

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



**Appeal Decision:** Dismissed in part;  
Denied in part;  
Approved in part


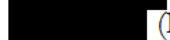
**Appeal Number:** 2200475

**Decision Date:** 8/4/2022

**Hearing Date:** 07/26/2022

**Hearing Officer:** Scott Bernard

**Appearance for Appellant:**

 (Guardian) *via* telephone  
 (PCA) *via* telephone


**Appearance for MassHealth:**

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>	Dismissed in part; Denied in part; Approved in part	<b>Issue:</b>	Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	8/4/2022	<b>Hearing Date:</b>	07/26/2022
<b>MassHealth's Rep.:</b>	Mary Jo Elliott, RN	<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

Through a notice dated January 10, 2022, MassHealth modified the appellant's prior authorization (PA) request for MassHealth PCA services. (See 130 CMR 450.204; 422.000 *et seq* and Exhibit (Ex.) 1; Ex. 13, pp. 3, 4-6). The appellant, through his guardian, filed this appeal in a timely manner on 18, 2022. (See 130 CMR 610.015(B) and Ex. 2). Modification to a request for PCA services is valid grounds for appeal (see 130 CMR 610.032).

On January 27, 2022, the Board of Hearings sent the guardian a request that they submit a copy of the guardianship document within 10 days. (Ex. 3). On February 10, 2022, this letter was returned unopened because it was addressed incorrectly. (Ex. 4). On February 11, 2022, the Board re-sent the letter requesting the guardianship documentation be submitted within 10 days. (Ex. 5). The appellant's guardian submitted the documentation on February 16, 2022. (Ex. 6). On February 18, 2022, the Board scheduled a hearing for March 17, 2022. (Ex. 7). The appellant's guardian did not appear for the hearing on March 17, 2022. (Ex. 8). On April 4, 2022, the Board sent the appellant's guardian a notice stating that the appeal would be dismissed unless she submitted a request to vacate with an explanation of the failure to appear within 10 days. (Ex. 9). The appellant's guardian did submit the requested explanation on April 22, 2022 but the Board did not find it until June 23, 2022. (Ex. 11). On June 29, 2022, the Board scheduled the present hearing.

## Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204 and 422.000 *et seq.*, in determining that the PA request for PCA services should be modified.

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. MassHealth received a PA request from the personal care management agency (PCM) for 28 hours and 30 minutes of day and evening PCA services and no night-time hours for one year. (Ex. 1; Ex. 13, pp. 3, 4-6). On January 10, 2022 MassHealth notified the appellant that it was modifying the PA request and approving 23 hours of day and evening and no night-time hours for a PA period from February 12, 2022 through February 11, 2023. (*Id.*). MassHealth specifically modified the following activities of daily living (ADLs) and instrumental ADLs (IADLs): bathing, dressing, undressing, bladder care, bowel care, and meal preparation. (*Id.*). The MassHealth representative stated that the appellant is a teenager and has a relevant medical history of “[a]utism with global delays, non-verbal, poor safety awareness, ADHD, history of failure to gain weight, Pica disorder, pre-puberty changes in process.” (Ex. 13, pp. 7-8).

In the request for fair hearing, the appellant’s guardian stated the appellant required assistance with bathing, grooming, toileting, and dressing. (Ex. 2). During the hearing, the appellant’s guardian accepted the modifications for bathing, bladder care, bowel care, and meal preparation. The appellant’s guardian contested the modifications for dressing and undressing. In the PA request, the PCM requested 20 minutes per day, seven days per week each for dressing and undressing. (Ex. 13, pp. 14-15). In the notice, MassHealth modified dressing to 18 minutes per day, seven days per week and undressing to 15 minutes per day, seven days per week. (Ex. 1; Ex. 13, pp. 3, 4-6).

The MassHealth representative highlighted the PCM comments in the submission, which stated that the appellant “needs constant redirection and patience as he can’t follow commands all the time” and “[the appellant] is able to hold his arm in/out of shirt and pull it down. He needs the same assistance getting undressed and putting on shoes/taking off shoes. Consumer with poor sequencing skills, poor safety awareness and can not [sic] be left unsupervised. Unable to consistently follow simple one step commands[.]” (Ex. 13, p. 15). The MassHealth representative stated that according to the PCM submission, the appellant requires maximum assistance with both dressing and undressing. (*Id.*). She further stated that the time MassHealth approved for dressing was on the higher side even for a person requiring maximum assistance. As for undressing, it was unusual for a person to request the same amount of time for undressing as for dressing. Generally, she testified, undressing requires less time than dressing.

The appellant’s guardian was accompanied at the hearing by the appellant’s PCA. They testified that the appellant does not assist getting dressed or undressed in any way. The appellant’s PCA stated that the appellant will often stand stiffly like a statue, which makes it very difficult to put on or remove clothing. The PCA likened him also to a doll that requires manipulation in order to clothe and unclothe. The appellant’s PCA testified that though the appellant is not violent in any way, he is extremely resistant to the processes of dressing and undressing. She politely disagreed that it took

less time to undress as to dress the appellant simply because he was as resistant to undressing and he was to dressing.

## Findings of Fact

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

1. At the hearing, MassHealth was represented by a registered nurse and clinical appeals reviewer and the appellant was represented by his guardian and his PCA. (Testimony of the MassHealth representative; Testimony of the appellant's guardian; Testimony of the appellant's PCA; Ex. 6).
2. The appellant is a teenager and has a relevant medical history of “[a]utism with global delays, non-verbal, poor safety awareness, ADHD, history of failure to gain weight, Pica disorder, pre-puberty changes in process.” (Ex. 13, pp. 7-8).
3. MassHealth received a PA request from the PCM for 28 hours and 30 minutes of day and evening PCA services and no night-time hours for one year. (Ex. 1; Ex. 13, pp. 3, 4-6).
4. On January 10, 2022 MassHealth notified the appellant that it was modifying the PA request and approving 23 hours of day and evening and no night-time hours for a PA period from February 12, 2022 through February 11, 2023. (Ex. 1; Ex. 13, pp. 3, 4-6).
5. MassHealth specifically modified the following ADLs and IADLs: bathing, dressing, undressing, bladder care, bowel care, and meal preparation. (Ex. 1; Ex. 13, pp. 3, 4-6).
6. The appellant, through his guardian, submitted a timely request for a hearing on January 18, 2022, stating that the appellant required assistance with bathing, grooming, toileting, and dressing. (Ex. 2; Ex. 6).
7. During the hearing, the appellant's guardian accepted the modifications for bathing, bladder care, bowel care, and meal preparation. (Testimony of the appellant's guardian).
8. The PCM requested 20 minutes per day, seven days per week each for dressing and undressing. (Ex. 13, pp. 14-15).
9. MassHealth modified dressing to 18 minutes per day, seven days per week and undressing to 15 minutes per day, seven days per week. (Ex. 1; Ex. 13, pp. 3, 4-6).
10. The appellant requires maximum assistance with dressing and undressing. (Ex. 13, p. 15).
11. The PCM stated that the appellant “needs constant redirection and patience as he can't follow commands all the time” and “[the appellant] is able to hold his arm in/out of shirt and pull it down. He needs the same assistance getting undressed and putting on shoes/taking off shoes. Consumer with poor sequencing skills, poor safety awareness and can not [sic] be left unsupervised. Unable to consistently follow simple one step commands[.]” (Ex. 13, p. 15).

12. The time MassHealth approved for dressing was on the higher side even for a person requiring maximum assistance. (Testimony of the MassHealth representative).
13. As for undressing, it was unusual for a person to request the same amount of time for undressing as for dressing because generally undressing requires less time than dressing. (Testimony of the MassHealth representative).
14. The appellant is highly resistant to dressing and undressing and will stand like a statue or a doll while the PCA has to manipulate his body to clothe and unclothe him. (Testimony of the appellant's PCA).
15. Because he is as resistant to undressing as dressing, it does require the same amount of time to undress the appellant as it does to dress the appellant. (Testimony of the appellant's PCA).

## **Analysis and Conclusions of Law**

The MassHealth Board of Hearings will dismiss a request for a hearing when the request is withdrawn by the appellant. (130 CMR 610.035(A)(2)). The MassHealth notice under appeal stated that it had modified the time requested for bathing, dressing, undressing, bladder care, bowel care, and meal preparation. (Ex. 1; Ex. 13, pp. 3, 4-6). In the fair hearing request, the appellant's guardian stated that the appellant required assistance with bathing, grooming, toileting, and dressing. (Ex. 2). At the hearing, the appellant's representative decided that she did not oppose the modifications MassHealth made to the time requested for bathing, bladder care, bowel care, and meal preparation. With regard to bathing, bladder care, bowel care, and meal preparation the appeal will be treated as withdrawn. The appellant's guardian, however, confirmed that she wished to contest the modifications MassHealth made to the time for dressing and undressing.

The provider must request prior authorization reevaluation from the MassHealth agency as a prerequisite to continued payment for ongoing PCA services. (130 CMR 422.416). Reevaluations must be conducted at least annually, accurately represent the member's need for physical assistance with ADLs and IADLs and consider the member's physical and cognitive conditions and resulting functional limitations to determine ability to benefit from PCA services. (130 CMR 422.422(D)). MassHealth covers activity time performed by a PCA in aiding with the ADLs and IADLs specified in the reevaluation, and as authorized by MassHealth. (130 CMR 422.411(A)). ADLs include physical assistance with mobility, taking medications, bathing or grooming, passive range of motion exercises, eating, toileting, and dressing and undressing. (130 CMR 422.402; 130 CMR 422.410(A)).

Prior authorization determines the medical necessity of the authorized services. (130 CMR 422.416; 130 CMR 450.303). A service is medically necessary if 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 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 MassHealth. (130 CMR 450.204(A)). 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. (130 CMR

450.204(B)).

The appellant's representative has not shown by a preponderance of the evidence that the request for 20 minutes of assistance with dressing per day was medically necessary. The record does show that the appellant requires maximum assistance with dressing. The appellant's PCA testified in some detail concerning the difficulties in dressing the appellant. Neither the appellant's PCA, nor the appellant's guardian described how much time the PCA actually spent physically assisting the appellant with dressing. The MassHealth representative stated that 18 minutes was on the higher side for someone requiring maximum assistance. Based on her professional expertise, there is no need to doubt the credibility of this assertion. The reduction of two minutes between the time requested and the time modified for dressing does not seem unreasonable under the circumstances.

With regards to undressing, the analysis is a little more complicated. The appellant's PCA credibly testified that it requires just as much time to undress the appellant and it does to dress him. The appellant's PCA stated that the appellant is resistant to the process of both dressing and undressing, standing stiffly like a statue or a doll. This description lends plausibility to the assertion that it takes the PCA just as much time to undress the appellant as to dress him. Although it may be true that generally it takes less time to undress as to dress an individual, this generalization does not appear to apply to the appellant. Even though the PCM requested 20 minutes for undressing, however, no evidence was submitted suggesting that amount of time was medically necessary. For that reason, the modification to undressing should be adjusted to equal the amount of time (as modified) for dressing.

For the above stated reasons, the appeal is DISMISSED with regard to the modifications to bathing, bladder care, bowel care, and meal preparation; DENIED with regard to dressing; and APPROVED IN PART and DENIED IN PART with regard to undressing.

## **Order for MassHealth**

Adjust the time allotted for undressing to 18 minutes per day, seven days per week. This adjustment should be effective from the beginning of the prior authorization period.

## **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 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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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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