

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied in part; Dismissed in part	<b>Appeal Number:</b>	2302137
<b>Decision Date:</b>	7/3/2023	<b>Hearing Date:</b>	05/12/2023
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



*via telephone*

**Appearance for MassHealth:**

Mary Jo Elliott, RN *via telephone*



*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 in part; Dismissed in part	<b>Issue:</b>	Personal Care Attendant Program (PCA)
<b>Decision Date:</b>	7/3/2023	<b>Hearing Date:</b>	05/12/2023
<b>MassHealth's Rep.:</b>	Mary Jo Elliott, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South		

### 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 March 9, 2023, MassHealth modified the appellant's prior authorization (PA) for PCA services. (See 130 CMR 422.410; 450.204; Exhibit (Ex.) 1; Ex. 8, pp. 4-6). The appellant filed this appeal in a timely manner on March 16, 2023. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request is valid grounds for appeal. (See 130 CMR 610.032).

On March 16, 2023, the Board of Hearings sent the appellant's representative a letter requesting that she submit a document giving her authority to represent the appellant at the hearing. (Ex. 4). On April 4 and April 10, 2023, the Board of Hearing received a copy of the Letters of Guardianship given the appellant's representative authority to represent the appellant. (Ex. 5; Ex. 6).

### Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying the appellant's PA request.

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The appellant is a young individual who is over the age of majority. (Ex. 3; Ex. 8, pp. 3, 11). The appellant has diagnoses including speech delays, and intellectual disability secondary to Greig's disease. (Ex. 8, pp. 11, 12). The PCM agency submitted a PCA reevaluation to MassHealth requesting 50 hours of day and evening PCA services per week, and two hours per night for one year. (Ex. 8, p. 42). In its submission, the PCM agency stated the following:

Med Hx: 2nd Greig's Syndrome, cognitive, gross and fine motor, speech delays, 4-5 signs, legally blind, shakes, bangs head, GERD fundoplication 2008, excessive drooling. 2016: Behaviors escalating, kicks, throws self on ground, screams, spits at others. 2017: Dx with acrocallosal syndrome ( ) also known as ACLS. 2018: There are plans for a sleep study and CAT scan, suspects sleep apnea. 2019: Question of sleep apnea .Pending sleep study. Mom states that his behavior has been escalating making it difficult to care for at times. 2020: Behaviors, resistance, combative with care. MD visits are remote. OT and Speech following school times and frequency changes secondary to COVID-19...

... : Consumer is bigger and heavier (gained 32 pounds last year). Mom reports that he is lazy and resistant to care, he often must be sponge bathed due to his refusal to get into the tub. Mom has been unable to assist in his care due to her own health issues, she is Obese and has chronic issues with an anal fistula, she has had multiple surgeries over the past 5 years, last one in , next is planned for March, she is not allowed to lift or strain. Testosterone treatments are still on hold for consumer. Time for task adjusted as appropriate. (Ex. 8, pp. 12-13).

In the notice under appeal, MassHealth approved 34 hours, 30 minutes of day and evening services and two hours per night for dates of service from March 9, 2023, through March 8, 2024. (Ex. 1; Ex. 8, pp. 4-9). The MassHealth representative stated that this was the same amount of time that MassHealth approved last year for the appellant.

The MassHealth representative stated that MassHealth made modifications to two activities of daily living (ADLs) and four instrumental activities of daily living (IADLs) which were as follows:

ADL/IADL	Time Requested	Time Approved
Passive Range of Motion	32 minutes, one time per	0x0x0. (Ex. 1; Ex. 8,

(PROM)	day, seven days per week (32x1x7). <sup>1</sup> (Ex. 8, p. 18).	pp. 4-9).
Bladder Care	8x6x5; 8x7x2. (Ex. 8, p. 25). <sup>2</sup>	8x4x5; 8x7x2. (Ex. 1; Ex. 8, pp. 4-9).
Meal Preparation	90x1x7. <sup>3</sup> (Ex. 8, p. 33).	20x1x7. (Ex. 1; Ex. 8, pp. 4-9).
Laundry	90x1x1. (Ex. 8, p. 34).	45x1x1. (Ex. 1; Ex. 8, pp. 4-9).
Housekeeping	45x1x1. (Ex. 8, p. 34).	20x1x1. (Ex. 1; Ex. 8, pp. 4-9).
Shopping	90x1x1. (Ex. 8, p. 35)	20x1x1. (Ex. 1; Ex. 8, pp. 4-9).

The appellant's representative did not contest the denial of PROM. After listening to the appellant's representative's testimony, the MassHealth representative offered to increase the time for bladder care during the school week to 8x5x5, which the appellant's representative accepted.

The MassHealth representative testified that the remaining four activities were IADLs. The main reason MassHealth modified the time requested was that the appellant lives with his legal guardian (the appellant's representative) and under the PCA program the legal guardian is responsible for providing assistance with most IADLs. (Ex. 8, p. 49).

The MassHealth representative spoke first about meal preparation. The appellant has not requested time for meal preparation in the past. MassHealth expects that the legal guardian will make sure that the appellant has food prepared. This is not just a PCA role. The PCM agency requested 15 minutes for breakfast, 30 minutes for lunch, 35 minutes for dinner, and 10 minutes for a snack. MassHealth approved 20 minutes for meal preparation in total and did not describe how that 20 minutes should be divided.

The appellant's representative stated that when she last had surgery in December 2022, she

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<sup>1</sup> The PCM agency requested this time as 8x1x7 per limb, which MassHealth combined. (See Ex. 8, p. 18).

<sup>2</sup> The reason for this subdivided line item is due to the fact that the appellant goes to school five days per week.

<sup>3</sup> The PCM agency requested this time as 15 minutes for breakfast, 30 minutes for lunch, 35 minutes for dinner, and 10 minutes for snacks, each once per day. (Ex. 8, p. 33). MassHealth combined this as 90 minutes, one time per day.

was not able to perform any of the meal preparation or IADLs. She stated that now that she's recovered from that surgery, she does cook all of the appellant's meals. The appellant's representative stated that she will be undergoing more surgery in the near future, and she would not be able to perform the IADLs.

The MassHealth representative stated that when the appellant's representative did have surgery, she could call the PCM agency and ask for a temporary adjustment to one or more of the IADLs to allow her to recover. If the temporary adjustment request provides the level of description the appellant's representative just provided in her testimony, the MassHealth representative would likely approve it.

The MassHealth representative stated that laundry, housekeeping, and shopping are in the same realm as IADLs. For laundry, the PCM agency requested 90 minutes per week. MassHealth generally approves 90 minutes per week for a person who is completely unable to perform the activity and has no other assistance. Other factors MassHealth takes into account are whether the appellant has incontinence and whether the laundry facilities are on site or whether the PCA has to take the laundry elsewhere to clean them. The MassHealth representative stated that MassHealth approved 45 minutes per week for laundry. The MassHealth representative stated that although she was not the initial reviewer, she understood the logic of allowing some time for laundry. Although the appellant's representative is the legal guardian, and is expected to provide assistance with IADLs, the information the PCM agency submitted that the appellant has incontinence and the appellant's representative is unable to lift large loads because of her medical condition. The appellant's representative indicated that she understood MassHealth's position.

For housekeeping, the PCM agency requested 45 minutes per week and MassHealth approved 20 minutes per week. In addition to the fact that the legal guardian is responsible for providing this service, she also shares the living space with the appellant and is responsible for cleaning some parts of the space based on this. The MassHealth representative again acknowledged that the appellant's representative had some physical limitations that made the housekeeping difficult for her, but this is most likely the reason why some time was approved for this IADL.

Finally, for shopping, the PCM agency requested 90 minutes per week and MassHealth approved 20 minutes per week for the same reasons.

## **Findings of Fact**

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

1. The appellant is a young individual who is over the age of majority. (Ex. 3; Ex. 8, pp. 3, 11).
2. The appellant's mother is his legal guardian and lives with him. (Ex. 5; Ex. 6).

3. The appellant's diagnoses including speech delays, and intellectual disability secondary to Greig's disease. (Ex. 8, pp. 11, 12).
4. The PCM agency submitted a PCA reevaluation to MassHealth requesting 50 hours of day and evening PCA services per week, and two hours per night for one year. (Ex. 8, p. 42).
5. In its submission, the PCM agency stated the following:

Med Hx: 2nd Greig's Syndrome, cognitive, gross and fine motor, speech delays, 4-5 signs, legally blind, shakes, bangs head, GERD fundoplication 2008, excessive drooling. 2016: Behaviors escalating, kicks, throws self on ground, screams, spits at others. 2017: Dx with acrocallosal syndrome ( ) also known as ACLS. 2018: There are plans for a sleep study and CAT scan, suspects sleep apnea. 2019: Question of sleep apnea .Pending sleep study. Mom states that his behavior has been escalating making it difficult to care for at times. 2020: Behaviors, resistance, combative with care. MD visits are remote. OT and Speech following school times and frequency changes secondary to COVID-19...

... : Consumer is bigger and heavier (gained 32 pounds last year). Mom reports that he is lazy and resistant to care, he often must be sponge bathed due to his refusal to get into the tub. Mom [the appellant's representative] has been unable to assist in his care due to her own health issues, she is Obese and has chronic issues with an anal fistula, she has had multiple surgeries over the past 5 years, last one in , next is planned for March, she is not allowed to lift or strain. Testosterone treatments are still on hold for consumer. Time for task adjusted as appropriate. (Ex. 8, pp. 12-13).

6. In the notice under appeal, MassHealth approved 34 hours, 30 minutes of day and evening services and two hours per night for dates of service from March 9, 2023, through March 8, 2024. (Ex. 1; Ex. 8, pp. 4-9).
7. This was the same amount of time that MassHealth approved last year for the appellant. (Testimony of the MassHealth representative).
8. MassHealth made modifications to the time requested for two ADLs: PROM and bladder care; and four IADLs: meal preparation, laundry, housekeeping, and shopping. (Ex. 1; Ex. 8, pp. 4-9; Testimony of the MassHealth representative).
9. The appellant's representative accepted MassHealth's modification to the time requested for PROM. (Testimony of the appellant's representative).
10. After considering the appellant's representative's testimony, the MassHealth

representative increased the frequency of time for bladder care during the school week to 8x5x5, which the appellant's representative accepted. (Testimony of the appellant's representative; Testimony of the MassHealth representative).

11. For the IADLs, the PCM agency requested the following:

- a. Meal Preparation 90x1x7. (Ex. 8, p. 33).
- b. Laundry 90x1x1. (Ex. 8, p. 34).
- c. Housekeeping 45x1x1. (Ex. 8, p. 34).
- d. Shopping 90x1x1. (Ex. 8, p. 35).

12. MassHealth modified the time for these IADLs in the following manner:

- a. Meal Preparation 20x1x7. (Ex. 1; Ex. 8, pp. 4-9).
- b. Laundry 45x1x1. (Ex. 1; Ex. 8, pp. 4-9).
- c. Housekeeping 20x1x1. (Ex. 1; Ex. 8, pp. 4-9).
- d. Shopping 20x1x1. (Ex. 1; Ex. 8, pp. 4-9).

13. MassHealth modified the time requested for IADLs because the appellant lives with his legal guardian and under the PCA program the legal guardian is responsible for providing assistance with most IADLs. (Testimony of the MassHealth representative; Ex. 8, p. 49).

## **Analysis and Conclusions of Law**

MassHealth may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*). First, the appellant's representative did not object to the denial of time for PROM. Second, after considering the appellant's representative's testimony, the MassHealth representative amended the modification to and increased the frequency for bladder care, which the appellant's representative accepted. Regarding these ADLs the appeal is DISMISSED.

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (*Id.*). MassHealth covers activity time performed by a

PCA in providing assistance with activities of daily living (ADLs) and IADLs. (130 CMR 422.411(A)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA and 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. (130 CMR 422.402; 422.410(B)).

In determining the number of hours of physical assistance that a member requires 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. (130 CMR 422.410(C)).

MassHealth does not cover services provided by family members or surrogates as part of the PCA program. (130 CMR 422.412(F),(G)). For the purposes of the PCA program, a “family member” is defined as “the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.” (130 CMR 422.402). A “surrogate” is “the member's legal guardian, a family member, or other person as identified in the service agreement, who is responsible for performing certain PCA management tasks that the member is unable or unwilling to perform.” (Id.).

The appellant's representative has not shown by a preponderance of the evidence that



she currently has need of time for IADLs at the times requested. MassHealth did assess the time for IADLs in a way that acknowledges that the appellant's representative, the appellant's legal guardian, has physical difficulties that make it difficult to perform the IADLs in their entirety. At the same time, the appellant's representative, as legal guardian, is still responsible for performing the bulk the IADLs currently. The appellant's representative did state that she anticipates undergoing surgeries in the future, which make her unable to perform the IADLs in their entirety. The PCA program does allow for adjustments to the time required for IADLs based on individual circumstances in the short term. When this occurs, the appellant's representative should consult the PCM agency to request an adjustment be put in place during time she requires for recovery from surgery. Until that time, however, the MassHealth determinations concerning IADLs appear to be correct.

For the above stated reasons, the 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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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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