

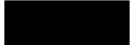
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in Part; Dismissed in Part	Appeal Number:	2413595
Decision Date:	12/3/2024	Hearing Date:	10/10/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown, OTR/L 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:	Denied in Part; Dismissed in Part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	12/3/2024	Hearing Date:	10/10/2024
MassHealth's Rep.:	Robin Brown, OTR/L	Appellant's Rep.:	[REDACTED]
Hearing Location:	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 August 14, 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 September 3, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to modify a member's request for 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 within the scope of the regulations in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is a minor child MassHealth member represented at the hearing by her parent. 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:

The appellant suffers from diagnoses of [REDACTED], autism spectrum disorder, skin issues, self-injurious behaviors, and developmental delays. She resides in a home with her parents and siblings. On August 13, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 40 hours and 45 minutes of PCA assistance per school week and 42 hours and 30 minutes of assistance on vacation weeks. On August 14, 2024, MassHealth modified the request and approved the appellant for 37 hours and 15 minutes of PCA assistance per school week and 40 hours and 15 minutes of assistance on vacation weeks with dates of service from September 4, 2024, to September 3, 2025.

Modifications were made in the areas of assistance with transfers, eating, bladder care (school days), and laundry. After the hearing, the parties agreed to the following modifications:

- **Transfer Assistance:** approved at 1 minute, 2 times per day, 7 days per week for both school and vacation weeks;
- **Eating:** approved at 20 minutes, 2 times per day, 5 days per week and 20 minutes, 3 times per day, 2 days per week for school weeks, 20 minutes, 3 times per day, 7 days per week for vacation weeks.

Thus, after hearing, disputes remained over assistance with bladder care and laundry.

Bladder Care

The appellant requested 10 minutes, 6 times per day, 5 days per week for assistance with bladder care on school days. She requested 7 times per day, 2 days per week for weekends during school weeks. MassHealth modified the school day request to 4 times per day, largely because the appellant's school is responsible for providing the service during the hours she is in school. The MassHealth representative testified that the standard of care in hospitals is to have patients urinate every two hours to avoid incontinence and other health issues. The appellant's parent reported that the appellant attends school from approximately 7:00 AM to 2:30 PM and goes to bed at 8:30 PM. He contended that the appellant goes to the bathroom between three and four times from when she gets home until she goes to bed. He also stated that her condition, to his knowledge, does not affect her kidneys or her bladder, except to the extent that she has bouts of incontinence.

Laundry

The appellant requested 45 minutes per week for assistance with laundry. MassHealth modified this request to 30 minutes per week. The MassHealth representative reported that this was modified because the appellant lives with a parent, who is generally responsible for providing assistance with Instrumental Activities of Daily Living, but that special consideration is given to individuals with particular needs. In this case, the appellant's reported incontinence, requiring more laundry than typical to be done for her, allowed MassHealth to approve some time for assistance with that task. The appellant's parent reported that there is laundry in the home and that the PCA is doing at least three to four loads of laundry per week for the appellant. Her laundry is done separately both due to her incontinence, persistent drooling, and because her self-injurious behavior causes her to bleed on her clothes and sheets, which requires more diligent laundry care to clean. The appellant provided photos of her injuries and soiled clothing to demonstrate the extent of the needed laundry. See Exhibit 6.

Findings of Fact

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

1. The appellant is a minor child MassHealth member who suffers from diagnoses of [REDACTED] Disorder, autism spectrum disorder, skin issues, self-injurious behaviors, and developmental delays. Exhibit 4, Exhibit 5 at 7-8.
2. On August 13, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 40 hours and 45 minutes of PCA assistance per school week and 42 hours and 30 minutes of assistance on vacation weeks. Testimony, Exhibit 5 at 33-34, 62-63. On August 14, 2024, MassHealth modified the request and approved the appellant for 37 hours and 15 minutes of PCA assistance per school week and 40 hours and 15 minutes of assistance on vacation weeks with dates of service from September 4, 2024, to September 3, 2025. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of transfers, eating, bladder care (school days), and laundry. Exhibit 1.
4. After the hearing, the parties agreed to the following modifications:
 - **Transfer Assistance:** approved at 1 minute, 2 times per day, 7 days per week;
 - **Eating:** approved at 20 minutes, 2 times per day, 5 days per week and 20 minutes, 3 times per day, 2 days per week for school weeks, 20 minutes, 3 times per day, 7 days per week for vacation weeks.

Testimony.

5. The appellant requested 10 minutes, 6 times per day, 5 days per week for assistance with bladder care on school days. Exhibit 5 at 20. She requested and was approved for 7 times per day for the weekends of school days. *Id.* MassHealth modified the school day request to 4 times per day. Exhibit 1. The appellant attends school from 7:00 AM to 2:30 PM and goes to bed at 8:30 PM. Testimony. Her conditions do not affect her bladder or kidneys except to the extent that she is incontinent. Testimony. The standard of care is for an individual to urinate every two hours to avoid any health issues or incontinence. Testimony.

6. The appellant requested 45 minutes per week for assistance with laundry. Exhibit 5 at 29. The appellant resides with her parents and siblings, and their home has laundry in-unit. Testimony. The appellant is sometimes incontinent of bladder and bowel, and her conditions cause persistent drooling and self-injurious behavior that makes her bleed on her sheets and clothes. Testimony, Exhibit 6. This requires more frequent loads of laundry than a typical individual. Testimony.

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 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).

- (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 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 “medical services available from other MassHealth providers...assistance provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members.” 130 CMR 422.412(B), (C) and (F). When determining the appropriate amount of physical assistance required by a MassHealth member, the following assumptions are made:

- (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.

.....

- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

130 CMR 422.410(C).

In this case, as the MassHealth representative and the appellant agreed to the approved hours for assistance with transfers and eating, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant’s approved hours to include the following:

Transfer Assistance: 1 minute, 2 times per day, 7 days per week for both school and vacation

weeks;

Eating: 20 minutes, 2 times per day, 5 days per week and 20 minutes, 3 times per day, 2 days per week for school weeks; 20 minutes, 3 times per day, 7 days per week for vacation weeks.

After hearing, disputes remained over assistance with bladder care and laundry. At issue in this case then is whether the appellant met her burden of proof in establishing that she is entitled to more approved PCA time than MassHealth approved for assistance with those tasks. For the reasons stated herein, I find that she has not.

Bladder Care

The appellant argues that she requires assistance with bladder care 6 times per school day. This argument is unconvincing for several reasons. First, she requested assistance only 7 times per day for the weekend and vacation days, and it seems unlikely that she would need only one less instance of assistance during days that she is gone from the home for nearly 8 hours. Second, I credit the testimony of the MassHealth representative that it is standard of care for someone to urinate every two hours. Therefore, it stands to reason that the appellant would require assistance with bladder care in the morning before school, and then 3 times during the 6 hour period between 2:30 and 8:30. Third, the appellant provided no evidence that her conditions cause her to urinate more frequently than a typical individual. For those reasons, I find that the appellant has not demonstrated that she requires more assistance with bladder care on school days beyond what MassHealth has already approved. The appeal with respect to that task is denied.

Laundry

The appellant argues that she requires 45 minutes of assistance with laundry each week. However, as an IADL, this is a task that typically would be expected to be provided by family members, pursuant to 130 CMR 422.410(C). Although there is credible evidence that the appellant requires more laundry than the typical individual due to her conditions, MassHealth rightly argues that this has already been taken into consideration by approval of 30 minutes for assistance with laundry. The appellant has not demonstrated that 30 minutes is insufficient for a PCA to provide hands-on assistance with any excess laundry (beyond that of someone with typical needs) produced by the appellant. For those reasons, the appeal with respect to that task is denied.

For the foregoing reasons, the appeal is hereby denied in part and dismissed in part.

Order for MassHealth

Modify the appellant's approved PCA assistance to reflect the following hours, retroactive to the start date of service of September 4, 2024:

- **Transfer Assistance:** 1 minute, 2 times per day, 7 days per week for school and vacation weeks;
- **Eating:** 20 minutes, 2 times per day, 5 days per week and 20 minutes, 3 times per day, 2 days per week for school weeks; 20 minutes, 3 times per day, 7 days per week for vacation weeks.

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

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