

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



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


**Appeal Number:** 2204307

**Decision Date:** 7/28/2022

**Hearing Date:** 07/14/2022

**Hearing Officer:** Rebecca Brochstein

**Appearances for Appellant:**

, Appellant's Mother

**Appearances for MassHealth:**

Cheryl Eastman, RN



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in part; Dismissed in part	<b>Issue:</b>	Prior Approval (PCA Services)
<b>Decision Date:</b>	7/28/2022	<b>Hearing Date:</b>	07/14/2022
<b>MassHealth's Rep.:</b>	Cheryl Eastman	<b>Appellant's Rep.:</b>	Appellant's Mother
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

Through a notice dated May 30, 2022, MassHealth modified the appellant's request for prior authorization for Personal Care Attendant (PCA) services by denying some of the time requested (Exhibit 1). The appellant filed this appeal in a timely manner on June 7, 2022, seeking approval of the denied time (130 CMR 610.015(B) and Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services by denying some of the time requested for several tasks.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

## Summary of Evidence

The MassHealth representative testified that the appellant is a minor child (under the age of ten) with primary diagnoses of autism spectrum disorder and developmental delays.<sup>1</sup> She was previously approved for personal care attendant (PCA) services. On May 12, 2022, the appellant's PCA provider submitted a prior authorization and reevaluation for PCA services. The provider requested PCA services in the amount of 22.0 day and evening hours per week, and no time at night, for the prior authorization period of June 12, 2022, through June 11, 2023. MassHealth modified the request by allowing a total of 15.75 day and evening hours per week. MassHealth modified the time requested for four tasks. The appellant's mother agreed to one of the modifications (bladder care) at hearing. The modifications that remain in dispute are to mobility and transfers, bathing, and nail care. The MassHealth representative testified to the basis of each of the modifications, and the appellant's mother responded to each in turn.

### Mobility and transfers:

The appellant requested PCA assistance with mobility and transfers, specifically for assistance with the bus, in the amount of ten minutes, twice per day, seven days per week. MassHealth allowed three minutes, twice per day, seven days per week. The MassHealth representative testified that the record indicates the appellant can ambulate independently with no assistive equipment, and requires only minimal assistance. She pointed out that in the appellant's initial evaluation (in a previous year), the skills trainer noted that the appellant did not require assistance on stairs. At that time, MassHealth approved three minutes, twice per day, which was the time requested.

The appellant's mother testified that the appellant is able to ambulate within their apartment. However, she stated that the appellant must descend two flights of stairs to get to the bus each day (and climb those two flights when she arrives home). She testified that the appellant has poor muscle tone and is only able to manage stairs while holding someone's hand. In addition, she moves very slowly while on the stairs. The mother testified that it takes about seven minutes to go in and out of the house. She noted that when the previous evaluation was done (where three minutes was requested and approved) she did not argue over the time because she did not know she could.

### Bathing:

The appellant requested PCA assistance with bathing in the amount of 30 minutes per day, plus an additional 15 minutes per day. The evaluation indicates that the 30-minute segment is for a daily

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<sup>1</sup> The PCA evaluation sets forth the appellant's medical history as follows:

■ female, ASD, dev delays, nonverbal, poor motor control, seizure disorder, last seizure 2 months ago, ER for observation, having EEG in May 2022, low muscle tone, difficulty with stairs, decreased coordination and limited attention span, poor initiation and sequencing, dev delays, incontinence of bladder and bowels, not showing signs of readiness, on a toileting schedule, wears diapers, poor safety awareness, will benefit from pca services.

shower, while the 15 minutes is for a sponge/bed bath. Notes in the evaluation state as follows:

■ female with thick african american hair, max a for all bathing, rinsing, drying, transfers in/out of tub, setting water temp. to ensure thoroughness, d/t ASD, dev delays, low tone, sensory issues, poor attention to task, can resist care. (Exhibit 4 at 13)

MassHealth approved only the 30 minutes per day for showering. The MassHealth representative testified that 30 minutes per day is the maximum allowable time for this task.

The appellant's mother testified that the 15-minute segment is not for a bed bath but for hair washing, and that she explained her daughter's needs around hair care to the evaluator. She stated that the appellant has her hair washed about twice a week (not daily), and that the process is done separately from the shower time. The mother testified that the process includes the transfer into the shower, adjusting the shower head, wetting and soaking the hair, shampooing and washing out, conditioning, combing it out, drying her off, and transferring out. She indicated that his process takes longer because the appellant has a sensory processing disorder and is resistive to care. She also added that a neurotypical child would be able to handle this task independently.

#### Nail Care:

The appellant requested time for nail care in the amount of 10 minutes per week. MassHealth did not allow any time for this task on the basis that nail care for any child of this age would be parental responsibility.

The appellant's mother testified that the appellant "does not just sit there and let you cut her nails." Rather, because of her sensory issues, she pulls her hand back repeatedly and has to be soothed and at times held in order to complete this task. In response, the MassHealth representative stated that MassHealth does not pay for a PCA to restrain a child.

### **Findings of Fact**

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

1. The appellant is a child under the age of ten with primary diagnoses of autism spectrum disorder and developmental delays. She is nonverbal and has a seizure disorder, poor motor control, low muscle tone, poor coordination, limited attention span, poor safety awareness, and is incontinent of bladder and bowel.
2. The appellant was previously approved for PCA services.
3. On May 12, 2022, the appellant's PCA agency submitted a re-evaluation and prior approval request for PCA services. The provider requested 22.0 day and evening hours per week, and no time at night, for the PA prior of June 12, 2022, through June 11, 2023.

4. MassHealth modified the request by allowing a total of 15.75 day/evening hours per week. It approved the 14 nighttime hours per week as requested.
5. MassHealth modified the time requested for mobility and transfers, bathing, nail care, and bladder care.
6. At hearing, the appellant agreed to the modification for bathing.
7. The appellant requested PCA time for mobility and transfers, specifically for assistance to get to and from the bus, in the amount of ten minutes, twice per day, seven days per week.
  - a. MassHealth allowed three minutes, twice per day, seven days per week. The basis of the modification was MassHealth's understanding that the appellant can ambulate independently with no assistive equipment, and requires only minimal assistance.
  - b. The appellant must descend two flights of stairs to get to the bus, and must climb the same two flights when she arrives home.
  - c. The appellant has poor motor control and coordination, low muscle tone, limited attention span, and poor safety awareness.
  - d. The appellant needs physical assistance to navigate stairs.
  - e. It takes approximately seven minutes for the appellant to get to and from the bus.
8. The appellant requested PCA time for bathing in the amount of 30 minutes per day plus an additional 15 minutes per day for a sponge/bed bath.
  - a. MassHealth approved 30 minutes per day for a shower but denied the separate request for 15 minutes per day.
  - b. The appellant does not have an evening sponge bath.
  - c. The appellant must have her hair washed approximately twice per week. The process is done separately from her daily shower.
  - d. The hair-washing process includes the transfer into the shower, adjusting the shower head, wetting and soaking the hair, shampooing and washing out, conditioning, combing it out, drying her off, and transferring out.
  - e. The appellant has a sensory processing disorder and resists having her hair washed.
9. The appellant requested PCA time for nail care in the amount of 10 minutes per week.

- a. MassHealth did not allow any time for this task on the basis that nail care for a typical child this age would be a parental responsibility.
- b. The appellant is resistive throughout the nail care task because of her sensory processing disorder. It takes two people to accomplish the task.

### **Analysis and Conclusions of Law**

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

**(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 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.

**(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 MassHealth as being instrumental to the health care of the member.
- (C) 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

In this case, MassHealth modified the PCA time allowed for four separate tasks. After the appellant's mother expressed agreement with the modification for bathing time, the modifications still at issue are for mobility/transfers, bathing, and nail care.

**Mobility and transfers:** The appellant requested time for transfers to and from the bus in the amount of ten minutes, twice per day. MassHealth modified the request and approved only three minutes for each transfer. The basis of the modification was information in the record that indicated the appellant is independent with mobility inside her home and requires only minimal assistance to

navigate stairs. The mother's testimony provided a more detailed picture of the appellant's needs around stairs, and suggests she requires more than minimal assistance. The mother's position is supported by documentation that the appellant has poor motor control and coordination, low muscle tone, limited attention span, and poor safety awareness. Her testimony that it takes seven minutes to assist her with the two flights of stairs (in each direction) is credible in light of the evidence.

Bathing: MassHealth approved the appellant's request for 30 minutes per day for showering, but denied the additional 15 minutes per day that was requested by the PCA agency. The evaluation indicates that the agency sought the 15 minutes for a daily sponge/bed bath, but the evidence suggests that the appellant does not undergo a daily sponge or bed bath. However, the mother clarified that she conveyed to the evaluator that the time is needed for hair washing (which is done twice a week, as a separate event from the daily shower), and that this is what the supplemental 15 minutes is meant for.

The appellant's mother provided credible testimony regarding the appellant's need for dedicated time for hair washing, which is an involved process due to the nature of the appellant's hair, the numerous steps required to complete the task, and the appellant's resistance to care. Even though the 15-minute segment was requested under the incorrect category, there is sufficient evidentiary support to justify allowing the time twice per week.

Nail care: MassHealth denied the time requested for nail care (ten minutes per week) on the basis that even a typical child of the appellant's age would require assistance, and that the task is therefore considered parental responsibility. While a typical child at this age may require some assistance with nail care, the appellant has sensory issues and resistive behaviors that make the process much more involved and time-consuming. The evidence supports the request for ten minutes per week for PCA assistance with nail care.

This appeal is approved as to the request for PCA time for nail care; approved in part as to the request for mobility and transfers (to seven minutes per day) and for bathing (15 minutes, twice per week for hair washing); and dismissed as to the modification for bladder care (which the appellant conceded at hearing).

### **Order for MassHealth**

Effective June 12, 2022, approve the appellant for the full PCA time requested for nail care (10 minutes per week); for seven minutes per day for mobility and transfers; and for 30 minutes per day plus 15 minutes twice per week for bathing.



## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: MassHealth PA Unit