

# 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>	2179180
<b>Decision Date:</b>	2/17/2022	<b>Hearing Date:</b>	02/01/2022
<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>	2/17/2022	<b>Hearing Date:</b>	02/01/2022
<b>MassHealth's Rep.:</b>	Mary-Jo Elliott, RN	<b>Appellant's Rep.:</b>	Father/Legal Guardian
<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 November 2, 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 December 6, 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. The appellant was represented at hearing via telephone by her father who is her legal guardian.

The MassHealth representative testified that the documentation submitted shows the appellant is an adult female under the age of 65 with a primary diagnosis of genetic chromosomal abnormality. No other medical history was provided.

On October 25, 2021, the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services requesting 30 hours and 45 minutes per week of day/evening hours and 2 nighttime hours per night for the dates of service of December 31, 2021 through December 30, 2022. On November 2, 2021, MassHealth modified the request to 24 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night. MassHealth made modifications related to PCA assistance with the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): nail care, oral care, shaving, menses care, meal preparation, laundry, housekeeping, and shopping. At hearing, parties were able to resolve the disputes related to the following: oral care<sup>1</sup>, shaving<sup>2</sup>, meal preparation<sup>3</sup>, housekeeping<sup>4</sup>, and shopping<sup>5</sup>. PCA assistance with the ADLs and IADLs of nail care, menses care, and laundry remain at issue.

### **Grooming: Nail Care**

The appellant requested 20 minutes per week for nail care. MassHealth modified the request to 10 minutes per week because the time requested is longer than ordinarily required.

The MassHealth representative explained that nail care generally involves filing and clipping and should not take more than 10 minutes per week.

The appellant's father responded that she bites her nails and scratches at herself a lot. The appellant's nails need to be trimmed and/or filed two to three times per week. She can be very moody and temperamental which can make it difficult to complete the task. The PCA often has to battle with or bribe the appellant. He stated that it takes more than 10 minutes per week.

### **Menses Care**

The appellant requested 120 minutes per month (or 30 minutes per week) for menses care. MassHealth modified the request to 60 minutes per month (or 15 minutes per week).

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<sup>1</sup> Oral care was fully restored as requested to 5 minutes, 1 time per day, 7 days per week.

<sup>2</sup> Shaving was fully restored as requested to 15 minutes per week.

<sup>3</sup> Meal preparation was modified to 75 minutes per day, 7 days per week

<sup>4</sup> Housekeeping was modified to 60 minutes per week.

<sup>5</sup> Shopping was modified to 45 minutes per week.

The MassHealth representative testified that the time requested was longer than ordinarily required and MassHealth modified it to 15 minutes per week which is the average amount of time given for PCA assistance with menses care. She stated that there were no notes or comments provided in the menses care section of the request to explain the need for so much time.

The appellant's father testified that he was not familiar with her menses cycle or care.

### **Laundry**

The appellant requested 90 minutes per week for laundry. MassHealth modified it to 45 minutes per week.

The MassHealth representative testified that the appellant lives with her father who is her legal guardian. She explained that when the legal guardian lives with the consumer, the legal guardian is expected to help with IADLs; however, MassHealth considers individual circumstances when determining the number of hours of PCA assistance with IADLs. Because the appellant's father works full-time, MassHealth approved 45 minutes per week for PCA assistance with laundry.

The appellant's father testified that he works two jobs and is out of the house seven days per week. The appellant wets her bed every night and the PCA must change and wash her sheets, pillow cases, and comforter every day. The appellant has seizures and when she has a seizure, she messes up the sheets even more. The linens are in addition to the appellant's clothing that need washing. He felt that the 90 minutes per week was appropriate for laundry.

The MassHealth representative responded that assistance with laundry includes the hands-on time to put the laundry into the washing machine, then into the dryer, then to fold and put away the clothes. It does not include the time that the clothes or linens are in the washing machine or dryer. The comments note that the washer and dryer are in the appellant's home and the appellant is dependent for all laundry tasks. The MassHealth representative stated that she would approve 60 minutes per week.

## **Findings of Fact**

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

1. The appellant is an adult female under the age of 65 with a primary diagnosis of genetic chromosomal abnormality (Testimony and Exhibit 4).
2. On October 25, 2021, MassHealth received a prior authorization request for PCA services on requesting 30 hours and 45 minutes per week of day/evening hours and 2 nighttime hours per night for dates of service of December 31, 2021 through December 30, 2022 (Testimony and Exhibit 4).

3. On November 2, 2021, MassHealth modified the request to 24 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night (Testimony and Exhibit 4).
4. At hearing, the parties were able to resolve disputes related to PCA assistance with the following ADLs and IADLs: oral care, shaving, meal preparation, housekeeping, and shopping (Testimony).
5. The appellant seeks time for PCA assistance with nail care as follows: 20 minutes per week (Testimony and Exhibit 4).
6. MassHealth modified the request to 10 minutes per week (Testimony and Exhibit 4).
7. The appellant seeks time for PCA assistance with menses care as follows: 120 minutes per month (or 30 minutes per week) (Testimony and Exhibit 4).
8. MassHealth modified the request to 60 minutes per month (or 15 minutes per week) (Testimony and Exhibit 4).
9. There was no additional information provided in the documentation regarding the appellant's menses care and her father was not familiar with it (Testimony and Exhibit 4).
10. The appellant seeks time for PCA assistance with laundry as follows: 90 minutes per week (Testimony and Exhibit 4).
11. MassHealth modified the request to 45 minutes per week (Testimony and Exhibit 4).
12. The appellant's father works full time, has two jobs, and is out of the house seven days per week (Testimony).
13. The appellant wets the bed every night. As a result, the sheets and comforter are washed every day. (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.

(Emphasis added).

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 oral care, shaving, meal preparation, housekeeping, and shopping because at hearing the parties were able to resolve the disputes related to PCA assistance with those ADLs and IADLs.

As to the appellant’s request for nail care, the appeal is denied. MassHealth authorized 10 minutes per week for nail care. The appellant has not demonstrated that additional PCA assistance with nail care should be authorized. Nail care involves the hands-on activity of clipping and filing nails. The appellant’s father testified that the behavioral issues of the appellant can make it difficult to complete the task and the PCA has to bribe the appellant. Cueing, prompting, supervision, guiding, or coaching, however, are not covered services in the PCA program and cannot be included in the calculation for PCA assistance (130 CMR 422.412(C)). For this reason, the appellant has not demonstrated that any further PCA assistance is medically necessary with the ADL of nail care and the appeal is denied.

As to the appellant’s request for menses care, the appeal is denied. The appellant requested 120 minutes per month (or 30 minutes per week), but MassHealth authorized 60 minutes per month (or 15 minutes per week) for menses care. The registered nurse representing MassHealth explained that 120 minutes per month is longer than ordinarily required for menses care. There was nothing in the documentation to support the need for so much time. The appellant’s father was not familiar with the appellant’s menses cycle or care and did not provide any additional information. For this reason, the appellant has not demonstrated that any further PCA assistance is medically necessary with the ADL of menses care and the appeal is denied.

As to the appellant’s request for laundry, the appeal is approved. MassHealth originally authorized 45 minutes per week for laundry. At hearing, MassHealth offered to approve 60 minutes per week for PCA assistance with laundry. The regulation requires family members to provide “**routine**



laundry” and “household management” assistance. The appellant’s need for laundry services related to her 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 bed linens every day. MassHealth considers individual circumstances in determining the number of hours of PCA services. Not only does the appellant have excessive laundry needs, but the appellant’s father works two jobs and is out of the house seven days per week. Therefore, the appellant’s medical condition results in the need for laundry assistance 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 90 minutes per week for laundry and implement agreements made at hearing for the ADLs and IADLs oral care, shaving, meal preparation, housekeeping, and shopping.

## **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