

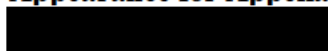
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2178957
<b>Decision Date:</b>	3/03/2022	<b>Hearing Date:</b>	01/11/2022
<b>Hearing Officer:</b>	Casey Groff		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Cheryl Eastman, R.N., Optum, Clinical  
Reviewer



*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>	3/03/2022	<b>Hearing Date:</b>	01/11/2022
<b>MassHealth's Rep.:</b>	Cheryl Eastman, R.N.	<b>Appellant's Rep.:</b>	██████████
<b>Hearing Location:</b>	Board of Hearings (Remote)	<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 November 18, 2021, MassHealth informed Appellant that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. On November 22, 2021, the Board of Hearings (BOH) received a timely appeal of the November 18<sup>th</sup> notice. See 130 CMR 610.015(B); Exhibit 2. On December 1, 2021, BOH dismissed the appeal for failure to demonstrate proper authority to challenge the action. See Exhibit 3; 130 CMR 610.015(G). On December 10, 2021, Appellant's guardian sent BOH the court ordered Letter of Guardianship to properly appeal the notice. See Exhibit 4. On December 21, 2021 BOH vacated the dismissal and scheduled a hearing for January 11, 2022. See Exhibit 5. Modification of a 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 the hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his court-appointed guardian. Both parties appeared via telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is under the age of 65 and has diagnoses including but not limited to: autism, global developmental delay, hypertension, gout, seasonal affective disorder, and self-abusive behaviors. See Exhibit 6, p. 8. He has limited ability to communicate and understanding of concepts. Id. He is also treated for sleep apnea. Id. at 25.

On September 18, 2021, Appellant's personal care management (PCM) agency conducted a re-evaluation of Appellant to determine his continued need for personal care attendant (PCA) services. Id. at 7. Based on the re-evaluation, the PCM agency submitted a prior authorization (PA) request to MassHealth, on behalf of Appellant, seeking 34 hours and 45 minutes per week and 2 hours per night (14 hours per week) of PCA services for the time period beginning December 26, 2021 through December 25, 2022. See Exh. 1; Exh. 6.

On November 3, 2021, MassHealth notified Appellant that it was modifying his PA request by approving 33 hours and 30 minutes per week and two nighttime hours per night of PCA services. Specifically, MassHealth approved all requested areas of care, except for the time requested for equipment maintenance. See Exh. 1. Under the instrumental activity of daily living (IADL) section of the PA request, Appellant requested 105 minutes per week for the PCA to clean and maintain his CPAP machine. See Exh. 6 at 24. The PA request noted that Appellant is totally dependent in the level of assistance he requires for equipment maintenance. Id.

MassHealth modified the requested time to 35 minutes per week because it determined the time requested was longer than ordinarily required to perform this task. The MassHealth representative testified that 5 minutes daily should be sufficient to wipe the machine, clean, and water-fill it daily. The machine itself is not cleaned every day.

In response, Appellant's guardian testified that Appellant uses the CPAP every day during naps, sleep, and at times while awake, as he feels better when using it. He takes several naps throughout the day, especially as he is getting older. When napping, he constantly takes his CPAP mask off and will throw it on the floor. This happens at least 3 to 4 times on weekdays, and closer to 5 to 6 times per day on weekends. To avoid getting him sick from a dirty CPAP mask, the PCA must clean the mask each time he throws it on the ground, which is a time-consuming process. Specifically, the PCA will pick the mask up from the floor, take it off the tube, bring it to the sink, run it under warm soapy water, dry it, and place it back on the tube. About an hour or two later, Appellant will throw it on the ground again and the PCA must repeat this process. The time tending to this task adds up as it ends up on the floor so frequently. It would not be right to put a dirty mask back on him without washing it.

The PA request notes that Appellant's guardian does not live with Appellant. There is no evidence that anyone lives in the home with Appellant.

MassHealth responded that wiping the mask down every time it is taken on and off is within the standard of care for cleaning a CPAP and the total time should not take longer than 35 minutes per week.

## **Findings of Fact**

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

1. Appellant is under the age of 65 and has diagnoses including but not limited to: autism, global developmental delay, hypertension, gout, seasonal affective disorder, and self-abusive behaviors; he has limited ability to communicate and understanding of concepts; and he is treated for sleep apnea.
2. On September 18, 2021, Appellant's PCM agency conducted a re-evaluation of Appellant to determine his continued need for PCA services.
3. Based on the re-evaluation, the PCM agency submitted a PA request to MassHealth, on behalf of Appellant, seeking 34 hours and 45 minutes per week and 2 hours per night (14 hours per week) of PCA services for the time period beginning December 26, 2021 through December 25, 2022.
4. On November 3, 2021, MassHealth notified Appellant that it was modifying his PA request by approving 33 hours and 30 minutes per week and two nighttime hours per night of PCA services.
5. MassHealth approved all requested areas of care, except for the time requested for equipment maintenance.
6. Appellant is totally dependent for care in maintaining his medical equipment.
7. Appellant requested 105 minutes per week for "equipment maintenance" for the PCA to clean and maintain his CPAP machine.
8. MassHealth modified the requested time to 35 minutes per week, which is the standard of care for cleaning a CPAP machine and includes time for weekly machine cleaning, as well as daily wiping of parts and filling the water chamber.
9. Appellant uses the CPAP every day during naps, sleep, and at times while awake, as he feels better when using it.
10. Appellant takes several naps each day, during which he frequently removes his mask and

throws it on the floor.

11. Each time the mask is thrown on the floor, his PCA removes it from the CPAP machine, and cleans the mask using warm soapy water, drying it, and placing it back on the CPAP tube.
12. Appellant does not live with his guardian and there is no evidence anyone else lives in the home with him.

## **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>1</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).

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.

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<sup>1</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.

MassHealth approved all the time requested for each activity of daily living (ADL) and instrumental activity of daily living (IADL), except for the IADL of “equipment maintenance.” Therefore, the only issue on appeal is whether MassHealth allotted sufficient time, in accordance with program regulations, for his PCA to maintain his medical equipment, to meet his care needs.

IADLs are 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. Equipment maintenance involves “assisting members with special needs, including the care and maintenance of wheelchairs and adaptive devices.” See 130 CMR 422.410(B)(4)(a). 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. Finally, MassHealth covers the “activity time performed by a PCA in providing assistance with the [ADLs or IADLs].” 130 CMR 422.411.

Under the IADL category of equipment maintenance, Appellant requested 105 minutes per-week (amounting to 15 minutes per day) for PCA assistance with maintaining and cleaning his CPAP machine. MassHealth modified the request by approving 35 minutes per week (amounting to 5 minutes daily). According to MassHealth, 35 minutes per week is sufficient to meet the standard of care for CPAP maintenance, including daily wiping of parts, filling the water chamber, and weekly cleaning of the machine. At hearing, Appellant’s guardian provided credible testimony indicating that in addition to standard CPAP maintenance and cleaning protocols, Appellant’s CPAP requires additional daily cleaning due to his tendency to remove and throw his mask on the floor multiple times per day, mostly when napping. Each time this occurs, the mask is removed from the machine, soaked in warm soapy water, rinsed, dried, and re-attached to the machine. In consideration of Appellant’s “individual circumstances” and behaviors that compromise the cleanliness of his mask, an additional 10 minutes of PCA assistance per day is needed to meet his care needs. Thus, Appellant met his burden in demonstrating he requires 105 minutes total per week with equipment maintenance.

Based on the foregoing, this appeal is APPROVED.

## **Order for MassHealth**

For the PA period beginning December 26, 2021 through December 25, 2022, approve the Appellant’s prior authorization request for PCA services in-full, including the time requested for equipment maintenance (105x1).

## 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

[REDACTED]