

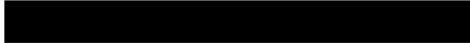
# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Approved in Part; Dismissed in Part	<b>Appeal Number:</b>	2155840
<b>Decision Date:</b>	11/09/2021	<b>Hearing Date:</b>	09/14/2021
<b>Hearing Officer:</b>	Scott Bernard		

Appearance for Appellant:




Appearance for MassHealth:

Donna Burns RN *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

<b>Appeal Decision:</b>	Approved in Part; Dismissed in Part	<b>Issue:</b>	PCA
<b>Decision Date:</b>	11/09/2021	<b>Hearing Date:</b>	09/14/2021
<b>MassHealth's Rep.:</b>	Donna Burns RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South Tower		

## 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 July 23, 2021, MassHealth modified the appellant's prior authorization (PA) request for MassHealth personal care attendant (PCA) services. (See 130 CMR 422.000 *et seq* and Exhibit 1). The appellant filed this appeal in a timely manner on August 3, 2021, although it was not signed by the appellant. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

On August 4, 2021, the Board of Hearings sent the appellant a letter requesting that he submit documentation concerning the authority to submit the appeal or sign a copy of the fair hearing request. (Ex. 4). The appellant submitted the requested documentation on August 9, 2021 at which time the Board scheduled the hearing. (Ex. 5; Ex. 6).

## Action Taken by MassHealth

MassHealth modified the appellants' PA request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000 *et seq*, in modifying the PA request for PCA services.

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The appellant is an individual under the age of 25 with primary diagnoses of autism and cerebral palsy. (Ex. 3; Ex. 7, pp. 7-8). The Personal Care Management agency (PCM) submitted a PCA PA reevaluation request on July 19, 2021.<sup>1</sup> (Ex. 7, pp. 7-52). The PCM requested 29 hours, 30 minutes of day and evening PCA services for 34.14 school weeks; 36 hours, 30 minutes of day and evening PCA services for 18 vacation weeks; and 2 hours of nighttime PCA services per night for one year. (Ex. 1; Ex. 7, pp. 6, 44). In the notice dated July 23, 2021, MassHealth approved 23 hours, 30 minutes of day and evening PCA service during the school weeks; 29 hours, 45 minutes of day and evening PCA services during vacation weeks; and 2 hours of PCA services per night from August 28, 2021 through August 27, 2022. (Ex. 1; Ex. 7, pp. 3, 4-6). The reductions in the requested times were the result of modifications to the time requested for four activities of daily living (ADLs). (Id.).

### 1. Grooming:

The PCM requested 181 minutes per week total for all grooming activities combined<sup>2</sup>. (Ex. 7, p. 14). MassHealth modified grooming to 105 minutes per week. (Ex. 1; Ex. 7, p. 6). The MassHealth representative stated that for some reason, the MassHealth reviewer decided to calculate as a whole without individually determining the times for the separate activities within grooming. These activities included nail care, oral care, hair care, shaving and other activities (generally the application of lotions and deodorant). After questioning the appellant's representative (the appellant's mother) at the hearing, the MassHealth representative offered the following adjustments to the grooming ADLs, which the appellant's representative accepted:

- Nail care: 10 minutes, 1 time per day, 1 time per week;
- Oral Care: 5 minutes, 1 time per day, 7 days per week;
- Hair Care: 1 minutes, 3 times per day, 7 days per week;
- Shaving: 5 minutes, 1 time per day, 1 days per week;
- Other: 10 minutes, 1 time per day, 7 days per week;

### 2. Undressing:

The PCM requested 12 minutes, 1 time per day, 7 days per week. (Ex. 7, p. 15). MassHealth modified this to 10 minutes, 1 time per day, 7 days per week. (Ex. 1; Ex. 7, p. 6). The MassHealth representative explained that 10 minutes was standard according to the time for task tool that MassHealth uses in order to determine the appropriate amount of time. The appellant's representative agreed that 10 minutes seems appropriate here.

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<sup>1</sup> The PA request was signed and dated on July 16, 2021. (Ex. 7, p. 52).

<sup>2</sup> The PCM requested time for each of the individual grooming activities and this is the total of that time.

### 3. Bowel care during school weeks:

The PCM requested 25 minutes, 3 times per day for 5 days of the week.<sup>3</sup> (Ex. 7, p. 18). Regarding bowel care, the PCM stated the following:

Incontinence with continued reporting major increase in bowel incont SEVERAL TIMES/DAY & Brief being changed also needing brief change continues to be physically held of his hand bring to bed a trans on bed D clothing management , D personal hygiene under nail on bed; consumer moves constantly -- in addition to the several bowel movements 1X day consumer needs to be showered as too much all over (REPORTS HAS COLONOSCOPY scheduled with GI following) Several visits to ER past year with bowel issues - task is time consuming & frequent PLEASE REFER TO OTHER HEALTH for requested time for incont with shower[.] (Id.).

MassHealth modified this to 15 minutes, 3 times per day for 5 days of the week. (Ex. 1; Ex. 7, p. 6). The appellant's representative confirmed that the appellant is still attending school and will do so until the end of the current academic year. The appellant's representative stated that the appellant's incontinence has gotten much worse recently. He tends to lose control when he does have a bowel movement, and there is a great deal of mess. The appellant's representative stated that the appellant requires 2 to 3 showers per day. The MassHealth representative responded that this was covered under the request for time for incontinence showers below). The appellant's representative stated that the appellant can be difficult when the PCA changes his diaper. Sometime two people are required and the appellant needs to be laying down on a bed for the diaper change to occur. The appellant's representative stated that for this to happen, only 10 minutes is required. The MassHealth representative confirmed this statement and asked if 15 minutes was sufficient. The appellant's representative agreed to the 15 minutes.

### 4. Other Health Care Needs (Incontinence care extra shower) during school weeks:

The PCM requested 30 minutes, 1 time per day, 2 days per week during school weeks. (Ex. 7, p. 20). In its comments regarding this activity the PCM wrote that the appellant's incontinence is so sever he needs a shower. (Id.). The PCM commented further for the appellant's daily shower and hair wash (time for which MassHealth approved):

A physical A step in & A to direct to sit on shower chair, min A to move within shower as nec D wash head > to, D wash ft rinse hair as if given a VC will only stand D dry off, reports if hands a wash clothe [sic] two consumer he would just drop it; With further conversation it was recognize [sic] the increased difficulty with showering as consumer is " very active" and moving needing to be relaxed & brought back to task and in motion making task long & difficult; unable to initiate plan organize sequence process nec to attempt or complete, cog impaired poor eye hand coord, alt dexterity[.]

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<sup>3</sup> The PCM agency also requested 15 minutes, 5 times per day, 2 days per week, which is the time MassHealth approved. (See Ex. 1; Ex. 7, pp. 6, 20). For that reason, it will not be discussed here.

MassHealth modified this to 20 minutes, 1 time per day, 2 days per week. (Ex. 1; Ex. 7, p. 6. The MassHealth representative stated that the appellant was approved for the time requested for regular daily bathing (both showering and washing hair), which was a total 30 minutes per day (25 minutes for showering, 5 minutes for washing hair). (See Ex. 7, pp. 12-13).

The MassHealth representative stated that this was an additional shower to assist with the appellant's incontinence care. The MassHealth representative ask the appellant's representative how long it generally took for the PCA to assist the appellant with showering. The appellant's representative stated that it took about 20 minutes for this extra shower.

The MassHealth representative stated that these were all the ADLs that MassHealth modified. The appellant's representative stated that she still did not understand why the appellant was receiving less time overall. The appellant's representative stated that her son is getting worse, and that his needs for PCA assistance are increasing. The MassHealth representative stated that the appellant's representative should go back to the PCM agency and review the other ADLs (requested time for which MassHealth approved) and request increases in the time for these.

## Findings of Fact

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

1. The appellant is an individual under the age of 25. (Ex. 3; Ex. 7, pp. 7-8).
2. The appellant's primary diagnoses are autism and cerebral palsy. (Ex. 3; Ex. 7, pp. 7-8).
3. The PCM submitted a PCA PA reevaluation request on July 19, 2021. (Ex. 7, pp. 7-52).
4. The PCM requested 29 hours, 30 minutes of day and evening PCA services for 34.14 school weeks; 36 hours, 30 minutes of day and evening PCA services for 18 vacation weeks; and 2 hours of nighttime PCA services per night for one year. (Ex. 1; Ex. 7, pp. 6, 44).
5. In the notice dated July 23, 2021, MassHealth approved 23 hours, 30 minutes of day and evening PCA service during the school weeks; 29 hours, 45 minutes of day and evening PCA services during vacation weeks; and 2 hours of PCA services per night from August 28, 2021 through August 27, 2022. (Ex. 1; Ex. 7, pp. 3, 4-6).
6. The reductions in the requested times were the result of modifications to the time requested for four ADLs: grooming, undressing, bowel care, and an extra shower as an adjunct to the appellant's incontinence care. (Ex. 1; Ex. 7, pp. 3, 4-6).
7. Grooming:
  - a. The PCM requested 181 minutes per week total for all grooming activities. (Ex. 7, p. 14).
  - b. MassHealth modified all grooming to 105 minutes per week without specifying which individual grooming activities were being modified. (Ex. 1; Ex. 7, p. 6; Testimony of the MassHealth representative).

c. After questioning the appellant's representative at the hearing, the MassHealth representative offered the following adjustments to the grooming ADLs, which the appellant's representative accepted:

- Nail care: 10 minutes, 1 time per day, 1 time per week;
- Oral Care: 5 minutes, 1 time per day, 7 days per week;
- Hair Care: 1 minutes, 3 times per day, 7 days per week;
- Shaving: 5 minutes, 1 time per day, 1 days per week;
- Other: 10 minutes, 1 time per day, 7 days per week;
- Total: 136 minutes per week. (Testimony of the MassHealth representative; Testimony of the appellant's representative).

8. Undressing:

- a. The PCM requested 12 minutes, 1 time per day, 7 days per week. (Ex. 7, p. 15).
- b. MassHealth modified this to 10 minutes, 1 time per day, 7 days per week. (Ex. 1; Ex. 7, p. 6).
- c. 10 minutes was standard according to the time for task tool that MassHealth uses to determine the appropriate amount of time for ADLs. (Testimony of the MassHealth representative).
- d. The appellant's representative agreed that 10 minutes seems appropriate here. (Testimony of the appellant's representative).

9. Bowel care during school weeks:

- a. The PCM requested 25 minutes, 3 times per day for 5 days of the week. (Ex. 7, p. 18).
- b. Regarding the appellant's bowel care, PA request stated the following:

Incontinence with continued reporting major increase in bowel incont  
SEVERAL TIMES/DAY & Brief being changed also needing brief  
change continues to be physically held of his hand bring to bed a trans  
on bed D clothing management , D personal hygiene under nail on bed;  
consumer moves constantly -- in addition to the several bowel  
movements 1X day consumer needs to be showered as too much all over  
(REPORTS HAS COLONOSCOPY scheduled with GI following)  
Several visits to ER past year with bowel issues - task is time consuming  
& frequent PLEASE REFER TO OTHER HEALTH for requested time

for incont with shower[.] (Id.).

- c. MassHealth modified this to 15 minutes, 3 times per day for 5 days of the week. (Ex. 1; Ex. 7, p. 6).
- d. The appellant's incontinence has gotten much worse recently. (Testimony of the appellant's representative).
- e. The appellant tends to lose control when he does have a bowel movement, and there is a great deal of mess. (Testimony of the appellant's representative).
- f. The appellant can be difficult when the PCA changes his diaper. (Testimony of the appellant's representative).
- g. Sometime two people are required and the appellant needs to be laying down on a bed for the diaper change to occur. Testimony of the appellant's representative).

10. Other Health Care Needs (Incontinence care extra shower):

- a. The PCM requested 30 minutes, 1 time per day, 2 days per week during school weeks. (Ex. 7, p. 20).
- b. In its comments regarding this activity the PCM wrote that the appellant's incontinence is so severe he needs a shower. (Ex. 7, p. 20).
- c. MassHealth modified this to 20 minutes, 1 time per day, 2 days per week. (Ex. 1; Ex. 7, p. 20).
- d. The appellant was approved for the time requested for regular daily bathing (both showering and washing hair), which was a total 30 minutes per day (25 minutes for showering, 5 minutes for washing hair). (Testimony of the MassHealth representative; Ex. 7, pp. 12-13).
- e. Regarding the appellant's daily shower and hair wash (which MassHealth approved), the PA request stated the following:

A physical A step in & A to direct to sit on shower chair, min A to move within shower as nec D wash head > to, D wash ft rinse hair as if given a VC will only stand D dry off, reports if hands a wash clothe [sic] two consumer he would just drop it; With further conversation it was recognize [sic] the increased difficulty with showering as consumer is "very active" and moving needing to be relaxed & brought back to task and in motion making task long & difficult; unable to initiate plan organize sequence process nec to attempt or complete, cog impaired poor eye hand coord, alt dexterity[.] (Ex. 7, p. 13).

- f. The appellant requires 2 to 3 showers per day due to his incontinence. (Testimony of

the appellant's representative).

- g. Each incontinence shower requires 10 minutes. (Testimony of the appellant's representative).

## Analysis and Conclusions of Law

The MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). 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. (*Id.*). During the hearing, the MassHealth representative adjusted the time MassHealth modified for grooming. The appellant agreed to the adjusted time. The appellant also agreed to the time for undressing as modified. Regarding grooming and undressing, the appeal is DISMISSED.

MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met:

- (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 ADLs and IADLs without physical assistance.
- (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)).

For MassHealth to pay for PCA services, the PCM agency must request prior authorization. (130 CMR 422.416; See also 130 CMR 450.303). Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care. (*Id.*). To ensure the continuation of PCA services, PCM agencies must request prior authorization from MassHealth at least 21 calendar days before the expiration date of the current prior-authorization period. (130 CMR 422.416(C)). The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior-authorization request at least 21 calendar days prior to the expiration of the current prior-authorization period. (*Id.*).

Reevaluations must be conducted by a registered nurse or LPN under the supervision of a registered nurse and must include a review of the service agreement and the assessment by qualified PCM agency staff. (130 CMR 422.422(D)). The evaluation must take place in the member's presence and in the member's actual or proposed place of residence in the community. (130 CMR 422.422(C)(2)). All evaluations must be completed on the MassHealth evaluation form by the registered nurse or the occupational therapist who conducted the evaluation. (130 CMR 422.422(C)(3)). The completed



evaluation must be reviewed, approved, and signed by the member, the member's legal guardian, the member's physician, nurse practitioner, or physician assistant, and the member's surrogate or administrative proxy, if appropriate. (130 CMR 422.422(C)(2)(a)). The completed evaluation must be sent to MassHealth, with the documentation specified in the regulations. (130 CMR 422.422(C)(2)(b)).

If MassHealth approves or modifies a prior authorization request for day/evening PCA services, the notice to the member will specify the number of day/evening hours of PCA services that MassHealth determines are medically necessary and reimbursable by MassHealth at the PCA rate for each week during the duration of the member's prior-authorization period. (130 CMR 422.417(B)(1)). If MassHealth denies or modifies a prior-authorization request for PCA services, the MassHealth agency will send written notice to the member, the PCM agency, and the fiscal intermediary. (130 CMR 422.417(B)(2)). The notice will state the reason for the denial or modification and will inform the member of the right to appeal and of the appeal procedure. (Id.) If MassHealth denies or modifies a prior-authorization request for PCA services, a member may appeal by requesting a fair hearing. (Id.).

MassHealth covers activity time performed by a PCA in providing assistance with ADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D)<sup>4</sup>, and as authorized by the MassHealth agency. (130 CMR 422.411(A)). ADLs are those specific activities described in 130 CMR 422.410(A) and elsewhere. (130 CMR 422.402). Such activities are performed by a PCA to physically assist a member. (Id.). ADLs include the following categories of activities and any number of activities within one category of activity is counted as one ADL:

- (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.** (Emphases added). (130 CMR 422.410(A)).

MassHealth will not pay a PCM for services that are not medically necessary and may impose sanctions on a PCM for providing or prescribing a service where such service is not medically necessary. (130 CMR 450.204).

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<sup>4</sup> See above.

- (A) A service is “medically necessary” if:
- 1) it is reasonably calculated to prevent, diagnose, prevent 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the PCM or identified by the Division pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.
- (B) 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. A PCM must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.).
- (C) A PCM's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(See 130 CMR 450.204).

The record shows by a preponderance of the evidence that MassHealth incorrectly modified the times for bowel care and the related extra incontinence shower. The documentation that the PCM agency submitted reports a “major increase” in the appellant’s bowel incontinence to several times a day. There is a described need for brief<sup>5</sup> changes, hygiene maintenance (cleaning under the nails) and clothing management. The appellant's representative confirmed that the appellant’s bowel incontinence is worse. The appellant's representative stated that the appellant tends to lose control when he defecates, and this creates a great deal of mess. The appellant's representative also stated that the appellant can be difficult when the PCA is changing his diapers. She stated that these changes generally need to be done while the appellant is lying down and the PCA sometimes requires assistance to hold the appellant down when the diaper is being changed.

Regarding the extra incontinence shower, the PCM reports that the appellant requires an all over shower because of his severe incontinence. Although only one incontinence shower was requested, the appellant's representative reported that the appellant often needs 2-3 incontinence showers per day according to the appellant's representative. The appellant's representative reported that each of these showers was around 10 minutes. Concerning the appellant’s regular showers, the PCM agency report indicates that the appellant is difficult to shower and requires a lot of assistance.

Although the appellant's representative seemingly agreed to the modified times for bowel care, and the incontinence shower, her testimony in conjunction with the information reported by the PCM agency in the PA request indicate that the times requested are medically necessary as well as reasonable under the circumstances.

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<sup>5</sup> Interpreted here as lower body undergarments or “underwear” given the context.

For the above stated reasons, the appeal is APPROVED with regarding to bowel care, and the incontinence shower.

## **Order for MassHealth**

Issue a new notice with the following adjustments:

1. For bowel care during the school week: approve 25 minutes, 3 times per day for 5 days of the week.
2. For incontinence shower during the school week: approve 30 minutes, 1 time per day, 2 days per week.
3. For grooming (if MassHealth has not done so already): notify the appellant that the times for grooming have been adjusted in the following agreed upon manner:
  - a. Nail care: 10 minutes, 1 time per day, 1 time per week;
  - b. Oral Care: 5 minutes, 1 time per day, 7 days per week;
  - c. Hair Care: 1 minutes, 3 times per day, 7 days per week;
  - d. Shaving: 5 minutes, 1 time per day, 1 days per week;
  - e. Other: 10 minutes, 1 time per day, 7 days per week.
4. Update total time in accordance with the above.

The time for undressing as modified was agreed upon by the appellant's representative at the hearing and there is no reason for MassHealth to include this in the new notice.

## **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.

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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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