

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2202774

**Decision Date:** 5/25/2022

**Hearing Date:** 05/19/2022

**Hearing Officer:** Patricia Mullen

**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>	5/25/2022	<b>Hearing Date:</b>	05/19/2022
<b>MassHealth's Rep.:</b>	Donna Burns, RN, Optum	<b>Appellant's Rep.:</b>	Father
<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 March 24, 2022, MassHealth modified the appellant's request for prior authorization for 32.25 hours per week for day/evening PCA services and 14 hours a week for a nighttime attendant (NTA) and approved 31 hours per week for day/evening PCA services and 14 hours for NTA, because MassHealth determined that time requested for PCA assistance with bathing did not meet criteria under MassHealth medical necessity and PCA regulations. (Exhibit 1; 130 CMR 422.410; 450.204). The appellant filed this appeal in a timely manner on April 4, 2022 and received aid pending appeal. (130 CMR 610.015(B) and Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

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

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410 in determining that time requested for PCA assistance with bathing did not satisfy the criteria set forth in the PCA and medical necessity regulations.

## Summary of Evidence

The appellant is a child and was represented telephonically at the hearing by his father. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for personal care attendant (PCA) services. The appellant's provider, Northeast Arc, submitted a re-evaluation request for prior authorization for 32.25 hours per week in day/evening PCA services and 14 hours per week for NTA services on March 15, 2022. (Exhibit 4, p. 3). By notice dated March 24, 2022, MassHealth approved 31 hours per week in day/evening PCA services and 14 hours per week for NTA services. (Testimony, exhibits 1, 4, p. 3).

The appellant is under age 18 and has diagnoses including autism and profound intellectual disabilities. (Exhibit 4, p. 8). The appellant's provider wrote that they were requesting a slight increase in PCA hours due to increased need for laundry tasks because the appellant engages in fecal smearing and has incontinence episodes that cause multiple clothing changes per day. (Exhibit 5, p. 8). The time requested for PCA assistance with laundry was approved in full. (Exhibit 4, p. 24).

The MassHealth representative stated that MassHealth made one modification to the request for PCA services. The MassHealth representative noted that the appellant's provider requested 45 minutes once a day for PCA assistance with showering and 15 minutes once a day for PCA assistance with a quick wash due to incontinence of bladder to maintain skin integrity. (Exhibit 4, p. 12). The nurse evaluator from the appellant's provider agency wrote that the PCA assists with showering activities including transferring, regulating water temperature, washing, rinsing, drying body and washing hair; the nurse evaluator noted that more than the average time is needed due to behavioral issues, decreased fine motor skills, no safety awareness, resistive behaviors, and intellectual disability. (Exhibit 4, p. 12). The MassHealth representative stated that MassHealth approved 35 minutes a day for PCA assistance with showering and 15 minutes a day for PCA assistance with the quick wash. The appellant's provider also requested 15 minutes, twice a day for PCA assistance with bowel care, noting that the appellant plays in the toilet and smears feces. (Exhibit 4, p. 17). The requested time for PCA assistance with bladder and bowel care was approved in full. (Exhibit 4, p. 17).

The MassHealth representative stated that time requested for PCA assistance with showering was reduced to 35 minutes time for task because 45 minutes is longer than ordinarily required for assistance with a shower. The MassHealth representative stated that the appellant's representative appeared at an appeal hearing last year and agreed 30 minutes time for task for PCA assistance with showering was sufficient. The MassHealth representative pointed out that MassHealth is approving an additional 5 minutes time for task this year for PCA assistance with showering. The MassHealth representative noted that there is no documented change in the appellant's condition to support the increase in time requested. The MassHealth representative stated that 45 minutes is a long time for the appellant to be in the shower and it should not take that long to assist with showering a person.

The appellant's father stated that the appellant plays with feces after a bowel movement and needs to be showered after every bowel movement. The appellant's father noted that the appellant also has bladder accidents. The appellant's father stated that he gives the appellant a shower in the morning when he wakes up, another shower when he gets home from school, and a third shower in the evening, due to the bladder and bowel accidents. The appellant's father stated that these quick showers are about 15 minutes each, and the appellant also has a 45-minute shower every day. The appellant's father stated that the appellant likes to sit in the shower for a while.

The MassHealth representative pointed out that the appellant's father stated that he is assisting the appellant in the shower and the time approved is only for assistance by the PCA, not family members.

The appellant was approved for 32 minutes a day for PCA assistance with bladder care on weekdays (48 minutes on weekends) and 30 minutes, every day for PCA assistance with bowel care. (Exhibit 4, p. 17). Time requested for PCA assistance with dressing and undressing was approved in full. (Exhibit 4, p. 14).

## **Findings of Fact**

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

1. The appellant's provider, Northeast Arc, submitted a re-evaluation request for prior authorization for 32.25 hours per week in day/evening PCA services and 14 hours per week for NTA services on March 15, 2022; MassHealth approved 31 hours per week in day/evening PCA services and 14 hours per week for NTA services.
2. The appellant is under age 18 and has diagnoses including autism and profound intellectual disabilities.
3. The appellant's provider wrote that they were requesting a slight increase in PCA hours due to increased need for laundry tasks because the appellant engages in fecal smearing and has incontinence episodes that cause multiple clothing changes per day.
4. MassHealth approved in full time requested for PCA assistance with laundry.
5. MassHealth approved in full time requested for PCA assistance with dressing/undressing.
6. The appellant's provider requested 45 minutes, once a day for PCA assistance with showering and 15 minutes once a day for PCA assistance with a quick wash, due to incontinence of bladder to maintain skin integrity.
7. MassHealth approved 35 minutes, once a day, for PCA assistance with showering and approved in full the 15 minutes, once a day requested for PCA assistance with a quick wash.

8. The nurse evaluator from the appellant's provider agency wrote that the PCA assists with showering activities including transferring, regulating water temperature, washing, rinsing, drying body and washing hair; the nurse evaluator noted that more than the average time is needed due to behavioral issues, decreased fine motor skills, no safety awareness, resistive behaviors, and intellectual disability.
9. The appellant's provider requested 15 minutes, twice a day for PCA assistance with bowel care, noting that the appellant plays in the toilet and smears feces; the requested time for PCA assistance with bladder and bowel care was approved in full.
10. The appellant plays with feces after a bowel movement and needs assistance with hygiene.

## **Analysis and Conclusions of Law**

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

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for 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) 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth 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 MassHealth 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.

(130 CMR 450.204(A)-(C)).

#### Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or 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 PCA 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 PCM 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 PCA 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.

(130 CMR 422.410).

Noncovered 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.

(130 CMR 422.412).

The appellant's provider requested 45 minutes a day for PCA assistance with showering and MassHealth approved 35 minutes a day for PCA assistance with showering. MassHealth also approved the requested 15 minutes a day for PCA assistance with a quick wash after toileting accidents. The appellant's provider specifically wrote that 15 minutes, once a day, was requested for PCA assistance with quick wash due to incontinence of bladder to maintain skin integrity. (Exhibit 4, p. 12). The appellant's provider also noted that extra time was requested for PCA assistance with laundry because the appellant engages in fecal smearing and has incontinence episodes that cause multiple clothing changes per day. (Exhibit 5, p. 8). The time requested for PCA assistance with laundry was approved in full. (Exhibit 4, p. 24). The appellant's provider did not request extra time for additional quick washes during the day for PCA assistance after toileting accidents. Time requested for PCA assistance with bladder and bowel care was approved in full.

The nurse evaluator from the appellant's provider agency wrote that more than the average time is needed for PCA assistance with showering due to behavioral issues, decreased fine motor skills, no safety awareness, resistive behaviors, and intellectual disability. MassHealth determined that 35 minutes is sufficient time for hands on assistance with washing the appellant and drying him off. MassHealth was reasonable in its determination that 45 minutes is a long time for the appellant to be in the shower.

The appellant's father noted that the appellant has 3 quick showers a day, in addition to his main shower. The appellant's father stated that he washes the appellant in the morning, when he gets home from school, and again in the evening. The MassHealth representative noted that time is approved for PCA assistance, not the assistance being provided by the appellant's father. The appellant's father noted that the appellant likes to sit in the shower for a while.

The time the appellant spends sitting in the shower and the time it takes to wait for resistive behaviors to pass is not hands on physical assistance with the task of bathing and is not included in the time for task for this activity. 35 minutes is sufficient time for a PCA to physically wash the appellant and dry him off. The appellant's provider only mentions one quick wash, not three as argued by the appellant's father. Further any assistance the appellant's father is providing is not included in covered PCA time. The appellant is approved for a total of 50 minutes a day for PCA assistance with washing (35 minutes for showering and 15 minutes for a quick wash). That would calculate into 12.5 minutes per task if the appellant is in fact being showered 4 times a day. If the appellant is showered 4 times a day, one long shower would not be necessary as he would be constantly cleaned off during the day. 50 minutes a day is sufficient for PCA assistance with all the appellant's showering/washing needs based on the documentation provided by the appellant's provider. MassHealth's modification is upheld, and the 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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Patricia Mullen  
Hearing Officer  
Board of Hearings

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