

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied in part;
Approved in part

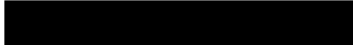
Appeal Number: 2413974

Decision Date: 12/4/2024

Hearing Date: 10/18/2024

Hearing Officer: Christopher Jones

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown, OT



*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; Approved in part	Issue:	Prior Authorization – Pediatric PCA Services
Decision Date:	12/4/2024	Hearing Date:	10/18/2024
MassHealth's Rep.:	Robin Brown, OT	Appellant's Rep.:	Mother
Hearing Location:	Virtual	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 August 19, 2024, MassHealth modified the appellant's prior authorization request for personal-care-attendant services. (Exhibit 1; 130 CMR 422.410.) The appellant's mother filed this appeal in a timely manner on September 9, 2024, and her last year's authorized time remains in effect through this appeal. (Exhibit 2; 130 CMR 610.015(B); 610.036.) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal-care-attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in approving fewer hours of personal-care-attendant services than were requested.

Summary of Evidence

The appellant is a [REDACTED] child with a primary diagnosis of autism, with attendant cognitive and behavioral issues. The request for services identified that the appellant requires additional

assistance with activities of daily living (“ADLs”) due to her increased behaviors, such as self-biting, and resistance to care that requires redirection and hands-on assistance for safety. On or around August 15, 2024, the appellant’s personal care management (“PCM”) agency, the [REDACTED] submitted an annual reassessment requesting 22 hours and 15 minutes (1,330 minutes) per school week and 24 hours and 45 minutes (1,480 minutes) per non-school week for personal-care-attendant (“PCA”) services.¹ The prior authorization period runs from September 29, 2024, through September 28, 2025.

MassHealth made modifications to six categories of assistance and approved 15 hours and 45 minutes (941 minutes) of assistance per school week and 18 hours and 30 minutes (1,106 minutes) per non-school weeks.

The first modification was to the category of bathing. The appellant requested 45 minutes and 10 minutes per day for bathing. MassHealth approved 25 minutes and 10 minutes per day for bathing for a total of 35 minutes per day. MassHealth’s representative testified that 45 minutes was more time than was usual to help a person with the appellant’s physical abilities take a bath. It was noted that the total approved time for bathing was 210 minutes per week (30 minutes a day) for school weeks, and 245 minutes per week (35 minutes per day) for non-school weeks. (Exhibit 6, pp. 15, 44). MassHealth’s representative did not have an explanation for the difference in bathing times for school weeks and non-school weeks, but she assumed that the notice was in error, and that the reviewer meant to reduce the total time for non-school weeks to 30 minutes per day as well.

The appellant’s mother testified that it probably takes about 25 minutes to provide physical assistance to the appellant with her bathing needs, including getting her into the bath or shower, cleaning her, and then helping her dry. However, the appellant loves water, and she can take four showers or baths a day, because it helps deal with her difficult behaviors. She spends 45 minutes in the bath because she likes to play in the water. The appellant’s mother testified that she cannot ever be left alone, so she needs someone to supervise her in the bath. Sometimes, she needs someone to intervene to stop her from physically harming herself, but the family uses the bath to calm the appellant, so most of her self-harming behaviors arise outside of the bath or when she is getting out.

MassHealth’s representative testified that PCA time is covered only for hands-on assistance with an ADL; supervision or behavioral management are not compensated time under the PCA program. The appellant’s mother submitted emails showing that the appellant is no longer participating in an ABA program to help with her autism-related behaviors, and she felt it was unfair that the PCA program would then also reduce her supports. The appellant’s mother testified that the appellant cannot be left alone due to her risk to herself. She has started biting and hitting herself, and she will

¹ The prior authorization request states that it is seeking an increase in time due to increased behaviors. However, the parties confirmed that the time requested this year is the same total time as was approved for last year’s prior authorization.

also bolt if left unsupervised. The appellant felt that an hour per day was the minimum amount of time that someone had to physically assist the appellant with her bathing throughout a day.

The appellant requested 10 minutes per week for PCA assistance with nail care, which MassHealth denied. MassHealth's representative testified that a neuro-typical child of the appellant's age would require their parent to trim their nails for them, therefore this is a parental responsibility, not time that is medically necessary due to the appellant's medical condition. The MassHealth representative referred to the Pediatric PCA Evaluation Section of the PCA Operating Standards.² The appellant's mother responded that 10 minutes does not come close to the time needed to help the appellant with her nails. She testified that she spends at least 30 minutes trimming the appellant's nails. The additional time is because the appellant's autism makes her tactilely sensitive, and the caregiver needs to be extra careful trimming her nails because she will pull her hands away.

The third and fourth modifications were to dressing and undressing. The appellant requested 20 minutes, once a day for PCA assistance with dressing and 15 minutes, once a day for PCA assistance with undressing. MassHealth allowed 12 minutes, once a day and 8 minutes, once a day for such assistance, respectively. MassHealth's representative testified that the time requested was more than is typically required given the appellant's physical capabilities. The appellant's mother testified that the time per task was probably correct as modified, but she testified that the appellant has at least four clothing changes throughout the day due to spillage and soiling. She is incontinent, and they are trying to develop independence, so they are limiting diaper usage. That said, even when they use diapers she still needs to be changed. The appellant's mother testified that the hands-on assistance with changing clothes is probably between 30 and 40 minutes per day. MassHealth's representative felt that this time should be captured under toileting if it is related to incontinence changes, and also responded that MassHealth typically only approves time for dressing in the morning and undressing to get ready for bed at night.

MassHealth also modified the time for task requested for bladder and bowel care. The appellant had requested 10 minutes, 6 times per day for PCA assistance with bladder care on weekends and non-school days. The appellant requested 10 minutes, 4 times per day for PCA assistance with bladder care on weekdays during school weeks. The appellant requested 15 minutes per day for PCA assistance with bowel care during both school and non-school weeks. The request noted the appellant's incontinence. MassHealth modified these times to 8 minutes, 6 times per day for PCA assistance with bladder care on weekends and non-school days and 8 minutes, 4 times a day for PCA assistance with bladder care on weekdays during school weeks. MassHealth approved 10 minutes per day for PCA assistance with bowel care. MassHealth's representative testified that this was likely done because the appellant had requested an adjustment on her last year's prior

² This document is not available on MassHealth's website, but it has been made available pursuant to a public records request. (Available at <https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf> (last visited November 26, 2024).)

authorization a week before it expired. In that adjustment request, the appellant sought to increase bladder care 5 minutes to 8 minutes per instance of assistance.

The appellant's mother testified that they are trying to get the appellant to use the bathroom. Every 90 minutes they bring the appellant to the bathroom and try and get her to use it. The appellant hates the bathroom, and every trip is a fight. Someone needs to turn on the faucet, help her undress, physically move her to sit on the toilet, wipe her, and then wash her hands afterwards. The helper needs to stay with the appellant to keep her hands away from her mouth because she will get her hands dirty while she's on the toilet. On top of this, she drinks a lot of water, so she has an average of two bladder accidents per day. The appellant's mother estimated that the appellant has bowel accidents three times per week. MassHealth's representative argued that this extra time was all uncompensated supervision or guiding.

The appellant's pediatrician submitted a letter stating that the appellant "has a diagnosis of severe autism. She requires assistance with all ADLs and supervision to help with self-injurious behavior. Her condition has worsened more recently as she has begun to have interrupted sleep and is more apt to hurt herself."³ (Exhibit 5, p. 1.)

Findings of Fact

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

- 1) The appellant is a [REDACTED] child with a primary diagnosis of autism, with attendant cognitive and behavioral issues. These behavioral issues include active self-harm, such as self-biting, as well as being a bolting risk. (Exhibit 5; Exhibit 6, pp. 7-8; testimony by the appellant's mother.)
- 2) On or around August 15, 2024, the [REDACTED] submitted an annual reassessment requesting 22 hours and 15 minutes (1,330 minutes) per school week and 24 hours and 45 minutes (1,480 minutes) per non-school week for PCA services. The prior authorization period runs from September 29, 2024, through September 28, 2025. (See Exhibit 6.)
- 3) MassHealth made six modifications and approved 15 hours and 45 minutes (941 minutes) of assistance per school week and 18 hours and 30 minutes (1,106 minutes) per non-school week. (Exhibit 1; see Exhibit 6.)
- 4) The appellant requested 45 minutes per day and 10 minutes per day for bathing. MassHealth approved 25 minutes and 10 minutes per day because 45 minutes was more

³ The letter also requests nighttime hours, but no nighttime hours were requested by the PCM agency.

time than was usual to help a person with the appellant's physical abilities take a bath. (Exhibit 6, pp. 14, 43; testimony by MassHealth's representative.)

- a. The "Total Approved Mins/Wk" in the bathing category was 210 for school weeks, and 245 for non-school weeks. (Exhibit 6, pp. 15, 44.)
 - b. The appellant takes multiple baths per day. Each bath requires about 25 minutes of hands-on assistance to bathe and dry her. Additional time in the bath is due to her playing in the water. (Testimony by the appellant's mother.)
- 5) The appellant requested 10 minutes per week for nail care, which MassHealth denied because most children of the appellant's age would require assistance trimming their nails. (Exhibit 6, pp. 16, 45; testimony by MassHealth's representative.)
 - a. It takes about 30 minutes to trim the appellant's nails each week due to the additional time needed based upon her medical conditions. (Testimony by the appellant's mother.)
- 6) The appellant requested 20 minutes, once a day for dressing and 15 minutes, once a day for undressing. MassHealth allowed 12 minutes per day for dressing and eight minutes per day for undressing. (Exhibit 6, pp. 18, 47.)
 - a. It takes about 12 minutes to get the appellant dressed and eight minutes to get her undressed, but she changes her clothes four times per day on average. (Testimony by the appellant's mother.)
- 7) The appellant requested 10 minutes, 6 times per day during non-school days to assist with bladder care. The appellant requested 10 minutes, 4 times per day on school days. The appellant requested 15 minutes per day for bowel care. MassHealth approved 8 minutes per instance of bladder care assistance and 10 minutes for bowel care assistance. (Exhibit 6, pp. 20, 49.)
 - a. The appellant is working on becoming independent with toileting. To facilitate this, the appellant goes to the bathroom every 90 minutes, whether she says she needs the toilet or not. She sometimes wears diapers, but she has about two bladder accidents per day whether or not she is wearing diapers. The appellant also has bowel accidents about three times per week. (Testimony by the appellant's mother.)
 - b. Each trip to the toilet requires physical redirection to get to the toilet, physical assistance with clothing, wiping, washing, and safety interventions to prevent self-injurious behavior. (Testimony by the appellant's mother.)

Analysis and Conclusions of Law

MassHealth generally covers personal care attendant (“PCA”) services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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: 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 or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

- (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 PCA services; and
- (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) There are also certain services that MassHealth will not cover:

- (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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412.)

The Pediatric PCA Evaluation Section of the PCA Operating Standards make clear that “[s]pecial consideration may be given to behavioral needs that demonstrate a safety risk for the child or others (i.e. removing a child from a dangerous situation), but documentation must support the request. Please Note: PCA time is not allowed when requested for purposes of restraint.”⁴ This section goes on to explain that special “consideration may be given for IADL’s if the documentation

⁴ “Restraint” is not defined, but it is clear that removing a child from a dangerous situation cannot be the same as restraining them.

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.**" This section also clarifies that a PCA should not provide skilled assistance, such as administering medications or feeding a child with a high aspiration risk. (PCA Operating Standards, pp. 62-63.)

MassHealth's representative is correct that time is not allowed for supervision, babysitting, or otherwise waiting in between times when physical hands-on assistance is required. Some of time the appellant's mother described falls under this prohibited time and should be considered babysitting or supervision.

For instance, most of the time the appellant's mother described for bathing, related to the time the appellant spent playing in the bathtub or the calming effects the bath had on her. The appellant may require additional hands-on assistance while she is playing in the bathtub to prevent her from harming herself, but this additional time in the bathtub only exists as a result of the appellant's taking a bath for recreation and not for cleansing. This appeal is DENIED in part with regards to additional bathing time that is not related to cleansing. However, this appeal is APPROVED in part to the extent necessary to align MassHealth's notice with the time actually allowed. MassHealth's notice approved 35 minutes per day, but MassHealth approved 210 per school week. This discrepancy remained unexplained, and the more reasonable outcome is to align the calculation with the language of the notice and the time allowed in non-school weeks. This restores 35 minutes per day to the school week authorization.

This appeal is DENIED with regards to nail care. The PCA Operating Standards contemplate the fact that a disabled child may require assistance "above and beyond what would be expected of a non-disabled child of the same age," however this specifically refers to assistance with IADLs, not ADLs. The appellant's mother's testimony was that the time needed was due to the additional time related to the appellant's medical condition, however nail care is an ADL. Nail care for a child of the appellant's age is a "service[] provided by family members" and non-covered. (130 CMR 422.412(F).)

This appeal is also DENIED with regards to dressing and undressing. The appellant's mother acknowledged that the time for dressing and undressing was modified to be accurate. The appellant's mother's objection was that there are multiple clothing changes per day due to incontinence. The appellant's argument with regards to both dressing and undressing time and time for toileting related to additional time needed to change clothing. This time can only be considered under one category of assistance, and I am persuaded that incontinence changes are more accurately considered under toileting, rather than under dressing and undressing.

The appeal is APPROVED with regards to bladder and bowel care. The appellant's requested time reflects the appellant's need for hands-on assistance using the toilet and washing up, and assistance with changing her clothing due to intermittent incontinence of the bowel and bladder. The requested 10 minutes time for task for bladder care and 15 minutes time for task with bowel care is approved. If the appellant feels additional time is needed in any category of assistance, such

as IADLs, nighttime assistance, or greater frequency with clothing changes, this must be requested through an adjustment request with the PCM agency.

Order for MassHealth

Rescind aid pending; approve 35 minutes per day (25 minutes and 10 minutes) for PCA assistance with bathing tasks during all weeks; approve the requested 10 minutes time for task with bladder care, and 15 minutes time for task with 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 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.

Christopher Jones
Hearing Officer
Board of Hearings

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