

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Dismissed in part;
Approved in part

Appeal Number: 2414521

Decision Date: 12/9/2024

Hearing Date: 10/24/2024

Hearing Officer: Scott Bernard

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown OTR/L (Optum) *via* telephone



*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:	Dismissed in part; Approved in part	Issue:	Prior Authorization - Personal Care Attendant (PCA) Services
Decision Date:	12/9/2024	Hearing Date:	10/24/2024
MassHealth's Rep.:	Robin Brown OTR/L	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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 September 3, 2024, MassHealth approved the appellant's PA request for PCA services with modifications. (See 130 CMR 422.410(A)(1),(6),(7); 422.412(A),(F); and 450.204(A)(1); Exhibit (Ex.) 1; and Ex. 7, pp. 3-5). The appellant, through his legally appointed guardian, filed this appeal in a timely manner on September 20, 2024. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request for PCA services is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant's request for PCA services with modifications.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(1),(6),(7); 422.412(A),(F); and 450.204(A)(1), in modifying the request for PCA services.

Summary of Evidence

MassHealth was represented by a registered occupational therapist/clinical appeals reviewer and the appellant was represented by his legally appointed guardian, who is his grandfather. Both parties attended the hearing by telephone.

The MassHealth representative testified to the following. According to the documentation submitted to MassHealth for review, the appellant is an individual under the age of 10. (Testimony; Ex. 7, p. 10). The appellant's primary diagnoses are schizencephaly, which is a type of brain malformation, and cerebral palsy. (Testimony; Ex. 7, p. 11). The appellant's other relevant medical diagnoses are global developmental delay, refractory epilepsy, oropharyngeal dysphagia, congenital quadriplegia, hip dysplasia, exotropia, cortical visual impairment, and legal blindness. (Testimony; Ex. 7, p. 11; Ex. 8). On August 28, 2024, [REDACTED] (the PCM agency) submitted an initial prior authorization request for Personal Care Attendant (PCA) services in the following amounts: 33 hours and 45 minutes per week for 44.14 school weeks and 40 hours and 15 minutes for eight vacation weeks. (Testimony; Ex. 1; Ex. 7, pp. 3-5). In a notice dated September 3, 2024, MassHealth modified this request to 15 hours and 15 minutes during school weeks and 18 hours during vacation weeks for dates of service from September 3, 2024 through September 2, 2025. (Testimony; Ex. 1; Ex. 7, pp. 3-5).

In its September 3 determination, MassHealth modified the times requested for seven activities of daily living (ADLs) based on MassHealth regulations. (Testimony; Ex. 1; Ex. 7, pp. 3-5). After considering the testimony of the appellant's grandfather, as well as medical documentation he submitted, the MassHealth representative overturned the modifications to the following three ADLs and approved the times the PCM agency requested:

1. Mobility (Gait Trainer): 10 minutes, three times per day, five days per week and 10 minutes, five times per day, two days per week during (44.14) school weeks; and 10 minutes, five times per day, seven days per week during (8) vacations weeks. (Testimony; Ex. 7, pp. 15, 46);
2. Eating: 20 minutes, two times per day, five days per week and 20 minutes, three times per day, two days per week during school weeks; and 20 minutes, three times per day, seven days per week during vacation weeks. (Testimony; Ex. 7, pp. 23, 54).
3. Bowel care: Seven minutes, one time daily, five days per week and seven minutes, twice daily, two days per week during school weeks; and seven minutes, twice daily, seven days per week during vacation weeks. (Testimony; Ex. 7, pp. 24, 55).

Furthermore, after the MassHealth representative explained the reason MassHealth denied the times requested for Repositioning (Overnight), Grooming (Hair Care), and Overnight Toileting, the appellant's grandfather stated that he would not contest these denials. (Testimony; See Ex. 1; Ex. 7, pp. 3-5, 16, 20, 24, 47, 51, 54).

The parties could not come to an agreement concerning the one remaining modification, which was to Bladder care. (Testimony; Ex. 1; Ex. 7, pp. 3-5, 24, 55). The PCM agency requested six minutes, four times per day, five days per week and six minutes, eight times per day, two days per week during school weeks; and six minutes, eight times per day, seven days per week during vacation weeks. (Testimony; Ex. 7, pp. 24, 55). The PCM agency wrote the level of assistance the appellant demonstrated was "Total dependence" and commented that "[c]onsumer wear[s] diaper and is incontinent of bladder...Dep[endent] to be lifted and placed on bed. Dep clothing management, diaper change and incontinence care. Dep limb manipulation while being cleansed and changed as well. Consumer with generalized weakness, decreased strength and impaired cognition. Is unable to assume sit position d/t impaired trunk control..." (Ex. 7, pp. 24, 55). MassHealth approved five minutes, four times per day, five days per week and five minutes, six times per day, two days per week during school weeks; and five minutes, six times per day, seven days per week during vacation weeks. (Ex. 1; Ex. 7, pp. 3-5; Testimony). In the notice, MassHealth explained that it modified the time requested because it was longer than ordinarily required for someone with the appellant's physical needs. (130 CMR 422.410(A)(7) and 450.204(A)(1); Ex. 1; Ex. 7, pp. 3-5; Testimony).

The MassHealth representative explained that based on the standard MassHealth uses to determine whether time requested for an activity is reasonable, a person of the appellant's age who has total dependence for assistance with this activity generally requires only a maximum of five minutes per episode. (Testimony). Furthermore, the PCM agency nurse reviewer commented that the appellant wears a diaper and is incontinent, thus it follows that time requested is for diaper changing. (Testimony; Ex. 7, pp. 24, 55).

The appellant's grandfather responded that while he understood the MassHealth representative's argument, the six minutes per episode was not just pulled out of the air based on nothing. (Testimony). Rather, it was an average time which was determined through observation of multiple episodes over time. (Testimony). Five minutes may be typical for a person of the appellant's age, but the appellant requires at least six minutes for assistance with bladder care. (Testimony).

The MassHealth representative stated, again, that the time would mostly be used for a diaper change, a point the appellant's grandfather did not dispute. (Testimony). The MassHealth representative stated that it would be different if they were speaking about bowel care, which could reasonably involve a more extensive amount of assistance. (Testimony).

The appellant's grandfather explained that changing the appellant's diaper is not an easy task. (Testimony). Typically, the appellant alerts them later than expected. (Testimony). The appellant's grandfather noted that the appellant stiffens up, and his muscle tone takes over, causing his legs to twist. (Testimony). This makes it very difficult to access the diaper, and the process can be time-consuming and challenging. (Testimony). The appellant's grandfather emphasized that the need for additional time is necessary and justified. (Testimony). When the appellant's legs tense up, the caregiver has to carefully manage the situation, as it is impossible to force the appellant's legs

apart. (Testimony). The muscles contract and take over, so the legs must be eased apart gently. (Testimony). The appellant's grandfather noted that he usually bends the appellant's knees slightly to facilitate the removal of the diaper. (Testimony). While this is generally a standard process, it can become more difficult depending on the tightness of the appellant's muscle tone and how his legs scissor together. (Testimony). In those instances, more time is required to complete the task, which is just part of the routine they manage. (Testimony).

The MassHealth representative stated that even after considering the appellant's grandfather's testimony, she thought the five minutes should be enough time for this activity. (Testimony).

Findings of Fact

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

1. The appellant is an individual under the age of 10. (Testimony; Ex. 7, p. 10).
2. The appellant's primary diagnoses are schizencephaly, which is a type of brain malformation, and cerebral palsy. (Testimony; Ex. 7, p. 11).
3. The appellant's other relevant medical diagnoses are global developmental delay, refractory epilepsy, oropharyngeal dysphagia, congenital quadriparesis, hip dysplasia, exotropia, cortical visual impairment, and legal blindness. (Testimony; Ex. 7, p. 11; Ex. 8).
4. On August 28, 2024, the PCM agency submitted an initial prior authorization request for PCA services in the following amounts: 33 hours and 45 minutes per week during school weeks and 40 hours and 15 minutes during vacation weeks. (Testimony; Ex. 1; Ex. 7, pp. 3-5).
5. In a notice dated September 3, 2024, MassHealth modified this request to 15 hours and 15 minutes during school weeks and 18 hours during vacation weeks for dates of service from September 3, 2024 through September 2, 2025. (Testimony; Ex. 1; Ex. 7, pp. 3-5).
6. MassHealth modified the times requested for seven ADLs based on MassHealth regulations. (Testimony; Ex. 1; Ex. 7, pp. 3-5).
7. After considering the testimony of the appellant's grandfather, as well as medical documentation he submitted, the MassHealth representative overturned the modifications to the following three ADLs and approved the times the PCM agency requested:
 - a. Mobility (Gait Trainer): 10 minutes, three times per day, five days per week and 10 minutes, five times per day, two days per week during (44.14) school weeks; and 10 minutes, five times per day, seven days per week during (8) vacations weeks.

(Testimony; Ex. 7, pp. 15, 46);

- b. Eating: 20 minutes, two times per day, five days per week and 20 minutes, three times per day, two days per week during school weeks; and 20 minutes, three times per day, seven days per week during vacation weeks. (Testimony; Ex. 7, pp. 23, 54).
 - c. Bowel: Seven minutes, one time daily, five days per week and seven minutes, twice daily, two days per week during school weeks; and seven minutes, twice daily, seven days per week during vacation weeks. (Testimony; Ex. 7, pp. 24, 55).
8. After the MassHealth representative explained the reason MassHealth denied the times requested for Repositioning (Overnight), Grooming (Hair Care), and Overnight Toileting, the appellant's grandfather stated that he would not contest these denials. (Testimony; See Ex. 1; Ex. 7, pp. 3-5, 16, 20, 24, 47, 51, 54).
9. The PCM agency requested six minutes, four times per day, five days per week and six minutes, eight times per day, two days per week during school weeks; and six minutes, eight times per day, seven days per week during vacation weeks. (Testimony; Ex. 7, pp. 24, 55).
10. The PCM agency wrote the level of assistance the appellant demonstrated was "Total dependence" and commented that "[c]onsumer wear[s] diaper and is incontinent of bladder...Dep[endent] to be lifted and placed on bed. Dep clothing management, diaper change and incontinence care. Dep limb manipulation while being cleansed and changed as well. Consumer with generalized weakness, decreased strength and impaired cognition. Is unable to assume sit position d/t impaired trunk control..." (Ex. 7, pp. 24, 55).
11. MassHealth approved five minutes, four times per day, five days per week and five minutes, six times per day, two days per week during school weeks; and five minutes, six times per day, seven days per week during vacation weeks. (Ex. 1; Ex. 7, pp. 3-5; Testimony).
12. In the notice, MassHealth explained that it modified the time requested because it was longer than ordinarily required for someone with the appellant's physical needs and cited 130 CMR 422.410(A)(7) and 450.204(A)(1). (Ex. 1; Ex. 7, pp. 3-5; Testimony).
13. Based on MassHealth's standard, a person of the appellant's age who is totally dependent on assistance typically requires no more than five minutes for this activity, which often includes time for a diaper change due to incontinence. (Testimony).
14. The appellant's grandfather acknowledged the MassHealth representative's argument but explained that the six minutes per episode was based on multiple observations over time, not arbitrary. (Testimony).

15. The appellant requires six minutes for bladder care due to the difficulty of changing his diaper:

- a. The appellant often stiffens up, causing his legs to twist and making diaper changes time-consuming;
- b. The appellant's muscle tone often dominates, and his legs must be eased apart gently, sometimes requiring extra time depending on the tightness of his muscles and the way his legs scissor together. (Testimony).

16. The MassHealth representative, a registered occupational therapist, stated that even considering this testimony, five minutes should be sufficient for bladder care for a person of the appellant's age and physical condition. (Testimony).

Analysis and Conclusions of Law

MassHealth may make an adjustment in the matters at issue before or during an appeal period and if the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (130 CMR 610.051(B)). After considering the appellant's guardian's testimony and other evidence, the MassHealth representative overturned the modifications to Mobility (Gait Trainer), Eating, and Bowel and approved the times for these ADLs as requested. As the dispute over these modifications has been resolved in favor of the appellant, the appeal is hereby DISMISSED with regard to these modifications.

BOH will also dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). At the hearing, the appellant's guardian stated that he did not object to the denials of the time requested for repositioning (overnight), grooming (hair care), and overnight toileting. The request for the hearing is hereby DISMISSED as to these denials.

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (Id.). MassHealth covers activity time performed by a PCA in aiding with activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs). (130 CMR 422.411(A)). ADLs include certain specified activities that are fundamental to an individual's self-care and include physically assisting a member with bladder needs. (130 CMR 422.410(A)(7)).

MassHealth does not pay a provider for services that are not medically necessary and may impose sanctions on a provider for prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if, among other things, 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. (130 CMR 450.204(A)(1)).

The PCM agency requested six minutes per episode for bladder care assistance, describing the appellant as totally dependent for assistance with this ADL. However, MassHealth reduced the time to five minutes per episode. The MassHealth representative explained that, according to MassHealth standards, a child of the appellant's age with total dependence typically requires no more than five minutes of assistance with this task. She noted that the PCM agency's comments showed the time requested was primarily for a diaper change. The appellant's grandfather testified that the requested time was not an arbitrary estimate, rather it was based on observations and was averaged over time. The appellant's grandfather also provided detailed and credible testimony about the diaper-changing process. The nurse reviewer from the PCM agency noted "Total dependence" and commented that "[c]onsumer wear[s] diaper and is incontinent of bladder...Dep[endent] to be lifted and placed on bed. Dep clothing management, diaper change and incontinence care. Dep limb manipulation while being cleansed and changed as well. Consumer with generalized weakness, decreased strength and impaired cognition. Is unable to assume sit position d/t impaired trunk control..." In addition to the need for transferring the appellant to his bed for diaper changes, the appellant's grandfather explained the appellant stiffens up, and his muscle tone takes over, causing his legs to twist and tense up and it is impossible to force the appellant's legs apart. The appellant's legs must be eased apart gently and the caregiver must bend the appellant's knees slightly to facilitate the removal of the diaper. I determine that based on the PCM nurse reviewer's comments and the appellant's grandfather's testimony, it takes at least 6 minutes, time for task, to assist with the appellant's bladder care. The MassHealth representative did not explain the reason for decreasing the requested frequency of 8 times per day on weekends and vacations weeks for this task, to 6 times per day. PCA day/evening services are provided between 6 am and 12 midnight. Assistance with bladder care 8 times during this 18 hour period averages to every 2.25 hours, which is a reasonable frequency for PCA assistance with bladder care. Time requested for PCA assistance with bladder care is approved in full and the appeal is approved as to this issue.

Order for MassHealth

Issue a new PCA determination showing that the appellant has been approved for the following:

1. Mobility (Gait Trainer): 10 minutes, three times per day, five days per week and 10 minutes, five times per day, two days per week during (44.14) school weeks; and 10 minutes, five times per day, seven days per week during (8) vacations weeks;
2. Eating: 20 minutes, two times per day, five days per week and 20 minutes, three times per day, two days per week during school weeks; and 20 minutes, three times per day, seven days per week during vacation weeks;

3. Bowel care: Seven minutes, one time daily, five days per week and seven minutes, twice daily, two days per week during school weeks; and seven minutes, twice daily, seven days per week during vacation weeks.
4. Bladder care: six minutes, four times per day, five days per week and six minutes, eight times per day, two days per week during school weeks; and six minutes, eight times per day, seven days per week during vacation weeks.

These changes are effective from September 3, 2024 through September 2, 2025.

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 report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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