

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2209404
<b>Decision Date:</b>	3/15/2023	<b>Hearing Date:</b>	01/26/2023
<b>Hearing Officer:</b>	Kimberly Scanlon		

**Appearance for Appellant:**  
*Via telephone*



**Appearance for MassHealth:**  
*Via telephone*  
Donna Burns, R.N.



*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>	Prior Authorization - PCA
<b>Decision Date:</b>	3/15/2023	<b>Hearing Date:</b>	01/26/2023
<b>MassHealth's Rep.:</b>	Donna Burns, R.N.	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Quincy Harbor South 2 (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 November 29, 2022, MassHealth modified the Appellant's prior authorization request from the requested 10 hours and 30 minutes of day/evening personal care attendant (PCA) services per week and 2 hours per night to 10 hours and 30 minutes per week of day/evening PCA services and 0 hours per night. (Exhibit 1). The Appellant filed this appeal in a timely manner on December 20, 2022. (See, 130 CMR 610.015(B); Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal. (See, 130 CMR 610.032).

## Action Taken by MassHealth

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

## Issue

The appeal issue is whether MassHealth was correct in modifying the Appellant's prior authorization request for PCA services.

## Summary of Evidence

The Appellant is a child and was represented telephonically at the hearing by his mother.

MassHealth was represented by a Registered Nurse who appeared at the hearing telephonically and testified as follows: The Appellant is a child with a primary diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), cognitive deficits and behavioral issues. (Exhibit 5, p. 11). On November 11, 2022, the provider, The Arc of the South Shore, submitted a request for initial review for 10 hours and 30 minutes per week of day/evening hours and 2 hours per night for the prior authorization period of November 29, 2022 to November 28, 2023. (Exhibit 5, p. 3). MassHealth modified this request to 10 hours and 30 minutes per week and 0 hours per night on November 29, 2022. (Exhibit 1; Exhibit 5, pp. 3-6).

The only modification was toileting. (Exhibit 5, p. 20). The PCM agency requested 2 hours per night which was modified to 0 hours per night. The MassHealth representative stated that there was no documentation submitted to support why the Appellant would need help with toileting 2 hours per night. The nighttime hours are considered as 12:00 p.m. (midnight) until 6 a.m. The MassHealth representative made inquiry as to whether the Appellant was toilet trained. The Appellant's mother testified that the Appellant is toilet trained, however, he has anxiety and cannot adequately express himself overnight. As a result, the Appellant has occasional accidents that occur perhaps once or twice weekly. The MassHealth representative explained that the PCA program covers services that require assistance on a regular/daily basis, not intermittently. Therefore, the Appellant does not qualify for the requested 2 hours per night. The MassHealth representative noted that the Appellant was approved for 10 hours and 30 minutes of day/evening hours per week which start at 6:00 a.m. and end at midnight. The Appellant's mother testified that she and her husband both work full time and that she could use some assistance at night.

## **Findings of Fact**

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

1. The Appellant is a child with a primary diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), cognitive deficits and behavioral issues. (Testimony; Exhibit 5, p. 11)
2. On November 11, 2022, the provider, The Arc of the South Shore, submitted a request for initial review for 10 hours and 30 minutes per week of day/evening hours and 2 hours per night. (Testimony; Exhibit 5, p. 3).
3. There is no aid pending. (Exhibit 4).
4. On November 29, 2022, MassHealth modified this request to 10 hours and 30 minutes per week and 0 hours per night. (Testimony; Exhibit 1; Exhibit 5, pp. 3-6).
5. MassHealth modified the nighttime hours for toileting. (Testimony; Exhibit 5, p. 20).
6. The Appellant has occasional accidents overnight, once or twice per week. (Testimony).

## **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 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 ADLs and IADLs without physical assistance.
- (3) The member, as defined 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 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 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. 1396(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)).

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 would otherwise 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;
- (7) toileting: physically assisting a member with bowel or bladder needs.

(130 CMR 422.410(A)).

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).

In this case, MassHealth made a modification to the Appellant's prior authorization request for toileting 2 hours per night because there was not any documentation submitted to support the need for assistance every night, on a regular basis. At the hearing, the Appellant's mother testified that the Appellant has occasional accidents once or twice per week. Moreover, the Appellant's mother testified that it is not definitive as to which nights the accidents occur because it depends on what the Appellant consumes each day. The MassHealth representative explained that the PCA program is not used for intermittent tasks, rather, it is a hands-on program for members that require assistance on a regular/daily basis. The MassHealth representative further explained that the PCA

program does not cover babysitting services and caring for your child at night, who has intermittent bowel accidents for example, is a parental responsibility.

The MassHealth representative's testimony is persuasive and supported by documentary evidence. MassHealth's denial is justified and the Appellant, who has the burden, did not provide convincing evidence to support that the Appellant's toileting request of 2 hours per night is permanent or chronic in nature, nor medically necessary, in accordance with the regulations stated above. This 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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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

cc:

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