

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied in part;  
Dismissed in part

**Appeal Number:** 2301408

**Decision Date:** 3/24/2023

**Hearing Date:** 03/21/2023

**Hearing Officer:** Thomas Doyle

**Record Open to:**

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, R.N.

**Interpreter:** Delwara



*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; Denied in part	<b>Issue:</b>	PA-PCA hours
<b>Decision Date:</b>	3/24/2023	<b>Hearing Date:</b>	03/21/2023
<b>MassHealth's Rep.:</b>	Donna Burns, R.N.	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote (phone)	<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 February 13, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Ex. 1). The appellant filed this appeal in a timely manner on February 22, 2023 (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal (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 MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant is a minor who was represented at hearing via telephone by his father, who was assisted by an interpreter.

The MassHealth representative testified that the documents submitted show that the appellant has a

primary diagnosis of autism. The appellant's personal care management (PCM) agency, Arc of the South Shore, submitted a prior authorization request for PCA services requesting 16 hours/30 minutes day/evening hours per week during school weeks and 18 hours/0 minutes day/evening hours per week during vacation weeks and 2 nighttime hours per night. MassHealth modified the request to 15 hours/15 minutes day/evening hours per week during school weeks and 16 hours/30 minutes day/evening hours per week for vacation weeks and approved the 2 nighttime hours per night.

There were two modifications based upon MassHealth regulations. MassHealth modified Grooming (hair) from 5 minutes, 1 time a day, 7 days a week to 2 minutes, 1 time a day, 7 days a week. MassHealth modified Other Healthcare Needs (snacks) from 45 minutes in school weeks and 70 minutes in vacation weeks to 0.

After testimony by the father of appellant and discussion between the parties, the parties were able to resolve the dispute related to grooming and agreed on 2 minutes an episode, 1 time a day, 7 days a week. Therefore, this part of the appeal is dismissed. The appellant requested 5 minutes for snacks at various frequency depending on whether it is a school or vacation week. MassHealth denied the request and did not approve any time for snacks. The MassHealth representative testified that the time was denied because the appellant has the ability to feed himself a snack.

The appellant's father testified that a snack usually consists of a cookie. When given a cookie, appellant will go away and therefore needs someone to bring him back to his snack and feed him. The father also testified that if the cookie is in appellant's hand, appellant will eat it. The MassHealth representative responded that time for bringing appellant back to his snack, or cueing, is not approved under the PCA program.

## **Findings of Fact**

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

1. The appellant is a minor MassHealth member with a primary diagnosis of autism. (Testimony and Ex. 4, p. 9).
2. MassHealth received a prior authorization request for PCA services requesting 16 hours/30 minutes day/evening hours per week during school weeks and 18 hours/0 minutes day/evening hours per week during vacation weeks and 2 nighttime hours per night. (Testimony; Ex. 4).
3. MassHealth modified the request to 15 hours/15 minutes day/evening hours per week during school weeks and 16 hours/30 minutes day/evening hours per week for vacation weeks and approved the 2 nighttime hours per night (Testimony; Ex. 1).
4. The appellant filed this appeal in a timely manner on February 22, 2022 (Ex. 2).

5. At hearing, the parties were able to resolve disputes related to PCA assistance with grooming – hair. (Testimony).
6. The appellant seeks time for PCA assistance with Other Healthcare Needs – snacks, as follows: 45 minutes per school week and 70 minutes per vacation weeks. (Testimony; Ex. 4).
7. MassHealth modified the request for snacks to 0 because the appellant has the ability to feed himself a snack. (Testimony; Ex. 1; Ex. 4).
9. If a snack is in appellant’s hand, he will eat it. (Testimony).

## **Analysis and Conclusions of Law**

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 personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member’s health care.
- (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 following ADLs as defined in 130 CMR 422.410(A):
  - (a) mobility, including transfers;
  - (b) medications,
  - (c) bathing or grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the 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 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 the Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 Division 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.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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 or 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.

Pursuant to 130 CMR 422.410(B), 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 personal care services; and
  - (c) other special needs approved by the Division as being instrumental to the health care of the member.

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.

See 130 CMR 422.412 (emphasis added).

The appeal is dismissed as to the following ADL because at hearing the parties were able to resolve the dispute related to PCA assistance with grooming – hair. The parties agreed on 2 minutes an episode, 1 episode a day, 7 days a week.

Regarding the appellant's request for PCA assistance with other healthcare needs – snacks, the appeal is denied. As the appellant's father testified, the appellant can feed himself a cookie, but needs to be prompted and reminded to eat. Time for cueing, prompting, supervision, guiding, or coaching are not included under the PCA program. (130 CMR 422.412 (C)). For this reason, the appellant has not shown that PCA assistance with other healthcare needs – snacks, is medically necessary.

Therefore, the appeal is denied in part and dismissed in part.

## **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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Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:

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