

# Office of Medicaid BOARD OF HEARINGS

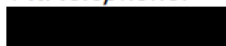
**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part; Dismissed in part	<b>Appeal Number:</b>	2178262
<b>Decision Date:</b>	12/22/2021	<b>Hearing Date:</b>	12/10/2021
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*



**Appearance for MassHealth:**


*Via telephone:*

Mary-Jo Elliott, RN



*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; Denied in part; Dismissed in part	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	12/22/2021	<b>Hearing Date:</b>	12/10/2021
<b>MassHealth's Rep.:</b>	Mary-Jo Elliott, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 October 18, 2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on October 22, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

## **Summary of Evidence**

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. She testified that the documentation submitted showed that the appellant was a minor child who is non-verbal, cognitively impaired, and has a diagnosis of Angelman Syndrome. The appellant lives at home with family and is dependent for all activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

The appellant's personal care management (PCM) agency submitted a prior authorization for PCA services on October 4, 2021 requesting 40 hours and 15 minutes of day/evening hours per week and 2 nighttime hours per night for the dates of service of October 18, 2021 through October 17, 2022. On October 18, 2021, MassHealth modified the request to 30 hours and 15 minutes per week and 2 nighttime hours per night. The appellant is currently in aid pending and receiving 34 hours and 30 minutes of day/evening hours per week and 2 nighttime hours per night. The appellant was represented at hearing via telephone by his father. At hearing, the parties were able to resolve the disputes related to PCA assistance with the tasks of hair care, shaving, other grooming, bladder care, bowel care, and eating. PCA assistance with the tasks of undressing, meal preparation, and laundry remained at issue.

### **Undressing**

The appellant requested 18 minutes, 1 time per day, 7 days per week for undressing. MassHealth modified the request to 15 minutes, 1 time per day, 7 days per week.

The MassHealth representative stated that there was an appeal last year and parties came to an agreement that 15 minutes, 1 time per day, 7 days per week was sufficient for undressing. There was nothing in the documentation that explained a need for additional time to undress.

The appellant's father explained that his son is bigger and it takes a little longer now. He runs away when called to undress. The appellant wears diapers and has accidents often which soil his clothes and require changing him.

MassHealth responded that she understands he has impulsive behaviors and there is resistance for certain tasks; however, the PCA program does not include time for waiting, re-directing, or cueing. The program only allows for hands-on time for the PCA. If he is soiling clothes, the PCM agency could request a second time for undressing, but there is no documentation that it is needed. Additionally, unlike last year, the appellant is in school full-time now, so it is unlikely he is getting dressed and undressed multiple times per a day at home by the PCA.

### **Meal Preparation**

The appellant requested 30 minutes per day, 7 days per week for meal preparation for dinner because his parents work full time and are not always able to cook meals. MassHealth did not approve any time for the request because meal preparation is the responsibility of the parent.

The MassHealth representative testified that she understands both parents work; however, meal preparation is always the responsibility of the parent and MassHealth will not pay for the PCA to do it.

The appellant's father explained that the PCA does not cook dinner for the appellant, but breakfast. The PCA will prepare breakfast foods such as eggs, French toast, or pancakes because the parents are at work. For dinner, the PCA will sometimes reheat food in the microwave for the appellant.

### **Laundry**

The appellant requested 60 minutes per week for laundry due to excessive soiled linens from incontinence. MassHealth did not approve any time for laundry because it is the responsibility of the parents. In addition to the soiled linens, the comments note that the PCA assists with sorting laundry, loading and unloading the laundry machines, and folding and putting away clothes.

The MassHealth representative stated that MassHealth will sometimes consider excessive laundry needs of a minor and approve laundry time, despite it being a parental responsibility. At the appeal last year, MassHealth approved 30 minutes per week for laundry. At hearing, MassHealth was willing to restore 30 minutes per week for laundry.

The appellant's father testified that the appellant has daily accidents and soils his clothes, even when they bring him to the bathroom regularly, creating excess laundry. The appellant also wets the bed nightly and they need to wash and change his sheets daily as a result. The appellant is incontinent of bowel and bladder

## **Findings of Fact**

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

1. The appellant is as minor MassHealth member with a diagnosis of Angelman Syndrome (Testimony and Exhibit 4).
2. The appellant is non-verbal and is cognitively impaired (Testimony and Exhibit 4).
3. The appellant is dependent for all activities of daily living and instrumental activities of daily living (Testimony and Exhibit 4).
4. The appellant lives at home with family (Testimony and Exhibit 4).
5. MassHealth received a prior authorization request on behalf of appellant on October 4, 2021, requesting 40 hours and 15 minutes of day/evening hours per week and 2 nighttime hours per night for the dates of service of October 18, 2021 through October 17, 2022 (Testimony and Exhibit 4).

6. MassHealth modified the request and authorized a total of 30 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night (Testimony and Exhibit 4).
7. The appellant is currently in aid pending and receiving 34 hours and 30 minutes of day/evening hours per week and 2 nighttime hours per night (Testimony and Exhibit 4).
8. At hearing, the parties were able to resolve disputes related to PCA assistance with the tasks of hair care, shaving, other grooming, bladder care, bowel care, and eating (Testimony and Exhibit 4).
9. Disputes remain regarding PCA assistance with the tasks of undressing, meal preparation, and laundry (Testimony and Exhibit 4).
10. The appellant seeks time for PCA assistance with undressing as follows: 18 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
11. MassHealth modified this request and authorized 15 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
12. There was an appeal last year and parties came to an agreement that 15 minutes, 1 time per day, 7 days per week was sufficient for undressing (Testimony).
13. The appellant has impulsive behaviors and resists undressing (Testimony and Exhibit 4).
14. The appellant seeks time for PCA assistance with meal preparation as follows: 30 minutes per day, 7 days per week (Testimony and Exhibit 4).
15. MassHealth did not approve any time for the task of meal preparation (Testimony and Exhibit 4).
16. The appellant's parents both work full-time and are not always able to cook meals (Testimony and Exhibit 4).
17. The appellant seeks time for PCA assistance with laundry as follows: 60 minutes per week (Testimony and Exhibit 4).
18. The appellant is incontinent of bowel and bladder. Even with frequent toileting, he often has accidents which soil his clothes and require changing. He also wets the bed every night and his bed linens need to be washed and changed daily. (Testimony).

## Analysis and Conclusions of Law

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

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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 personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
  - (a) mobility, including transfers;
  - (b) medications,
  - (c) bathing or grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

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 provider 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 provider 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 provider'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

Pursuant to 130 CMR 422.410(A), 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 basic care such as bathing, personal hygiene, and grooming skills;
- (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.

Pursuant to 130 CMR 422.410(B), instrumental activities of daily living include the following:

- (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 personal care services; and

(c) other special needs approved by the Division as being instrumental to the health care of the member.

MassHealth **does not cover** any of the following as part of the PCA program or the transitional living program:

- (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;
- (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**;
- or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen a member is living with family members, the family members will provide assistance with most IADLs. For example, **routine laundry**, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.” See 130 CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to the following tasks because at hearing the parties were able to resolve the disputes related to PCA assistance with: hair care, shaving, other grooming, bladder care, bowel care, and eating.

Regarding the appellant’s request for undressing, the appeal is denied. The appellant has not demonstrated that additional PCA assistance with undressing should be authorized. Last year at an appeal, MassHealth authorized 15 minutes per day for PCA assistance with undressing. This year, MassHealth has agreed to authorize the same amount of time. The appellant’s father did not present sufficient evidence regarding a change in his son’s condition that would justify any further increase. While the appellant runs away and needs redirection during the undressing process, waiting time, redirecting, and cueing are not covered services and cannot be included in the calculation of time-for-task (130 CMR 422.412(C)). For these reasons, the appellant has not demonstrated that any



further PCA assistance with the task of undressing is medically justified. The appeal is denied as to that task.

Regarding the appellant's request for meal preparation, the appeal is denied. When someone is living with a family member, the regulation requires family members to provide assistance with most IADLs, including meal preparation (130 CMR 422.410(C)). The appellant lives with his parents and meal preparation is the parents' responsibility.

Regarding the appellant's request for laundry, the appeal is approved. The appellant requested 60 minutes per week for laundry. MassHealth originally did not approve any time because laundry is the parental responsibility. At hearing, MassHealth explained that it will sometimes consider the excessive laundry needs of a minor and approved 30 minutes per week for the task, which was the same amount approved for laundry last year. The regulation requires family members to provide "routine laundry" and "household management" assistance. The appellant's need for laundry services solely related to his medical and behavioral conditions exceeds the laundry services anticipated through "household management" or "routine laundry." The appellant's father testified credibly that the appellant's medical conditions and behaviors result in an excessive amount of laundry being generated daily, including linens and clothing. Therefore, the appellant's medical condition results in the need for laundry assistance of at least one hour per week in excess of the routine laundry assistance that would be expected for regular household maintenance.

For these reasons, the appeal is approved in part, denied in part, and dismissed in part.

## **Order for MassHealth**

Approve 60 minutes per week for laundry and implement agreements made at hearing for the tasks of hair care, shaving, other grooming, bladder care, bowel care, and eating.

## **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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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

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