

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied;  
Dismissed

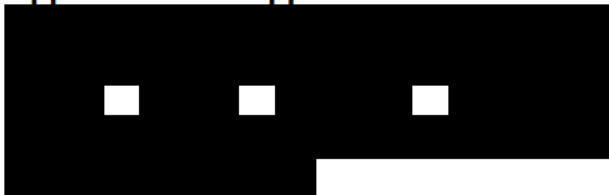
**Appeal Number:** 2209562

**Decision Date:** 2/6/2023

**Hearing Date:** 02/01/2023

**Hearing Officer:** Patricia Mullen

**Appearance for Appellant:**



**Appearance for MassHealth:**

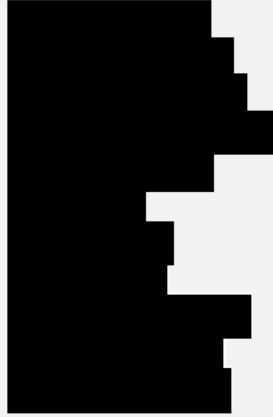
Donna Burns, RN, Optum

**Interpreter:** Ruth



*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; Dismissed	<b>Issue:</b>	PCA services
<b>Decision Date:</b>	2/6/2023	<b>Hearing Date:</b>	02/01/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN, Optum	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	Yes

## 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 December 15 2022, MassHealth modified the appellant's request for prior authorization for 54.25 hours a week for day/evening PCA services and 14 hours a week for a nighttime attendant (NTA), and approved 39.75 hours per week for day/evening PCA services and 14 hours for NTA, because MassHealth determined that time requested for PCA assistance with certain activities did not meet criteria under MassHealth medical necessity and PCA regulations. (Exhibit 1; 130 CMR 422.410; 450.204). The appellant filed this appeal in a timely manner on December 23, 2022 and received aid pending appeal. (see 130 CMR 610.015(B) and 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 request for prior authorization for PCA services.

## **Issue**

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410 in determining that time requested for PCA assistance with certain activities did not satisfy the criteria set forth in the PCA and medical necessity regulations.

## **Summary of Evidence**

The appellant is a child and was represented telephonically at the hearing by his mother, who testified through an interpreter. The appellant was also representative by his care coordinator from the Department of Public Health, his service navigator from Multicultural Community Services, and his rehab counselor from Massachusetts Commission for the Blind. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for personal care attendant (PCA) services. The appellant's provider, WestMass Eldercare, submitted a re-evaluation request for prior authorization for 54.25 hours per week in day/evening PCA services and 14 hours per week for NTA services on November 21, 2022. (Exhibit 6, p. 3). By notice dated December 15, 2022, MassHealth approved 39.75 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service December 15, 2022 to December 14, 2023. (Testimony, exhibit 6, p. 3). The appellant lives at home with his family; he is non-verbal, legally blind, and has impaired hearing; diagnoses include Lennox-Gastaut Syndrome (seizure disorder), partial agenesis of corpus callosum, left hemiplegia, global developmental delay, diabetes insipidus, and cerebral palsy. (Exhibit 6, p. 10). The appellant's mother testified that the appellant attends school Monday through Friday from 7 am to 3 pm, but has missed a lot of school this year due to illness. The appellant attends school year round, but in the summer his schedule is half days, Monday through Thursday. (Testimony).

The MassHealth representative testified that MassHealth modified the time requested for PCA assistance with repositioning and denied the time requested for PCA assistance with eating and with PCA assistance with fluids given by syringe.

The appellant's provider requested 25 minutes, 3 times a day, 7 days a week for PCA assistance with eating. (Exhibit 6, p. 19). After hearing testimony at the hearing, MassHealth approved 25 minutes, twice a day, 5 days a week for PCA assistance with eating breakfast and dinner, and approved 25 minutes, three times a day, 2 days a week for PCA assistance with eating all meals on weekends. The appellant's mother agreed to the time approved for PCA assistance with eating and withdrew the appeal as to that issue. The appeal of the denial of time for PCA assistance with eating is dismissed.

Repositioning: The appellant's provider requested 5 minutes, 10 times a day, 7 days a week for PCA assistance with repositioning. (Exhibit 6, p. 13). The nurse evaluator from the provider agency wrote that the appellant requires frequent repositioning during the day. (Exhibit 6, p. 13).

MassHealth approved in full the time requested for PCA assistance with all transfers. (Testimony, exhibit 6, p. 13). The MassHealth representative testified that MassHealth approved 5 minutes, 6 times a day, 5 days a week for PCA assistance with repositioning during school days, and 5 minutes, 9 times a day for PCA assistance with repositioning on weekends. The MassHealth representative explained that the standard of care for repositioning is every 2 hours and thus MassHealth approved 9 times during the 18 hour day from 6:00 am to midnight. At the hearing, MassHealth agreed to approve the requested 10 times per day for assistance with repositioning on weekends. The MassHealth representative stated that the appellant is repositioned during every activity of daily living and MassHealth approved PCA assistance with transfers 5 times a day, passive range of motion once a day, showering once a day, bed bath once a day, dressing once a day, undressing once a day, bladder care 8 times a day, bowel care once a day, and assistance into stander twice a day, for a total of 21 times a day that the appellant is repositioned in addition to the time approved for PCA assistance with repositioning. (Exhibit 6, pp. 12-22). The MassHealth representative noted that the appellant would need less time for PCA assistance on the days he is in school and the frequency for PCA assistance with repositioning was modified to 6 times per day, 5 days a week. The MassHealth representative testified that assistance with repositioning 6 times a day, along with the other 21 opportunities for repositioning during the day more than meets the standard of care for repositioning every 2 hours.

The appellant's mother stated that the appellant had Covid and missed a number of days of school this year and he was out of school during the month of January due to seizure activity. The appellant's mother stated that the appellant does not go to school consistently. The MassHealth representative stated that the PCA program is not set up to account for sick days or anticipatory events. When asked how many times a day the PCA is repositioning the appellant in is wheelchair, the appellant's mother stated that she cannot count the times. The appellant's mother stated that the appellant has no muscular tone and she needs to lift his head to take medications.

Fluids by syringe: The appellant's provider requested 7 minutes, 5 times a day, 7 days a week for PCA assistance with giving fluids into mouth by syringe. (Exhibit 6, p. 19). MassHealth denied this request. (Testimony). The MassHealth representative stated that the appellant cannot hold his neck up by himself and injecting fluid by syringe into his mouth presents a safety risk for aspiration. The MassHealth representative stated that giving fluids by syringe is not an appropriate PCA task and would be parental responsibility for a minor child due to high choking risk.

The appellant's mother stated at first that the appellant is no longer receiving fluids by syringe but rather fluids are given by spoon. The appellant's mother later stated that sometimes they use a syringe to provide fluids into the side of the mouth.

Prior to hearing, the appellant's mother submitted a letter dated December 23, 2022 from the appellant's physician and a letter dated January 13, 2023 from the appellant's occupational therapist. (Exhibit 7). The letters were forwarded to the MassHealth and reviewed prior to hearing. The appellant's occupational therapist noted that the appellant is fed pureed foods and liquids by spoon. (Exhibit 7, p. 2). The appellant's physician wrote that fluids are given to the appellant by teaspoon. (Exhibit 7, p. 1).

## Findings of Fact

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

1. The appellant's provider, WestMass Eldercare, submitted a re-evaluation request for prior authorization for 54.25 hours per week in day/evening PCA services and 14 hours per week for NTA services on November 21, 2022.
2. By notice dated December 15, 2022, MassHealth approved 39.75 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service December 15, 2022 to December 14, 2023.
3. The appellant lives at home with his family; he is non-verbal, legally blind, and has impaired hearing; diagnoses include Lennox-Gastaut Syndrome (seizure disorder), partial agenesis of corpus collosum, left hemiplegia, global developmental delay, diabetes insipidus, and cerebral palsy.
4. The appellant attends school Monday through Friday from 7 am to 3 pm, but has missed a lot of school this year due to illness; the appellant attends school in the summer for half days, Monday through Thursday.
5. The appellant's provider requested 25 minutes, 3 times a day, 7 days a week for PCA assistance with eating; at the hearing, MassHealth approved 25 minutes, twice a day, 5 days a week for PCA assistance with eating breakfast and dinner, and approved 25 minutes, three times a day, 2 days a week for PCA assistance with eating all meals on weekends.
6. The appellant's mother agreed to the time approved for PCA assistance with eating and withdrew the appeal as to that issue.
7. The appellant's provider requested 5 minutes, 10 times a day, 7 days a week for PCA assistance with repositioning.
8. MassHealth approved 5 minutes, 10 times a day, 2 days a week for PCA assistance with repositioning on weekends; MassHealth approved 5 minutes, 6 times a day, 5 days a week for PCA assistance with repositioning during school days.
9. The standard of care for repositioning is every 2 hours.
10. MassHealth approved PCA assistance with transfers 5 times a day, passive range of motion once a day, showering once a day, bed bath once a day, dressing once a day, undressing once a day, bladder care 8 times a day, bowel care once a day, and assistance into stander twice a day, for a total of 21 times a day that the appellant is repositioned in addition to the time approved for PCA assistance with repositioning.

11. The appellant's provider requested 7 minutes, 5 times a day, 7 days a week for PCA assistance with giving fluids into mouth by syringe; MassHealth denied this request.
12. The appellant cannot hold his neck up by himself.
13. The appellant receives fluids by teaspoon.

## **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 determined 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 the 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 prevent, 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. 1396a(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)).

#### Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 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; and
- (7) toileting: physically assisting a member with bowel or 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.

(130 CMR 422.410).

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).

After hearing testimony at the hearing, MassHealth approved 25 minutes, twice a day, 5 days a week for PCA assistance with eating breakfast and dinner, and approved 25 minutes, three times a day, 2 days a week for PCA assistance with eating all meals on weekends. The appellant's mother agreed to the time approved for PCA assistance with eating and withdrew the appeal as to that issue. The appeal of the denial of time for PCA assistance with eating is dismissed. Because this issue resolved at hearing, the appeal is dismissed as to this issue. (130 CMR 610.035(A)(2), (8)).

MassHealth approved 5 minutes, 6 times a day, 5 days a week for PCA assistance with repositioning during school days, and 5 minutes, 10 times a day for PCA assistance with repositioning on weekends. The standard of care for repositioning is every 2 hours, or 9 times during the 18 hour day from 6:00 am to midnight. The appellant is repositioned during every activity of daily living and MassHealth approved PCA assistance with transfers 5 times a day, passive range of motion once a day, showering once a day, bed bath once a day, dressing once a day, undressing once a day, bladder care 8 times a day, bowel care once a day, and assistance into stander twice a day, for a total of 21 times a day that the appellant is repositioned in addition to the time approved for PCA assistance with repositioning. PCA assistance with repositioning 6 times a day during weekdays and 10 times a day during weekends, along with the other 21 opportunities for repositioning during the day more than meets the standard of care for repositioning every 2 hours. MassHealth's modification of time requested for PCA assistance with repositioning is upheld and the appeal is denied as to this issue.

MassHealth denied the appellant's provider's request for PCA assistance with giving fluids into the appellant's mouth by syringe 5 times a day. The appellant cannot hold his neck up by himself and the MassHealth representative, a registered nurse, testified that injecting fluid by syringe into his



mouth presents a safety risk for aspiration. Giving fluids by syringe to a child who is an aspiration risk is parental responsibility and not an appropriate task for a PCA. Further the appellant's mother testified, and his physician and occupational therapist noted, that the appellant is receiving fluids by spoon, not syringe. MassHealth's denial of the appellant's provider's request for 7 minutes, 5 times a day for PCA assistance with giving fluids by syringe is upheld and the appeal is denied as to this issue.

## **Order for MassHealth**

Rescind aid pending. If MassHealth has not already done so, make the adjustments agreed to at the hearing for PCA assistance with repositioning 10 times a day, 2 days a week, and PCA assistance with eating 25 minutes, twice a day, 5 days a week and 25 minutes, 3 times a day, 2 days a 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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Patricia Mullen  
Hearing Officer  
Board of Hearings

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