

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2301096
<b>Decision Date:</b>	5/5/2023	<b>Hearing Date:</b>	03/13/2023
<b>Hearing Officer:</b>	Rebecca Brochstein		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Donna Burns, RN



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Prior Approval (PCA Services)
<b>Decision Date:</b>	5/5/2023	<b>Hearing Date:</b>	03/13/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	Appellant's Mother
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated January 4, 2023, MassHealth modified the appellant's request for prior authorization for Personal Care Attendant (PCA) services by denying some of the time requested (Exhibit 1). The appellant filed this appeal in a timely manner on February 9, 2023, seeking approval of the denied time (130 CMR 610.015(B) and Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

## Summary of Evidence

MassHealth was represented at hearing by a registered nurse, who appeared telephonically. She testified that the appellant is a teenager with a primary diagnosis of cerebral palsy. The appellant was previously approved for a personal care attendant (PCA). On December 22, 2022, the appellant's PCA agency filed a prior authorization request and re-evaluation for continued PCA services for the period of January 17, 2023, through January 16, 2024. The agency requested a total of 15.5 day/evening PCA hours per week, and no time at night. On January 27, 2023, MassHealth modified the request and approved 12 day/evening hours per week.

The MassHealth representative testified that the only area that was modified was in the request for PCA assistance with meal preparation. The appellant requested 30 minutes per day of PCA assistance with this task, and MassHealth denied it in full. The MassHealth nurse stated that the request was denied because the appellant lives with family members who are responsible for assisting the appellant with this task until the age of 18.

The PCA agency included the following comments as part of its request for time for meal preparation:

Mother works 5x/week and PCA makes breakfast and lunch. Consumer is dependent for meal prep d/t ataxia; tremors; low muscle tone; Falls risk with daily falls reported; impaired gross motor skills; walks on toes; fatigue; impaired FMC r/t Ataxic Cerebral Palsy; Partial Complex Seizure DO- she averages two clusters of seizures/week and misses 1 day of school/week; Ataxia; strabismus; tight heel cords-walks on toes-receiving botox injections Q3 months; learning disabilities-Dyslexic-can not read or write. (Exhibit 4 at 24)

The appellant's mother appeared at the hearing telephonically and testified on her child's behalf. She testified that the appellant was approved for PCA assistance with meal preparation in last year's prior authorization, and questioned why it was denied this year. She stated that the PCA prepares breakfast and lunch for the appellant in the mornings, as the mother has to leave early to drop the appellant's brother at school and then go to work. The mother stated that the appellant does not have the capacity to prepare meals independently.

## **Findings of Fact**

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

1. The appellant is a teenager with a primary diagnosis of cerebral palsy.
2. The appellant has ataxia, tremors, low muscle tone, and impaired gross motor skills.
3. MassHealth previously approved the appellant for a personal care attendant (PCA).
4. On December 22, 2022, the appellant's PCA agency submitted a re-evaluation and prior approval request for continued PCA services for the period of January 17, 2023, through January 16, 2024.
5. The provider agency requested a total of 15.5 day/evening PCA hours per week, and no time at night.
6. MassHealth modified the request and allowed 12 day/evening hours per week.
7. The appellant requested 30 minutes per day of PCA assistance with meal preparation.
8. The appellant is not able to prepare meals on her own.
9. MassHealth did not approve any PCA time for meal preparation. MassHealth determined that the appellant lives with family members who are responsible for assisting the appellant with this task.
10. The appellant lives with at least one parent and a sibling.

## **Analysis and Conclusions of Law**

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (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 personal care agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 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 MassHealth 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

In this case, MassHealth modified the appellant's request for PCA services by denying the time requested for meal preparation. The PCA agency requested 30 minutes per day, seven days per week, to prepare the appellant's breakfast and lunch. MassHealth denied the time because it found the appellant's needs around meal preparation should be met by family members. Pursuant to part (C)(1) in the regulation above, when a member lives with family members, the family members are expected to provide assistance with most instrumental activities of daily living (IADLs), which include meal preparation and clean-up.<sup>1</sup> Here, the appellant lives with family members (at least one parent and a younger sibling). There is no evidence that the appellant's needs, which appear to be routine, could not be incorporated into the breakfast and lunch preparation for the rest of the family, even if some of the appellant's meals (such as a bag lunch on school days) are prepared ahead of time. Accordingly, the record supports MassHealth's decision to deny PCA time for meal preparation.

This appeal is denied.

### **Order for MassHealth**

None.

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<sup>1</sup> Notwithstanding the MassHealth representative's suggestion, the regulation does not limit this provision to members who are under the age of 18.

## **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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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Optum