

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



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

**Appeal Number:** 2205391

**Decision Date:** 8/30/2022

**Hearing Date:** 08/25/2022

**Hearing Officer:** Casey Groff

**Appearance for Appellant:**



**Appearance for MassHealth:**

Mary Jo Elliot, R.N., Clinical Appeals  
Reviewer, 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>	Dismissed-in-part; Approved-in-part	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	8/30/2022	<b>Hearing Date:</b>	08/25/2022
<b>MassHealth's Rep.:</b>	Mary Jo Elliot, R.N.	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

## 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 June 20, 2022, 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 July 19, 2022, the Board of Hearings (BOH) received a timely appeal of the June 20<sup>th</sup> notice. See 130 CMR 610.015(B); Exhibit 2. 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 PA 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 hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his mother. Both parties appeared via telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a minor child with autism. See Exh. 4, p. 8. He is nonverbal, has decreased cognitive processing, developmental delays, sensory and behavioral issues, and increased anxiety due to a recent move. Id.

On June 14, 2022, following a re-evaluation for personal care attendant (PCA) services, Appellant's personal care management (PCM) agency sent MassHealth a prior authorization (PA) request, on Appellant's behalf, seeking 15 hours and 30 minutes per-week of day/evening PCA services and 2 hours per night (14 hours per week) for dates of service beginning August 7, 2022 through August 6, 2023. See Exh. 1; see also Exh 4.

On June 20, 2022, MassHealth notified Appellant that it was modifying his PA request by approving 14 hours and 45 minutes of day/evening hours per-week and two nighttime hours per night of PCA services. See Exh. 1. MassHealth approved all requested areas of care, except for the times requested for "oral care" and "housekeeping." See Exh. 1.

At hearing, MassHealth agreed to restore the time requested for oral care at 5 minutes per episode. Additionally, the parties acknowledged that the PA request contained a transcription error relating to the amount of days-per-week required for oral care. Although the PCA provides Appellant with oral care 7 days per week, the PA erroneously requested five days per week. MassHealth agreed to correct the transcription error and approve oral care at 5x2x7.

Next, the parties addressed the modification to "housekeeping." Through his PCM agency, Appellant requested 30 minutes of PCA assistance with housekeeping per-week. See Exh. 4, p. 23. In support of the request, the PCM agency noted that "all day long [Appellant] empties trash, plays in it, scatters it throughout house – continuous housekeeping needed." Id. Additionally, the PCM agency documented the following narrative regarding Appellant's behavioral issues:

Appellant is aggressive toward self and others, bangs head with phone, resistive to personal care activities, continually removing clothes at inappropriate times, sometimes urinates on floor, bolts from home into street...new behavior of emptying trash all day long, playing in trash, spreading trash throughout house and throwing it out windows."

Id. at 8.

MassHealth denied the request and did not allow any time for housekeeping. The MassHealth representative explained that where Appellant is a minor, housekeeping is a parental responsibility. Additionally, MassHealth does not reimburse for supervisory or respite care, which the requested activity falls into. To the extent that Appellant seeks assistance with this task as a preventive measure (e.g. to keep him from stepping on a sharp object), such a need

would be “anticipatory.” MassHealth does not pay for anticipatory care under the PCA program. Housekeeping, as requested here, is a “noncovered service” under 130 CMR 422.412(A).

In response, Appellant’s mother testified that the time requested is limited to clean-up needs arising from Appellant’s behavioral tendency of going through the trash. Specifically, Appellant has developed a behavior of going into the trash throughout the day, every day, and this poses health and safety risks if not addressed and cleaned promptly. Appellant’s mother acknowledged that housekeeping is a parental responsibility, which she assumes, however this is outside the scope of standard housekeeping tasks. She is not always present in the home or available to help the PCA pick up the trash as Appellant is emptying it from the bins and playing with. Much of the trash that gets scattered needs to be cleaned up to not pose a safety hazard, such as sharp pieces he could step on. Appellant also has the behavioral tendency of taking off his clothes, which causes more of a risk due to the skin exposure with these items. Appellant has had to seek care in the emergency room and urgent care on at least two occasions. One such occasion, the doctor had to cut out a piece of glass that got into his foot. The trash cannot be left around for sanitary issues as well.

## **Findings of Fact**

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

1. Appellant is a minor child with autism; he is nonverbal, has decreased cognitive processing, developmental delays, sensory and behavioral issues, and increased anxiety due to a recent move. (Testimony; Exh. 4, p. 8).
2. Appellant is aggressive toward self and others, bangs head with phone, resistive to personal care activities, continually removing clothes at inappropriate times, sometimes urinates on floor, bolts from home into street...new behavior of emptying trash all day long, playing in trash, spreading trash throughout house and throwing it out windows. (Exh. 4, p. 8).
3. On June 14, 2022, following a re-evaluation for PCA services, Appellant’s PCM agency sent MassHealth a PA request, on Appellant’s behalf, seeking 15 hours and 30 minutes per-week of day/evening PCA services and 2 hours per-night for dates of service beginning August 7, 2022 through August 6, 2023. (Testimony; Exh. 1).
4. On June 20, 2022, MassHealth notified Appellant that it was modifying his PA request by approving 14 hours and 45 minutes of day/evening hours per-week and two nighttime hours per night of PCA services. (Exh. 1).
5. MassHealth approved all requested areas of care, except for the times requested for “oral care” and “housekeeping.” (Testimony; Exh. 1)
6. At hearing, MassHealth agreed to restore the time requested for oral care at 5 minutes per

episode and fix a transcription error to reflect the need for oral care 7 days per week, thereby approving oral care at 5x2x7. (Testimony; Exh. 4, p. 13).

7. Through his PCM agency, Appellant requested 30 minutes of PCA assistance with housekeeping per week and noted that “all day long [Appellant] empties trash, plays in it, scatters it throughout house – continuous housekeeping needed.” (Exh. 4, p. 23).
8. MassHealth denied the request and did not allow any time for housekeeping. (Exh. 1).
9. Appellant’s mother provides standard parental housekeeping responsibilities; however, is not always present or available during PCA hours to clean up the trash when it is scattered by Appellant. (Testimony).

## **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).

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 the times requested for each PCA activity, except for “oral care” (under grooming) and “housekeeping.” At hearing, MassHealth agreed to restore the time requested for oral care and corrected a transcription error in the PA request, thereby approving 5x2x7 for oral care. Therefore, the only remaining issue on appeal is whether MassHealth appropriately denied the requested time for “housekeeping.”

Under MassHealth PCA regulations, “housekeeping” is considered an instrumental activity of daily living (IADL). IADLs are “those specific activities listed in 130 CMR 422.410(B) that are instrumental to the care of the member’s health and are performed by a PCA...” 130 CMR 422.402. Among the covered IADLs, MassHealth includes assistance with “household services,” which it defines as follows:

- (1) Household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping.

130 CMR 422.410(B); see also 130 CMR 422.402.

Additionally, when determining the amount of physical assistance, a member requires for an IADL, PCM agencies must assume the following:

- (1) When a member is living with family members, the family member 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.  
.....
- (3) The MassHealth agency will consider ***individual circumstances*** when determining the number of hours of physical assistance that a member requires for IADLs.

See 130 CMR 422.410(C) (emphasis added).

Finally, MassHealth covers the “activity time performed by a PCA in providing assistance with the [ADLs or IADLs].” 130 CMR 422.411(A). It does not, however, cover “social services” such as babysitting and respite care, as part of the PCA program. See 130 CMR 422.412(A).

In the present case, Appellant’s PCM agency requested 30 minutes per-week for PCA assistance with housekeeping. MassHealth denied the request on the basis that it is a parental responsibility, it is “anticipatory,” and that it is considered a supervisory or respite service, and thus not covered by MassHealth. As a minor living with his parents, Appellant is, indeed, not eligible to receive PCA assistance with *routine* household services, such as housekeeping. See 130 CMR 422.410(C). However, Appellant successfully demonstrated that the requested PCA service here, is limited to *non-routine* housekeeping tasks and is “incidental to the care of the member.” 130 CMR 422.402. The evidence indicates that in connection with his autism diagnosis, Appellant exhibits numerous behavioral challenges, including the daily tendency of going into, and playing with, the trash, scattering it throughout the house, and throwing it out the window. See Exh. 4 p. 8, 23. Appellant’s mother testified that she does, in fact, assume all standard

parental housekeeping responsibilities. During PCA hours, however, she is not always available to provide the immediate clean-up that is required when responding to Appellant's trash-related behaviors. As Appellant's mother persuasively reasoned, leaving the trash to be cleaned for a later time would compromise Appellant's physical environment, such as posing health risks and causing sanitary issues. Because Appellant exhibits this behavior daily, the need for clean-up is not anticipatory. Rather, it is an expected and integral part of Appellant's care. In consideration of Appellant's "individual circumstances," 30 minutes per-week of PCA assistance with non-routine housekeeping tasks is necessary to meet Appellant's care needs. See 130 CMR 422.410(C)(3).

The appeal is APPROVED with respect to "housekeeping."

The appeal is DISMISSED with respect to "oral care" as agreed-upon by the parties at hearing.

## **Order for MassHealth**

For the PA period beginning August 7, 2022 through August 6, 2023, approve oral care at 5x2x7 and housekeeping at 30 minutes per week.

## **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