

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in Part; Approved in Part; Denied in Part	<b>Appeal Number:</b>	2208504
<b>Decision Date:</b>	1/23/2023	<b>Hearing Date:</b>	12/22/2022
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, RN

**Interpreter:**

N/A



*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; Denied in Part	<b>Issue:</b>	Prior Approval-PCA services
<b>Decision Date:</b>	1/23/2023	<b>Hearing Date:</b>	12/22/2022
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Quincy Harbor South 1	<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 October 25, 2022, MassHealth modified the Appellant's prior authorization for PCA services because MassHealth determined that various requested times exceeded time ordinarily required for someone with the Appellant's physical needs (see 130 CMR and Exhibit 1). The appellant filed this appeal in a timely manner on November 14, 2022 (see 130 CMR 610.015(B) and Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization request for personal care services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303, in modifying the Appellant's prior authorization request for personal care services.

## Summary of Evidence

The Appellant is a MassHealth member whose primary diagnoses include idiopathic epilepsy and epileptic syndrome, Lennox-Gestault Landau-Kleffner syndrome with seizures, legal blindness and Autism-nonverbal. (Exhibit 8, p. 10) On October 25, 2022, MassHealth made 7 modifications to the Appellant's prior authorization request for PCA services. (Exhibit 8, p. 3). Specifically, MassHealth modified the following: 1) ADL – Mobility, physical assist with stairs from 7 minutes, 8 times a day, 7 days a week to 5 minutes, 8 times a day, 7 days a week 2) ADL – Bathing, physical assist with washing hair from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week 3) ADL – Grooming, physical assist with oral care from 5 minutes, 3 times a day, 7 days a week to 3 minutes, 3 times a day, 7 days a week 4) ADL – Grooming, physical assist with shaving from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week 5) ADL – Eating , physical assist with eating from 20 minutes, 3 times a day, 7 days a week to 15 minutes, 3 times a day, 7 days a week 6) Toileting, physical assist with bladder care from 15 minutes, 7 times a day, 7 days a week to 10 minutes, 7 times a day, 7 days a week and 7) IADL, Medical Transportation from 45 minutes per week to no minutes for medical transportation.

Regarding 1) ADL – Mobility, physical assist with stairs from 7 minutes, 8 times a day, 7 days a week to 5 minutes, 8 times a day, 7 days a week (Exhibit 8, p. 11), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with stairs. (Testimony) MassHealth testified that this category includes only stairs within the home, not outside stairs. (Testimony) MassHealth further testified that the time allotted does not include time waiting on the Appellant, but rather includes actual mobility time. (Testimony) The Authorized Representative responded to questions posed by MassHealth and indicated that sometimes the Appellant suffers from seizures that can be dangerous on the stairs. (Testimony). Additionally, the Authorized Representative testified that on occasion, it can take up to 20 minutes for the Appellant to navigate the stairs with assistance. No compromise was reached between the parties on this issue and is addressed in the Analysis and Conclusions of Law section below.

Regarding 2) ADL – Bathing, physical assist with washing hair from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 8, p.14), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with hair washing. MassHealth inquired if the Appellant's hair was particularly thick or if there was another condition which would cause the need for additional time. (Testimony) The Authorized Representative stated candidly that there was no special condition related to the Appellant's hair. (Testimony) The Authorized Representative then stated that the modification to 5 minutes, 1 time a day, 7 days a week for physical assistance with washing hair was acceptable, and resolved this issue related to the instant appeal. (Testimony)

Regarding 3) ADL – Grooming, physical assist with oral care from 5 minutes, 3 times a day, 7 days a week to 3 minutes, 3 times a day, 7 days a week (Exhibit 8, p. 15) MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with oral care. (Testimony) MassHealth inquired if there were special

circumstances that required additional time for physical assistance with oral care. (Testimony) The Authorized Representative explained that sometimes the Appellant becomes uncooperative and brushing the Appellant's teeth can take significantly longer. (Testimony) After consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 5 minutes, 3 times a day, 7 days a week, which resolved this issue related to the instant appeal (Testimony)

Regarding 4) ADL – Grooming, physical assist with shaving from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 8, p. 15), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with shaving. (Testimony) The Authorized Representative testified that the Appellant's facial hair was thick, and due to the thickness, cannot be shaved utilizing electric shavers, but instead requires shaving with a razor, and the Appellant cannot perform any part of this activity himself. After consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 10 minutes, 1 time a day, 7 days a week, which resolved this issue related to the instant appeal (Testimony)

Regarding 5) ADL – Eating physical assist with eating from 20 minutes, 3 times a day, 7 days a week to 15 minutes, 3 times a day, 7 days a week (Exhibit 8, p.18), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with eating. (Testimony) MassHealth stated that the time allotted does not include cutting food, that falls under the category of meal preparation. (Testimony). MassHealth inquired as to whether the Appellant was capable of feeding himself finger foods, and the Authorized Representative candidly stated the Appellant was able to feed himself finger foods. No compromise was reached between the parties on this issue and is addressed in the Analysis and Conclusions of Law section below.

Regarding 6) ADL – Toileting, physical assist with bladder care from 15 minutes, 7 times a day, 7 days a week to 10 minutes, 7 times a day, 7 days a week (Exhibit 8, p. 18-19), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with bladder care. MassHealth inquired about the specifics related to the Appellant's difficulties with bladder. The Authorized Representative testified regarding the Appellant's difficulties with bladder care when he was being less cooperative with one physically assisting him. The Authorized Representative then stated that the modification to 10 minutes, 7 times a day, 7 days a week for physical assistance with bladder care was acceptable, and resolved this issue related to the instant appeal. (Testimony)

Regarding 7) IADL – Medical Transportation from 45 minutes per week to no minutes for medical transportation (Exhibit 8, p.27), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with medical transportation. (Testimony) The Authorized Representative reaffirmed that the Appellant doesn't drive and requires transportation to all appointments. (Exhibit 8, p.27, Testimony) The Authorized Representative stated that the Appellant did not receive transportation to day programs or medical appointment from any other sources. After consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 45 minutes per week for medical transportation, which resolved this issue related to the instant appeal (Testimony)

## Findings of Fact

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

1. The Appellant is a MassHealth member whose primary diagnoses include idiopathic epilepsy and epileptic syndrome, Lennox-Gestault Landau-Kleffner syndrome with seizures, legal blindness and Autism-nonverbal. (Exhibit 8, p. 10)
2. On October 25, 2022, MassHealth made 7 modifications to the Appellant's prior authorization request for PCA services. (Exhibit 8, p. 3). Specifically, MassHealth modified the following: 1) ADL – Mobility, physical assist with stairs from 7 minutes, 8 times a day, 7 days a week to 5 minutes, 8 times a day, 7 days a week 2) ADL – Bathing, physical assist with washing hair from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week 3) ADL – Grooming, physical assist with oral care from 5 minutes, 3 times a day, 7 days a week to 3 minutes, 3 times a day, 7 days a week 4) ADL – Grooming, physical assist with shaving from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week 5) ADL – Eating , physical assist with eating from 20 minutes, 3 times a day, 7 days a week to 15 minutes, 3 times a day, 7 days a week 6) Toileting, physical assist with bladder care from 15 minutes, 7 times a day, 7 days a week to 10 minutes, 7 times a day, 7 days a week and 7) IADL, Medical Transportation from 45 minutes per week to no minutes for medical transportation.
3. The first modification was to an ADL – Mobility, physical assist with stairs from 7 minutes, 8 times a day, 7 days a week to 5 minutes, 8 times a day, 7 days a week. (Exhibit 8, p. 11)
4. The Authorized Representative testified that that Appellant weighs 200 pounds and physical assistance with navigating the stairs can be prolonged due his physical size, his behavior, and the seizures the Appellant experiences. The Authorized Representative testified that the Appellant has suffered seizures that began while he was on the stairs. (Testimony)
5. The parties were not able to reach a resolution on the issue of mobility. (Testimony)
6. The second modification was to an ADL – Bathing, physical assist with washing hair from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week. (Exhibit 8, p.14)
7. After testimony by MassHealth, the Authorized Representative stated that the modification to 5 minutes, 1 time a day, 7 days a week for physical assistance with washing hair was acceptable, and resolved this issue related to the instant appeal. (Testimony)
8. The third modification was to an ADL – Grooming, physical assist with oral care from 5 minutes, 3 times a day, 7 days a week to 3 minutes, 3 times a day, 7 days a week (Exhibit 8, p. 15)
9. After consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 5 minutes, 3 times a day, 7 days a week, which resolved this issue related to

the instant appeal (Testimony)

10. The fourth modification was to an ADL – Grooming, physical assist with shaving from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 8, p. 15)

11. The Authorized Representative testified that the Appellant has thick facial hair growth that requires a razor and cannot be shaved with an electric razor. (Testimony)

12. After consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 10 minutes, 1 time a day, 7 days a week, which resolved this issue related to the instant appeal (Testimony)

13. The fifth modification was to an ADL – Eating physical assist with eating from 20 minutes, 3 times a day, 7 days a week to 15 minutes, 3 times a day, 7 days a week (Exhibit 8, p.18)

14. The Authorized Representative testified that the Appellant is able to feed himself finger foods. (Testimony)

15. The parties were not able to reach a resolution on the issue of eating. (Testimony)

16. The sixth modification was to an ADL – Toileting, physical assist with bladder care from 15 minutes, 7 times a day, 7 days a week to 10 minutes, 7 times a day, 7 days a week (Exhibit 8, p. 18-19)

17. The Authorized Representative stated that the modification to 10 minutes, 7 times a day, 7 days a week for physical assistance with bladder care was acceptable, and resolved this issue related to the instant appeal. (Testimony)

18. The seventh modification was to an IADL – Medical Transportation from 45 minutes per week to no minutes for medical transportation (Exhibit 8, p.27)

19. After consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 45 minutes per week for medical transportation, which resolved this issue related to the instant appeal (Testimony)

## **Analysis and Conclusions of Law**

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(A) 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.

(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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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/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 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.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Although there were 7 modifications in total, the parties were able to reach agreement on 5 of those modifications. 2 other modifications remain contested. All are discussed below.

Regarding the first modification, 1) ADL – Mobility, physical assist with stairs from 7 minutes, 8 times a day, 7 days a week to 5 minutes, 8 times a day, 7 days a week (Exhibit 8, p. 11), The MassHealth representative testified that this time requested was in excess of the time established standard of care. However, the Appellant's Authorized Representative testified that the Appellant weighs 200 pounds and suffers from seizures and that seizures have commenced in the past while the Appellant was navigating the stairs. (Testimony). Additionally, the Authorized Representative testified that on occasion, it can take up to 20 minutes for the Appellant to navigate the stairs with assistance due to his diagnoses and related behavioral problems. I find that Appellant has met his burden and demonstrated the medical necessity of the additional time required for aid in navigating the stairs and that the additional time is reasonably calculated to prevent the potential harm should the 200-pound Appellant suffer another seizure while he is walking on the stairs. 130 CMR 450.204. Therefore, I APPROVE the Appellant's requested time for 7 minutes, 8 times a day, 7 days a week for the ADL of mobility, physical assist with stairs.

Regarding the second modification, 2) ADL – Bathing, physical assist with washing hair from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 8, p.14), the Authorized Representative stated the modification to 5 minutes, 1 time a day, 7 days a week for physical assistance with washing hair was acceptable, and resolved this issue related to the instant



appeal. (Testimony). Therefore, the appeal related to the second modification is DISMISSED. (130 CMR 610.051(B)).

Regarding the third modification, 3) ADL – Grooming, physical assist with oral care from 5 minutes, 3 times a day, 7 days a week to 3 minutes, 3 times a day, 7 days a week (Exhibit 8, p. 15) after consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 5 minutes, 3 times a day, 7 days a week, which resolved this issue related to the instant appeal (Testimony). Therefore, the appeal related to the third modification is DISMISSED. (130 CMR 610.051(B)).

Regarding the fourth modification, 4) ADL – Grooming, physical assist with shaving from 10 minutes, 1 time a day, 7 days a week to 5 minutes, 1 time a day, 7 days a week (Exhibit 8, p. 15), After consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 10 minutes, 1 time a day, 7 days a week, which resolved this issue related to the instant appeal (Testimony). Therefore, the appeal related to the fourth modification is DISMISSED. (130 CMR 610.051(B)).

Regarding the fifth modification, 5) ADL – Eating physical assist with eating from 20 minutes, 3 times a day, 7 days a week to 15 minutes, 3 times a day, 7 days a week (Exhibit 8, p.18), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with eating. (Testimony) MassHealth stated that the time allotted does not include cutting food, that falls under the category of meal preparation. (Testimony). MassHealth inquired as to whether the Appellant was capable of feeding himself finger foods, and the Authorized Representative candidly stated the Appellant was able to feed himself finger foods. MassHealth's modifications are justified based upon MassHealth representative's testimony regarding the standard of care for eating assistance as well as the Appellant's Authorized Representative's testimony that the Appellant is capable of eating finger foods on his own. Additionally, no further supporting information to support a deviation from the standard of care for eating was supported on this record. The Appellant has not met his burden to show the invalidity of MassHealth's determination. Therefore, the appeal related to the fifth modification is DENIED.

Regarding the sixth modification, 6) ADL – Toileting, physical assist with bladder care from 15 minutes, 7 times a day, 7 days a week to 10 minutes, 7 times a day, 7 days a week (Exhibit 8, p. 18-19), The Authorized Representative stated that the modification to 10 minutes, 7 times a day, 7 days a week for physical assistance with bladder care was acceptable, and resolved this issue related to the instant appeal. (Testimony) Therefore, the appeal related to the sixth modification is DISMISSED. (130 CMR 610.051(B)).

Regarding the seventh modification, 7) IADL – Medical Transportation from 45 minutes per week to no minutes for medical transportation (Exhibit 8, p.27), after consideration of the testimony of the Authorized Representative, MassHealth agreed to approve the requested 45 minutes per week for medical transportation, which resolved this issue related to the instant appeal (Testimony). Therefore, the appeal related to the seventh modification is DISMISSED. (130 CMR 610.051(B)).

## Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve the following as of October 31, 2022:

- Mobility, physical assist with stairs (7 minutes, 8 times a day, 7 days a week)
- Oral Care (5 minutes, 3 times a day, 7 days a week)
- Shaving (10 minutes, 1 time a day, 7 days a week)
- Medical Transportation (45 minutes per week)

## 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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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

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

Authorized Representative: [REDACTED]