

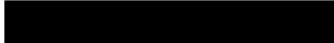
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part; Dismissed in Part	<b>Appeal Number:</b>	2208746
<b>Decision Date:</b>	1/23/2023	<b>Hearing Date:</b>	12/30/2022
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Mary Jo Elliott



*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>	Approved in Part; Denied in Part; Dismissed in Part	<b>Issue:</b>	Prior Authorization
<b>Decision Date:</b>	1/23/2023	<b>Hearing Date:</b>	12/30/2022
<b>MassHealth's Rep.:</b>	Mary Jo Elliott	<b>Appellant's Rep.:</b>	Parent
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<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 November 1, 2022, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant filed this appeal in a timely manner on November 25, 2022. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services.

## Summary of Evidence

The appellant has a primary diagnosis of Epilepsy. (Testimony; Exhibit 4). The appellant primarily remains at home 24 hours each day, 7 days each week. (Testimony; Exhibit 4). The appellant was not accepted into a day program due to constant screaming. (Testimony; Exhibit 4). The appellant has Post-Traumatic Stress Disorder (PTSD) from childhood experiences involving bombings. (Testimony; Exhibit 4). The appellant also has the following diagnoses: severe cognitive defects; insomnia; intermittent blindness; lactose intolerance; and chronic constipation. (Testimony; Exhibit 4). The appellant has no self-awareness, is combative and resistive to care. (Testimony; Exhibit 4). The appellant is dependent for all activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

The appellant requested 60.75 day/evening hours and 2 nighttime hours for PCA services. MassHealth modified this request and approved 48.5 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 4). The dates of service are November 1, 2022 to October 21, 2023. The MassHealth representative noted at hearing that the appellant was approved for 48.75 day/evening hours in the past.

The appellant requested 5 minutes, 6 times each day for assistance with transfers. MassHealth modified this request and approved 2 minutes, 6 times each day for assistance with transfers. At the hearing, the appellant's representative did not dispute this modification. The appellant's representative noted that the appellant has issues with mobility. MassHealth approved the time requested for mobility.

The appellant requested 7 minutes each day for assistance with "other" grooming tasks. MassHealth modified this request and approved 5 minutes each day for "other" grooming tasks. The MassHealth representative noted there was no description of the tasks performed under this category. The MassHealth representative testified that the time requested was approved for other grooming tasks such as nailcare, oral care, hair care and shaving. The only modification was made to time for "other" tasks.

The appellant's representative testified that the time requested was for the application of deodorant, lotion, powder and creams. The appellant's representative testified that the appellant sweats heavily and needs to have lotion applied to the feet and fingers, cream in the vaginal and anal area as well as powder under the chest. The MassHealth representative noted that the appellant had not requested time for "other" grooming tasks in the past. The appellant's

representative responded that the use of most lotions and creams are relatively new due to an increase in sweat and irritation.

The appellant requested 20 minutes one time each day, and 10 minutes 2 times each day for assistance with dressing. MassHealth modified this request and approved a total of 20 minutes each day for assistance with dressing. The appellant requested 10 minutes, one time each day and 5 minutes 2 times each day for assistance with undressing. MassHealth approved a total of 15 minutes each day for assistance with undressing. Notes in the prior authorization request state that the appellant receives a full change of clothing in the morning with at least two partial changes throughout the day due to soiling that occurs. (Testimony; Exhibit 4). The MassHealth representative testified that the agency approved all of the time requested for toileting which included time for hygiene and clothing adjustments.

The appellant's representative testified that the time requested for clothing changes are not always associated with toileting. The appellant often opens and tears clothing, spits up medications, bleeds, and uses the clothing to wipe her hands and face. As noted above, records indicate that the appellant receives at least two partial changes throughout the day due to soiling.

The appellant requested 30 minutes, 3 times each day for assistance with eating meals and 10 minutes 2 times each day for assistance with eating snacks. MassHealth modified this request and approved 20 minutes, 3 times each day for assistance with eating meals and 5 minutes, 2 times each day for assistance with eating snacks. The MassHealth representative noted that MassHealth approved all of the time requested for assistance with meal preparation. The appellant's representative did not dispute this modification.

The appellant requested 12 minutes, 2 times each day for assistance with medication administration. MassHealth modified this request and approved 5 minutes, 2 times each day for assistance with medication administration. The MassHealth representative testified that this modification was based upon the number of medications, the number of times that the appellant receives the medications and the preparation necessary to administer the medications. The MassHealth representative noted that the appellant takes some medications one time each day and others two times each day.

The appellant's representative testified that the time requested for assistance with medication administration involves the need to dilute medications into juice or tea and then assisting the appellant in taking the medications as she does not always swallow the medications on her own.

The appellant requested 50 minutes each week for menses care. MassHealth modified this request and approved 25 minutes each week for menses care. The MassHealth representative testified that since this is generally something that occurs for a few days each month, MassHealth calculates the time by taking the time for the period in which the task is performed and dividing that time over the course of the month. The MassHealth representative testified that 50 minutes each week would result in 200 minutes each month and the approved 25 minutes each week would result in 100 minutes each month. The MassHealth representative testified that the 100 minutes is something that would typically be applied over the course of 7 days. The application of 200 minutes over the course of 7 days would result in a daily allocation of approximately 28 minutes each day and 100 minutes would result in a daily allocation of approximately 14 minutes each day. The MassHealth representative noted that this task is typically done in conjunction with toileting tasks for which MassHealth approved the time requested. MassHealth determined that the time requested was excessive.

The appellant's representative responded that the time requested was necessary due to changes in clothing, having to change the sheets on the bed and the task is performed approximately 4 times each day. MassHealth approved bladder care 8 minutes 6 times each day, bowel care 12 minutes, 2 times each day as well as time for dressing and undressing.

The appellant requested 75 minutes each week for housekeeping. MassHealth modified this request and approved 45 minutes each week for housekeeping. The MassHealth representative testified that there are others living in the home and the time approved is to perform tasks in areas used by the appellant alone. The MassHealth representative testified that the 45 minutes is typically the time approved for housekeeping tasks.

The appellant's representative responded that the time for housekeeping includes time to change the bed due to the appellant spitting up and bleeding. The appellant's representative testified that there is also clean up associated with meals noting the appellant can eat on her own but needs assistance with cleaning up after meals. The MassHealth representative responded that the agency approved time for eating which involves physically assisting the member with eating the food, not supervision, preparation or clean-up. As noted above, the appellant did not dispute the modification made to the time requested for eating.

## **Findings of Fact**

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

1. The appellant has a primary diagnosis of Epilepsy.
2. The appellant primarily remains at home 24 hours each day, 7 days each week.
3. The appellant was not accepted into a day program due to constant screaming.
4. The appellant has Post-Traumatic Stress Disorder (PTSD) from childhood experiences involving bombings.
5. The appellant also has the following diagnoses:
  - a. severe cognitive defects;
  - b. insomnia;
  - c. intermittent blindness;
  - d. lactose intolerance; and
  - e. chronic constipation.
6. The appellant has no self-awareness, is combative and resistive to care.
7. The appellant is dependent for all activities of daily living (ADLs) and instrumental activities of daily living (IADLs).
8. The appellant requested 60.75 day/evening hours and 2 nighttime hours for PCA services.
9. MassHealth approved 48.5 day/evening hours and 2 nighttime hours.
10. Dates of service are November 1, 2022 to October 21, 2023.
11. In the past, the appellant received 48.75 day/evening hours.
12. The appellant did not dispute MassHealth's authorization of 2 minutes, 6 times each day for assistance with transfers.
13. MassHealth approved the time requested for mobility.
14. The appellant requested 7 minutes each day for assistance with "other"

grooming tasks.

15. MassHealth approved 5 minutes each day for assistance with “other” grooming tasks.
16. MassHealth approved the time requested for nailcare, oral care, hair care and shaving.
17. The time requested for “other” grooming tasks includes the application of deodorant, lotion, powder and creams.
18. The appellant sweats heavily and needs to have lotion applied to the feet and fingers, cream in the vaginal and anal area as well as powder under the chest.
19. The use of most lotions and creams is relatively new due to an increase in sweat and irritation.
20. The appellant requested 20 minutes one time each day, and 10 minutes 2 times each day for assistance with dressing.
21. MassHealth approved a total of 20 minutes each day for assistance with dressing.
22. The appellant requested 10 minutes, one time each day and 5 minutes 2 times each day for assistance with undressing.
23. MassHealth approved a total of 15 minutes each day for assistance with undressing.
24. MassHealth approved the time requested for toileting and considered time for hygiene and clothing adjustments in that decision.
25. The appellant receives a full change of clothing in the morning with at least two partial changes throughout the day due to soiling.
26. Clothing changes are not always associated with toileting.
27. The appellant often opens and tears clothing, spits up medications, bleeds and uses the clothing to wipe her hands and face.
28. The appellant did not dispute MassHealth’s authorization of 20 minutes 3

times each day for assistance with eating meals and 5 minutes 2 times each day for assistance with eating snacks.

29. The appellant requested 12 minutes, 2 times each day for assistance with medication administration.
30. MassHealth approved 5 minutes, 2 times each day for assistance with medication administration.
31. The appellant is unable to take most medications on her own.
32. The appellant takes some medications one time each day and others two times each day.
33. The appellant requires medications to be diluted into juice or tea as well as assistance in swallowing as she does not do that on her own.
34. The appellant requested 50 minutes each week for menses care.
35. MassHealth approved 25 minutes each week for menses care.
36. Menses care is generally a task that takes place for a few days each month.
37. MassHealth calculates time for menses care by dividing it over the course of one month.
38. Fifty minutes each week results in a total of 200 minutes each month and a daily allocation of 28 minutes each day over the course of one week.
39. Twenty-five minutes each week results in a total of 100 minutes each month and a daily allocation of 14 minutes each day over the course of one week.
40. The requested time for menses care was to allow for changing clothing and bedding.
41. Menses care often takes place in conjunction with bowel and bladder care.
42. MassHealth approved the time requested for bladder and bowel care: 8 minutes, 6 times each day for bladder care and 12 minutes, 2 times each

day for bowel care.

43. The appellant requested 75 minutes each week for housekeeping.
44. MassHealth approved 45 minutes each week for housekeeping.
45. The appellant lives with others.
46. Housekeeping tasks include periodically changing bedding and cleaning up after meals.
47. The appellant can eat most meals on her own.

## **Analysis and Conclusions of Law**

MassHealth covers personal care attendant (PCA) services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of 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 Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (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).
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency. (130 CMR 422.411(A)).

The Personal Care Management (PCM) agency must request prior authorization from MassHealth as a prerequisite to payment for PCA services. (130 CMR 422.416). Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care. (130 CMR 422.416). The regulations define a service as "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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

In reviewing records presented by the appellant's provider MassHealth authorized time for PCA services but modified the time requested for several tasks.

The appellant did not challenge the modifications made to the time for transfers and assistance with eating meals and snacks.<sup>1</sup> Since the appellant did not dispute the modifications made by the MassHealth, this part of the appeal is dismissed. (130 CMR 610.035).

Activities of daily living include physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered. (130 CMR 422.410(A)(2)). The appellant's representative presented testimony to support the time requested for assistance with medications in discussing the need to dilute or mix medications with drinks or food in addition to assisting the appellant in consumption as she often spits out the medications. As the appellant demonstrated that the time requested was

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<sup>1</sup> In testimony related to the time approved for housekeeping, the appellant's representative noted that the appellant can eat on her own and only requires assistance with meal preparation and clean-up. The MassHealth representative responded to this testimony stating that the agency approved time for eating which is considered as physically assisting with task of eating not meal preparation or clean-up. As the agency approved time for eating and the appellant did not challenge that decision, this hearing decision will not take that time away from the appellant. However, this task and others related to it, such as meal preparation and clean-up, should be reviewed and considered more carefully by both parties in future prior authorization requests.

medically necessary, this part of the appeal is approved.

Activities of daily living include physically assisting a member with bathing, personal hygiene or grooming. (130 CMR 422.410(A)(3)). The appellant's representative demonstrated that the time requested for "other" grooming tasks was appropriate with the addition of tasks such as the application of lotions and powder to several areas of the body. As the appellant demonstrated that the time requested was medically necessary, this part of the appeal is approved.

Activities of daily living include physically assisting a member to dress or undress. (130 CMR 422.410(A)(4)). The appellant's representative demonstrated that the time requested for physically assisting the appellant to dress and undress was appropriate due to behaviors and physical limitations that impact the need to change clothing throughout the day. While MassHealth approved the time requested for toileting and considered adjustments or changes to clothing in approving that time, the appellant demonstrated that the time requested for dressing and undressing was meant to address incidents associated with other behaviors such as spitting up, tearing clothing, bleeding and using the clothing to wipe her hands and face. As the appellant has demonstrated that the time requested for dressing and undressing was medically necessary, this part of the appeal is approved.

While the appellant's representative presented testimony regarding the needs associated with menses care, it was not sufficient to demonstrate that the time approved by MassHealth was not correct. MassHealth and this decision approved the time requested for daily clothing changes, toileting as well as some time for menses care. As MassHealth noted at the hearing, the time requested for menses care was excessive given the time approved for activities associated with menses care. The decision made by MassHealth adjusting the time requested for menses care was correct. This part of the appeal is denied.

Instrumental activities of daily living include physically assisting a member with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping. (130 CMR 422.410(B)(1)). In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the Personal Care Management (PCM) agency must assume that MassHealth will consider individual circumstances. In this case, MassHealth considered the fact that the appellant lives with others. While MassHealth did not determine the time approved based on those living with the appellant performing housekeeping tasks for the appellant, MassHealth correctly considered the PCA as responsible for tasks performed in areas primarily utilized by the appellant alone. As the modification made by

MassHealth to the time requested for housekeeping was correct, this part of the appeal is denied.

This appeal is approved in part, denied in part, and dismissed in part.

## **Order for MassHealth**

Adjust the decision and approve the time requested for the following tasks effective November 1, 2022:

- 7 minutes each day for assistance with “other” grooming tasks;
- 20 minutes one time each day and 10 minutes 2 times each day for assistance with dressing;
- 10 minutes one time each day and 5 minutes 2 times each day for assistance with undressing;
- 12 minutes, 2 times each day for assistance with medication administration.

## **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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

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