need, and the record was therefore kept open.

On July 23, 2024, the appellant submitted a letter from a physician that stated, in relevant part, "[the appellant] requires 945 minutes a week and 10 minutes a night for PCA hours. Due to her increased risk of aspiration and dysphagia, it is important to monitor [her] carefully in terms of eating to prevent aspiration events and choking." Exhibit 6 at 22. The MassHealth representative did not change her offer made at the hearing based on this information.

Findings of Fact

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

1. The appellant is an adult MassHealth member under the age of 65 who suffers from diagnoses of Down Syndrome, intellectual disability, autism spectrum disorder, developmental and cognitive delay, vision impairment, Tourette's Syndrome, and unsteady gait. Exhibit 4, Exhibit 5 at 7. The appellant received 78 hours and 30 minutes of weekly PCA services prior to the notice at issue. Testimony.
2. On May 22, 2024, MassHealth received a prior authorization request on the appellant's behalf for renewal of services requesting 82 hours of PCA services per week. Testimony, Exhibit 5 at 35. On June 18, 2024, MassHealth modified the request and approved the appellant for 60 hours and 30 minutes of weekly assistance with dates of service from July 5, 2024, to July 4, 2025. Testimony, Exhibit 1, Exhibit 5 at 36.
3. The specific modifications were made in the areas of lotion application, eating, nighttime feeding, and laundry. Exhibit 1.
4. After hearing testimony, MassHealth and the appellant agreed to the following hours:
 - **Lotion Application:** approved for 5 minutes, 3 times per day, 7 days per week;
 - **Nighttime Feeding:** appellant accepts modification;
 - **Laundry:** approved for 60 minutes per week.

Testimony.

5. The appellant requested 45 minutes, 3 times per day, 7 days per week for assistance with eating. MassHealth denied the request after finding that the request did not comport with professionally recognized standards of care. At the hearing, MassHealth offered to partially approve assistance for the task at 20 minutes per day for breakfast, 30 minutes, 2 times per day for lunch and dinner, and 10 minutes, 2 times per day for snacks, each for 7 days per week. Exhibit 1 at 2, Exhibit 5 at 15, Testimony.

6. The appellant can pick up food and place it in her mouth. Her PCA must hand her a single piece of food and maintain near-constant supervision and monitoring to ensure the appellant does not overstuff her mouth and risk aspiration and/or choking. She also requires assistance with taking a sip of water between every few bites of food. Testimony, Exhibit 5 at 20, Exhibit 6 at 22.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹
- (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.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007...

...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.

130 CMR 450.204(A)-(B).

As part of the PCA program, MassHealth does not cover certain activities, including, but not limited to “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members.” 130 CMR 422.412(C) and (F).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for lotion application, nighttime feeding, and laundry, the appeal with respect to those tasks has been resolved and is hereby dismissed pursuant to 130 CMR 610.051(B). Thus, at issue in this case is whether the appellant met her burden of proof in establishing medical necessity for more approved PCA time than MassHealth approved for assistance with eating.

The definition for eating can be found at 130 CMR 422.410(A)(6) and involves “physically assisting a member to eat...[and] can include assistance with tube-feeding and special nutritional and dietary needs.” In this case, the appellant’s representative reported that the appellant can put food in her own mouth, but she requires constant supervision to ensure that she does not over-stuff her mouth and risk aspiration and/or choking. She also requires assistance with taking drinks of water between bites. However, I agree with the MassHealth representative that the evidence supports the argument that a majority of the appellant’s required assistance has to do with cueing and supervision, not hands-on assistance with feeding. While there is no reason to doubt the testimony and evidence provided by the appellant’s representative, her needs are largely beyond what is allowed by the PCA regulations. Even the appellant’s doctor reports that the appellant requires “monitoring” while she is eating, not physical assistance. Exhibit 6 at 22. As such, the appellant did not provide evidence that she requires 45 minutes per meal of *hands-on assistance* for this task that is able to be covered as part of the PCA program. I therefore impose MassHealth’s offer of 20 minutes per day for assistance with breakfast, 30 minutes per day each for assistance with lunch and dinner, and 10 minutes, 2 times per day for assistance with snacks.

For the foregoing reasons, the appeal is dismissed with respect to lotion application, nighttime feeding, and laundry, and approved in part and denied in part with respect to eating.

Order for MassHealth

Modify the appellant’s approved PCA hours to include the following assistance:

- **Lotion Application:** 5 minutes, 3 times per day, 7 days per week;
- **Eating:** Breakfast: 20 minutes, 1 time per day, 7 days per week, Lunch: 30 minutes, once a day, 7 days per week; Dinner: 30 minutes, once a day, 7 days per week, Snacks: 10 minutes, 2 times per day, 7 days per week;
- **Laundry:** 60 minutes per week.

Remove Aid Pending.

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

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