

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2178756

**Decision Date:** 02/08/2022

**Hearing Date:** 01/03/2022

**Hearing Officer:** Marc Tonaszuck

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, RN, Optum



*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>	Denied	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	02/08/2022	<b>Hearing Date:</b>	01/03/2022
<b>MassHealth's Rep.:</b>	Donna Burns, RN, Optum	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Quincy Harbor South		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction<sup>1</sup>

Through a notice dated 10/25/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 21:15 day/evening hours per week plus 0 daily night time attendant hours to 6:30 day/evening hours per week plus 0 daily night time attendant hours (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 11/18/2021 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

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<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

MassHealth modified appellant's prior authorization request for personal care attendant services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

## Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that on 10/14/2021 a prior authorization request for PCA services was received on appellant's behalf from her PCA provider, Northeast ARC, Inc. ("provider"), and is an initial evaluation request for the dates of service of 10/26/2021 to 10/25/2022. In the prior authorization request for PCA services, the provider requested 21:15 day/evening hours per week plus 0 daily nighttime attendant hours. The appellant is ■ years old and her primary diagnosis affecting her ability to function independently is congenital malformation of corpus callosum (Exhibit 4).

The Optum representative testified that on 10/26/2021 MassHealth modified the PCA request to 6:30 day/evening hours per week plus 0 daily nighttime attendant hours. Modifications were made to the request for PCA services that include modifications in the activity of daily living (ADL) tasks of transfers, passive range of motions (PROM) exercises, grooming-nail care, and other healthcare needs.

### Mobility - Transfers

Appellant's PCA provider requested 2 minutes, 6 times a day, 7 days a week (2 X 6 X 7)<sup>2</sup> for assistance with transfers. The provider noted in the request that the appellant "crawls independently and is able to get herself from one place to the next within the home via crawling. She is non-ambulatory; dependent for transfers in/out crib, in/out highchair, on/off sofa due to being non-ambulatory and cognitive limitations. She is able to reposition herself independently" (Exhibit 4).

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<sup>2</sup> PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

MassHealth modified the request for assistance with transfers to 5 X 2 X 7. The MassHealth representative testified that the time requested is longer than what is ordinarily necessary for someone with the appellant's needs. She testified that the time was approved for assistance in and out of the stander.

The appellant was represented at the fair hearing by her mother, who testified that she is trying to make the appellant walk, so that is the reason why the time was requested.

#### Passive Range of Motion Exercises (PROM)

The appellant's PCA provider requested 360 minutes per week for assistance with passive range of motion exercises for all extremities. The provider noted that the appellant is dependent for PROM exercises to all extremities due to decreased gluteal muscle contracture and she is non-ambulatory. PROM exercises are necessary to prevent contractures, promote circulation, and maintain current muscle mass.

MassHealth denied the request for assistance with PROM. The MassHealth representative testified that the appellant has sufficient movement of her extremities, as evidenced by the fact that she can crawl. PROM is not medically necessary for someone who can move her own limbs.

The appellant's mother did not wish to respond to the PROM modification.

#### Grooming-Nail Care

The appellant's provider requested 5 X 1 X 1 for assistance with nail care. The provider noted that the appellant is unable to manipulate grooming tools including toothbrush and hairbrush due to decreased fine motor coordination and gross motor coordination. She is resistive to nail care, hair care, and oral care due to sensory integration disorder/tactile defensiveness, causing these tasks to take longer to complete. The appellant doesn't participate in completing any of her grooming tasks due to cognitive limitations and has vision impairment that affects her ability to perform ADLs.

MassHealth denied the request for PCA assistance with nail care. The MassHealth representative testified that a child of █ years of age is dependent on her parent/caretaker to trim the nails. This task is a parental responsibility for any child of the appellant's age.

The appellant's mother testified that the appellant is resistive to having her nails trimmed. "She doesn't help and it is hard to get someone to help us."

#### Other Healthcare Needs

The appellant's provider requested 2 X 3 X 7 and 60 X 1 X 7 for assistance with other healthcare needs. The provider noted the following:

Oral motor sensory exercises prior to each feeding - these exercises are necessary to help the appellant develop the ability to eat solid foods. She is only able to consume smoothies at this time due to feeding difficulties. Mother reports swallow studies have been completed;

In/out gait trainer – the appellant is dependent for transfer in/out gait trainer and contact guard while in gait trainer on a daily basis. The appellant is non-ambulatory at this time.

MassHealth denied the time requested for assistance with other healthcare needs. The MassHealth representative testified that assisting the appellant with exercises to swallow her food is not a PCA service. A PCA is not a skilled health care provider. The time requested for this task does not meet the standard of care and is therefore not medically necessary.

Similarly, MassHealth denied the time requested for assistance in and out of the gait trainer (stander), as the time was approved under the task of mobility-transfers. This time is duplicative and not medically necessary.

The appellant's mother testified that the appellant has "sensory issues and gets anxious before eating. The vibrations help awaken the muscles."

## **Findings of Fact**

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 10/14/2021 from her PCA provider, Northeast ARC, Inc. ("provider"), and is an initial evaluation request for the dates of service of 10/26/2021 to 10/25/2022 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 21:15 day/evening hours per week (Testimony; Exhibit 4).
3. Nighttime attendant hours were not requested (Testimony; Exhibit 4).
4. The appellant is ■ years old and her primary diagnosis affecting her ability to function independently is congenital malformation of corpus callosum (Testimony; Exhibit 4).
5. On 10/26/2021 MassHealth modified the PCA request to 6:30 day/evening hours per week (Testimony; Exhibits 1 and 4).
6. Appellant's PCA provider requested 2 minutes, 6 times a day, 7 days a week (2 X 6

X 7) for assistance with transfers. The provider noted in the request that the appellant “crawls independently and is able to get herself from one place to the next within the home via crawling. She is non-ambulatory; dependent for transfers in/out crib, in/out highchair, on/off sofa due to being non-ambulatory and cognitive limitations. She is able to reposition herself independently” (Testimony; Exhibits 1 and 4).

7. MassHealth modified the request for assistance with transfers to 5 X 2 X 7 for assistance in and out of the gait trainer/stander (Testimony; Exhibits 1 and 4).
8. The appellant’s PCA provider requested 360 minutes per week for assistance with passive range of motion exercises for all extremities. The provider noted that the appellant is dependent for PROM exercises to all extremities due to decreased gluteal muscle contracture and she is non-ambulatory. PROM exercises are necessary to prevent contractures, promote circulation, and maintain current muscle mass (Testimony; Exhibit 4).
9. The appellant is independently able to crawl and move her limbs on her own (Testimony; Exhibit 4).
10. MassHealth denied the request for assistance with PROM exercises (Testimony; Exhibit 4).
11. The appellant’s provider requested 5 X 1 X 1 for assistance with nail care. The provider noted that the appellant is unable to manipulate grooming tools including toothbrush and hairbrush due to decreased fine motor coordination and gross motor coordination. She is resistive to nail care, hair care, and oral care due to sensory integration disorder/tactile defensiveness, causing these tasks to take longer to complete. The appellant doesn’t participate in completing any of her grooming tasks due to cognitive limitations and has vision impairment that affects her ability to perform ADLs (Testimony; Exhibit 4).
12. MassHealth denied the request for assistance with nail care (Testimony; Exhibits 1 and 4).
13. The appellant’s provider requested 2 X 3 X 7 and 60 X 1 X 7 for assistance with other healthcare needs. The provider noted the following:

Oral motor sensory exercises prior to each feeding - these exercises are necessary to help the appellant develop the ability to eat solid foods. She is only able to consume smoothies at this time due to feeding difficulties. Mother reports swallow studies have been completed;

In/out gait trainer – the appellant is dependent for transfer in/out gait trainer and contact guard while in gait trainer on a daily basis. The appellant is non-

ambulatory at this time.

14. MassHealth denied the request for PCA assistance with other healthcare needs (Testimony; Exhibit 4).

15. Assistance with stimulating a child's throat in preparation of eating is a skilled task (Testimony.)

## **Analysis and Conclusions of Law**

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

- (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/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.

(B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.

- (1) When 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.
- (2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth modified the appellant's request for PCA time. In the area of mobility/transfers, the provider requested 2 X 6 X 7, noting primarily that the appellant needs assistance for transfers in/out crib, in/out high chair, on/off sofa due to being non-ambulatory and cognitive limitations. MassHealth approved time for assistance in and out of the gait trainer/stander; however the remaining time was denied because the appellant's parent or caregiver would normally assist any child of the appellant's age in and out of the crib, high chair and sofa. She also is able to crawl from place to place independently and to reposition herself. The mother did not provide a substantive response to MassHealth's modification. She stated that she is trying "to make [the appellant] walk." The appellant's representative has not shown by the requisite standard that MassHealth's modification in this area is incorrect. Accordingly, this portion of the appeal is denied.

In the area of assistance with PROM, MassHealth denied the time for assistance based on medical necessity. The MassHealth representative, a registered nurse, testified credibly and convincingly that standards of medical practice contraindicate passive range of motion for a member who is independently able to move their own extremities. Further, the appellant acknowledged that she is able to independently move her upper and lower extremities. MassHealth's denial of PCA time for passive range of motion exercise is supported by the evidence in the record, as well as the regulations. Accordingly, this portion of the appeal is denied.

In the area of grooming-nail care, MassHealth denied all time requested based on its determination that nail care is a parental responsibility for all children of the appellant's age. The appellant's mother testified that the appellant is not helpful when the PCA performs this task; however, such an assertion does not show by a preponderance of the evidence that MassHealth's denial is incorrect. This portion of the appeal is therefore denied.

In the area of other health care needs, MassHealth denied the requested time that was requested for assisting the appellant with throat exercises prior to eating a meal and for assistance in and out of the gait trainer/stander. First concerning the first issue, MassHealth's denial is based on the MassHealth representative's testimony that assisting a child with exercises to relax her throat prior to eating is a skilled task, one that a PCA is not allowed to provide because of its level of necessary training/skill. The appellant's mother testified that the appellant needs assistance to reduce her anxiety before eating. Second, MassHealth denied the requested time for assistance in and out of the gait trainer/stander in this area, as the time was approved in the mobility – transfers area. MassHealth's denial of PCA assistance in this area is supported by the material facts in the hearing record as well as the regulations. This portion of the appeal is denied.

For the foregoing reasons, this appeal is denied.

## **Order for MassHealth**

None.

## **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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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