

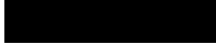
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2177874
<b>Decision Date:</b>	01/11/2022	<b>Hearing Date:</b>	11/19/2021
<b>Hearing Officer:</b>	Casey Groff		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, R.N., Optum

**Interpreter:**



*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	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	01/11/2022	<b>Hearing Date:</b>	11/19/2021
<b>MassHealth's Rep.:</b>	Donna Burns, R.N.	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 October 1, 2021, MassHealth informed Appellant, a minor, that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant's mother filed a timely appeal on behalf of Appellant on October 15, 2021. See 130 CMR 610.015(B); Exhibit 1. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

## Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his mother. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a minor, under the age of 18. His diagnoses include autism, depletion mitochondrial disorder, asthma, metabolic disorder, behavioral disorder, hypotonia, developmental delay, and succinyl-C00A ligase deficiency. See Exh. 4, p. 8. On September 16, 2021, following a re-evaluation by Appellant's personal care management (PCM) agency, MassHealth received a prior authorization (PA) request on behalf of Appellant for personal care attendant (PCA) services starting October 3, 2021 through October 2, 2022. Id. at 3. The PA request sought approval for 27 hours and 30 minutes of day/evening PCA services per week and two hours per night (14 hours per week) of nighttime PCA services. Id.

Through a letter dated October 1, 2021, MassHealth notified Appellant that it modified his PA request by approving 23 day/evening hours per week. See Exh. 1. MassHealth approved the requested nighttime hours in full. Id. For the day/evening PCA services, MassHealth made modifications to the time and/or frequency requested for the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): (1) eating; (2) medication administration; and (3) medical appointment transport. Id.

Appellant filed a timely appeal of the October 1<sup>st</sup> notice. See Exh. 2. In the fair hearing request, Appellant included a letter in support of increased PCA hours from Appellant's Complex Care provider at Boston Children's Hospital, which stated, in relevant part, the following:

Appellant has SUCLG1 deficiency and multiple associated medical complexities including aspiration, chronic cough, g-tube dependence, GERD, global developmental delay, hypothyroidism, hypotonia, and mixed receptive expressive language disorder.... He requires assistance with all activities of daily living...[He] has a history of aspiration with liquids and not chewing his food completely, and requires constant monitoring during all mealtimes. [Appellant] has behavioral dysregulation including constant touching of his diaper area, licking his hands and face as well as objects around the house, and pulling on his G-tube...It is essential that he have additional support at the home to prevent caregiver fatigue and to allow his parents time to complete household tasks. [Appellant] needs an adult within reach of him at all times in order to maintain a safe environment. It is medically necessary that he have additional support at home for all activities of daily living [and] should be reevaluated for an increase in PCA hours given his medical complexities and ADL support needs.

Exh. 2, p. 2.

At hearing, the parties first addressed MassHealth's modification to the time requested for "eating." For this ADL, Appellant's PCM agency requested 51 minutes, once per-day, seven days per-week (51x1x7) and two minutes, six times per-day, seven days per-week (2x6x7) for a total request of 441 minutes per week. See Exh. 4 at 17. According to the PCM agency's submission, the time requested was for the PCA to provide physical assistance with eating solid food, g-tube feedings (twice daily), and administering water by g-tube (six times daily). Id. For oral feedings, the PCA was noted to assist by keeping Appellant from having too much on his

spoon, ensuring he eats small amounts, and by putting food back into his bowl. Id. Appellant's g-tube feedings are for prescribed PediaSure twice in the morning (one hour apart). Id. at pp. 8, 17. He also has physician orders for 8oz of water six-times per day via g-tube with the assistance of one other person.<sup>1</sup> Id.

MassHealth approved the time as requested for water g-tube feeds at 2x6x7; however modified the remaining request for 51 minutes daily to allow for PediaSure administration only at ten minutes two-times per-day, seven days per-week (10x2x7), for a total of 224 minutes per week for eating. See Exh. 1, p. 3. The MassHealth representative stated it was unclear what the requested 51 minutes were intended to encompass as it would be excessive for giving two PediaSure feeds per day. MassHealth did not approve any time for oral feeds, noting in its October 1<sup>st</sup> notice that it was a "parental" responsibility. See id. at 3. In addition, the MassHealth representative stated that MassHealth does not reimburse PCA's for "queuing" activities, such as keeping Appellant from putting too much food on his spoon.

In response, Appellant's mother, who appeared via telephone and testified through an interpreter, explained that the request was intended to include time for *both* PediaSure and oral feeds. Appellant eats three meals and two snacks per day, for a total of five feedings per day. Appellant has a developmental disability and presents with an IQ of a two-year-old. He can hold a spoon but cannot control it correctly to bring it to his mouth or to feed himself. The PCA helps him put the spoon to his mouth and controls his intake. Without such assistance, he will swallow the food without having chewed completely and will attempt another bite swallowing what is already in his mouth. The process of assisting him is all hands-on. Appellant has not choked or aspirated because there is always someone present to control his intake. Because he has such low muscle tone, Appellant cannot have any liquids by mouth as it would pass through his airway and lungs and become an aspiration risk. Thus, all fluids must be consumed via g-tube. Because Appellant's protein limit is 90 grams per-day, his doctor ordered non-protein PediaSure to meet his nutritional needs. As a teenager, he is always hungry and so he does require oral foods.

In response, the MassHealth representative testified that she would be willing to approve a total of 385 minutes per week, which is the amount that MassHealth approved last year. The time would consist of oral feedings and water g-tube feeds, but not PediaSure because MassHealth only pays for the primary source of nutrition, which Appellant indicated was primarily through oral feedings.

The Appellant did not accept the offer because she believed the time approved should include time it takes for the PCA to assist in giving him *both* the PediaSure and oral feedings. His condition has gotten worse since last year and his needs have increased. Appellant also noted that Appellant is not going to school in-person, which is why the requested time was not adjusted for school days.

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<sup>1</sup> The PA request noted that Appellant's mother assists in administering water an additional two-times per day, for a total of eight times per day. Id.

Next, the parties addressed the modification MassHealth made to medication administration. Appellant, through his PCM agency, requested two minutes, two times per-day, seven days per-week (2x2x7) for this task. The PA request noted that the time was to allow the PCA to assist by holding the g-tube while Appellant's mother administers the medication via a syringe into the g-tube. See Exh. 4, p. 19. MassHealth did not approve any time for medication administration because it was a "parental responsibility." See Exh. 1.

In response, Appellant's mother testified that medication administration is a two-person job and although she does herself administer the medication, she needs the PCA to assist in the process. Because it is deemed a "parental responsibility" the PCM agency only sought time for assistance with two episodes daily of medication administration, when in fact Appellant is prescribed six medications that are administered via g-tube seven times per day, every day. See Exh. 4, p. 8. Additionally, Appellant's mother relies on the PCA to assist by holding the g-tube steady while she uses the syringe to deliver the medication correctly. No other family members are available to assist as her husband (Appellant's father) works every day. She also has a younger son that is not able to help. She noted that both Appellant and her younger son attend school remotely. In addition to Appellant, the mother explained that she must attend to her younger son's needs as well.

Finally, the parties addressed the remaining modification made to medical transportation. Appellant, per his PCM agency, requested 23 minutes per week of PCA assistance for this task (23x1). See Exh. 4, pp. 26-27. The request noted that Appellant's mother is pregnant; and although she typically drives Appellant to his appointments, she relies on the PCA to drive when she is not feeling well. Id. MassHealth did not approve any time for this task because in the case of a minor, medical transportation is considered a parental responsibility. See Exh. 1.

Appellant responded that she is unable to perform this task alone. Appellant uses a wheelchair to go to and from doctors' visits. It takes two people to get him out of the wheelchair,<sup>2</sup> into the car and then fold and put the wheelchair, which is heavy, into the car. This has been especially difficult now that she is pregnant. At the time of the PCA re-evaluation, she was three months pregnant. Now she is five months pregnant. She also needs someone in the car with her while driving due to Appellant's behavioral dysregulation and needs to be tended to. He has frequent medical appointments, occurring at least once a month. The PA request indicates that Appellant has a total of eight providers, including his PCP and multiple specialists - each of whom he sees multiple times per year. Additionally, he has monthly blood lab visits at Children's Hospital. See id. at 26. Appellant's mother reiterated that she does not have any other family members to assist her in this capacity as her husband works and she has another minor son.

The MassHealth representative offered to approve 14 minutes per week; however Appellant stated that the proposed time was insufficient. The frequency of appointments has increased this year because his genetic disorder has gotten worse, and it does not account for the frequency of

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<sup>2</sup> Appellant's mother clarified that while at home, Appellant can walk, however he falls easily and requires a contact guard. For medical appointments he uses a wheelchair. She also noted his condition is getting worse and he is becoming more and more unstable.

visits and the time it takes the PCA to assist in this task.

## Findings of Fact

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

1. Appellant is a minor, under the age of 18.
2. Appellant has a genetic SUCLG1 deficiency and multiple associated medical complexities including autism, global developmental delay, hypothyroidism, hypotonia, mixed receptive expressive language disorder, asthma, metabolic disorder, g-tube dependence, GERD, and behavioral disorder. See Exh 2, p. 2; see also. 4, p. 8.
3. On September 16, 2021, following a re-evaluation by Appellant's personal care management (PCM) agency, MassHealth received a PA request on behalf of Appellant for PCA services starting October 3, 2021 through October 2, 2022.
4. The PA request sought approval for 27 hours and 30 minutes of day/evening PCA services per week and two hours of nighttime PCA services per night.
5. Through a letter dated October 1, 2021, MassHealth notified Appellant that it modified his PA request by approving 23 day/evening hours per week by reducing the time requested for (1) eating; (2) medication administration; and (3) medical appointment transport.

### Eating

6. For the ADL of "eating," Appellant's PCM agency requested 51 minutes, once per-day, seven days per-week (51x1x7) for oral and supplementary g-tube feedings; and requested two minutes, six times per-day, seven days per-week (2x6x7) for water g-tube feedings; for a total request of 441 minutes per week.
7. MassHealth approved the request time of 2x6x7 to allow for water g-tube feedings; however modified the remaining request for 51 minutes daily and approved 10x2x7 to allow for PediaSure administration only, resulting in a total of 224 minutes per-week for eating.
8. Appellant can eat solid foods by mouth but lacks the ability to pace himself and lacks the coordination to bring the spoon to his mouth.
9. Appellant's eats three meals and two snacks per day, for a total of five oral feedings per day.
10. Appellant requires physical assistance with bringing the spoon to his mouth, limiting the

amount of food on his spoon, controlling his intake, and by putting food back into his bowl.

11. Due to Appellant's low muscle tone, he is unable to consume fluids by mouth; all fluids must be administered by g-tube.
12. Appellant receives PediaSure by g-tube two-times daily, as a supplementary source of nutrition and to accommodate his dietary protein limit of 90-grams per-day.
13. Appellant is ordered to have 8oz of water six-times daily, which are administered by g-tube and with the assistance of another person.

### **Medication Administration**

14. In addition to physician orders for PediaSure and water via the g-tube, Appellant is prescribed six medications, which are administered via g-tube for a total of seven times per day, every day.
15. Because MassHealth typically considers it a parental responsibility, the PCM agency only requested PCA assistance for medication administration at two minutes, two times per-day, seven days per-week (2x2x7) to assist Appellant's mother in delivering the medication.
16. MassHealth did not approve any time for medication administration.
17. Appellant's mother relies on the PCA to assist by holding the g-tube steady while she uses the syringe to deliver the medication correctly.
18. No other family members are available to assist Appellant's mother in this task, as her husband (Appellant's father) works every day and she has a younger son that is not able to help.

### **Medical Transportation**

19. Appellant requested 23 minutes per week (23x1) of PCA assistance for transportation to medical appointments.
20. MassHealth did not approve any time for this task because it was deemed a parental responsibility.
21. Appellant's mother takes Appellant to all doctors' appointments; however requires the assistance of another person to help Appellant into and out of the wheelchair, collapse and fold the wheelchair into the car.
22. Due to Appellant's behavioral dysregulation, it is necessary to have one person tend to

his behaviors while the other person drives the car.

23. As of the PCA re-evaluation date and hearing date, Appellant was three-months and five-months pregnant, respectively, and having increased difficulty in taking Appellant to medical appointments.
24. Appellant has a total of eight providers, including his PCP and numerous specialists, each of whom he sees multiple times per year; and he has monthly appointments at Children's Hospital for routine blood draws.
25. Other than Appellant's mother, there are no other family members to assist in taking Appellant to his medical appointments.

## **Analysis and Conclusions of Law**

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:<sup>3</sup> First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). A service is "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 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.

See 130 CMR 450.204(A).

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<sup>3</sup> PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.



Medically necessary services must also “be of a quality that meets professionally recognized standards of health care and must be substantiated by the record including evidence of such medical necessity and quality.” 130 CMR 450.204(B).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive assistance with his activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs) to meet his health care needs. MassHealth regulations provide the following description of ADLs under the PCA program:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

- (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 or undressing: 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 and bladder needs.

See 130 CMR 422.410.

In addition, MassHealth reimburses for PCA assistance with certain IADLs, which include tasks that are “instrumental to the care of the member’s health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services.” 130 CMR 422.402. Specifically, MassHealth pays for transportation for the purposes of “accompanying the member to medical providers.” See 130 CMR 422.410(B)(3). In determining the amount of time it takes the PCA to physically assist a member with an IADL, MassHealth requires the PCM agency to consider the presence of live-in family member’s responsible for tasks they would perform themselves and would include the member, such as laundry, meal preparation, and shopping. See 130 CMR 422.410(C).

MassHealth will also consider individual circumstances when determining the amount of physical assistance a member requires for IADLs. Id.

With respect to both ADLs and IADLs, MassHealth will cover the “activity time performed by a PCA in providing assistance with the [tasks].” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

### **Eating**

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that the requested time for eating was appropriate and consistent with the regulatory standards, above. In this case, MassHealth approved the requested time for water g-tube feeds at 2x6x7; however, explained that under pediatric medical necessity guidelines, would only approve time for the primary source of nutrition, which in this case would either be PediaSure via g-tube, or oral feedings, but not both. Initially, MassHealth only approved time for PediaSure at 10x2x7, bringing the total approved feeding time to 224 minutes per-week. At hearing, MassHealth offered to increase the time to 385 total per-week, which would include time for assistance with oral feedings and water feeds, but not PediaSure. The evidence indicates that Appellant requires significant PCA hands-on assistance to help him safely consume foods by mouth; to obtain water via frequent g-tube feedings; and in accordance with physician orders, administer supplemental g-tube feedings to accommodate his low-protein diet while ensuring his nutritional needs are met. The totality of evidence indicates that Appellant requires the additional 51 minutes per day for the PCA to assist *both* in oral feedings and supplementary PediaSure g-tube feedings (in addition to the approved time for water feedings) in accordance with subsection (7) above.

### **Medication Administration**

Next, Appellant successfully demonstrated that he requires the requested time of two minutes, two-times per-day, seven days per-week (2x2x7) for the PCA to provide medication administration assistance. Because Appellant is a minor, MassHealth considers this task a parental responsibility and therefore approved no time for the PCA to administer medications. Appellant’s mother provided credible testimony that she does, in fact, administer his medications, however, requires an additional person to assist in holding the g-tube to ensure it is given properly. Appellant’s mother is unable to hold the syringe and the g-tube at the same time. Appellant credibly testified that there are no other available family members to assist her in place of the PCA. Because the process of administering medication is a two-person job which Appellant’s mother takes part in, the requested time for PCA assistance of 2x2x7 is appropriate.

### **Medical Transportation**

Finally, Appellant successfully demonstrated that he requires 23 minutes per week for a PCA to assist his mother in driving him to medical appointments, as was requested. MassHealth did not approve any time for this task, again, because it is considered a “parental responsibility” when the member is a minor. The evidence indicates that Appellant has numerous medical appointments

throughout the year, consisting of monthly blood draws and multiple appointments with his PCP and specialists. For each visit, Appellant uses a wheelchair. He is placed into the car seat, and his wheelchair, which is heavy, must be folded and placed in the car. Appellant's mother, who is pregnant, relies on the PCA to assist in this process as well as occasionally drive. Additionally, Appellant's mother testified that due to his increased behavioral dysregulation, two people are required for transportation: one to tend to Appellant's needs and one person to drive the car. Although driving a child to medical appointments is generally a parental responsibility, MassHealth may "consider individual circumstances when determining the amount of physical assistance a member requires for IADLs." See 130 CMR 422.410(C)(3). Based on the individual circumstances presented in this case, the requested time of 23 minutes per week for assistance with transportation to medical visits is appropriate.

Based on the foregoing, the appeal is APPROVED with respect to each modification.

## **Order for MassHealth**

Remove aid pending. For the PA period beginning October 3, 2021 through October 2, 2022, approve the requested time for PCA assistance with eating (51x1x7) in addition to the time already approved for water at 2x6x7; approve the requested time for PCA assistance with medication administration (2x2x7); and approve the requested time for medical transportation (23x1).

## **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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Casey Groff  
Hearing Officer  
Board of Hearings

cc:

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