

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2302300
<b>Decision Date:</b>	5/5/2023	<b>Hearing Date:</b>	04/26/2023
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns



*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>	Approved	<b>Issue:</b>	Prior Authorization
<b>Decision Date:</b>	5/5/2023	<b>Hearing Date:</b>	04/26/2023
<b>MassHealth's Rep.:</b>	Donna Burns	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<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 March 3, 2023, MassHealth modified the appellant's prior authorization request for personal care services effective May 12, 2023. (130 CMR 422.000; Exhibit 1). The appellant's mother filed this appeal in a timely manner on March 21, 2023. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care services.

## Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for personal care services.

## Summary of Evidence

The appellant is under the age of 18 and has a primary diagnosis of autism. (Testimony; Exhibit 4). Notes indicate that the appellant's cognitive deficits inhibit the ability to initiate, follow through, or complete activities of daily living (ADLs). The PCA provides hands on assistance with all tasks. (Testimony; Exhibit 4).

On February 23, 2023, the appellant underwent a re-evaluation for Personal Care Attendant (PCA) services. The appellant requested 14 day/evening hours each week and 2 nighttime hours. MassHealth modified this request and approved 12.75 day/evening hours each week and 2 nighttime hours. Dates of service are May 12, 2023 to May 11, 2024. MassHealth approved all of the time requested for ADLs and nighttime services. MassHealth made 2 modifications to the time requested for assistance with Instrumental Activities of Daily Living (IADLs).

The appellant requested 5 minutes, one time each day, 5 days each week for assistance with snack preparation for school weeks and 5 minutes, 2 times each day 2 days each week for assistance on the weekends. MassHealth modified this request and denied all of the time requested for preparation of snacks. MassHealth based this decision on the fact that the appellant is under the age of 18 and lives with family members. The MassHealth representative testified that MassHealth does not pay for services that should be provided by parents of a minor member or any legally responsible relative. The MassHealth representative noted that the appellant is a minor and resides with his mother.

The appellant's mother responded that the appellant has snacks when she is at work and he is unable to prepare snacks on his own. The appellant's mother testified that the PCA assists the appellant in preparing snacks. The appellant's mother testified that the appellant learns about recipes for snacks and wants to prepare them on his own. The appellant's mother notes that he would not be able to learn how to do prepare snacks without assistance from the PCA. The appellant's mother testified that one goal of this work is to provide the appellant with the ability to perform tasks such as preparing a snack on his own. The MassHealth representative responded that the regulations do not allow for time for vocational or educational services.

The appellant requested 30 minutes each week for assistance with laundry. MassHealth denied this request as the appellant lives with family members and MassHealth does not pay for services that should be provided by the parents of a minor member or any legally responsible relative. The appellant's mother responded that the appellant has accidents at night and she is not able to do all of his excessive laundry on her own. The appellant's mother also noted that one purpose of having the PCA assist with tasks such a laundry is to provide the

appellant with the opportunity to learn how to perform the task. The appellant's mother testified that her other children had the opportunity to learn how to perform these tasks and now complete them on their own. The appellant's mother wants to provide this same opportunities and lessons for the appellant. The MassHealth representative noted again that the agency does not pay for educational or vocational services.

## **Findings of Fact**

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

1. The appellant is under the age of 18 and has a primary diagnosis of autism.
2. The appellant's cognitive deficits inhibit the ability to initiate, follow through, or complete activities of daily living (ADLs).
3. The PCA provides hands on assistance with all tasks. (Testimony; Exhibit 4).
4. On February 23, 2023, the appellant underwent a re-evaluation for Personal Care Attendant (PCA) services.
5. The appellant requested 14 day/evening hours week and 2 nighttime hours.
6. MassHealth approved 12.75 day/evening hours each week and 2 nighttime hours.
7. Dates of service are May 12, 2023 to May 11, 2024.
8. MassHealth approved all of the time requested for ADLs and nighttime services.
9. MassHealth made 2 modifications to the time requested for assistance with Instrumental Activities of Daily Living (IADLs).
10. The appellant requested 5 minutes, one time each day, 5 days each week for assistance with snack preparation for school weeks and 5 minutes, 2 times each day 2 days each week for assistance on the weekends.

11. MassHealth denied all of the time requested for assistance with snack preparation.
12. The appellant is under the age of 18 and lives with his mother.
13. The appellant has snacks when his mother is at work.
14. The PCA assists the appellant with preparing snacks.
15. The appellant requested 30 minutes each week for assistance with laundry.
16. MassHealth denied this request as the agency does not pay for services that should be provided by the parents of a minor member.
17. The appellant has accidents almost every night.

## **Analysis and Conclusions of Law**

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). 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/grooming;
  - d. dressing or undressing;

- e. range-of-motion exercises;
- f. eating; and
- g. toileting.

- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as “medically necessary” if it is reasonably calculated to prevent, diagnose, prevent the 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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

Instrumental activities of daily living include physically assisting a member with household management tasks that are incidental to the care of the member including: laundry, shopping and housekeeping. (130 CMR 422.401(B)(1)).

As noted by the MassHealth representative at hearing, in determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for instrumental activities of daily living (IADLs), the Personal Care Management (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)).

The regulations define a family member 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).

While MassHealth was correct in making the mandated assumption that the appellant's mother should perform most IADLs, they did not appear to balance that with the appellant's individual circumstances as his mother works 5 days each week and the appellant has snacks during that time. Additionally, testimony regarding the appellant's incontinence issues at night is an individual circumstance that the agency should have considered in determining the time for assistance with laundry.

The testimony and arguments presented by the appellant's mother at hearing regarding wanting to teach the appellant how to perform these tasks was not persuasive as the regulations specifically state that MassHealth does not cover 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. However, the time requested for each activity seems to coincide with time for a PCA to complete the task themselves rather than the extensive time it may take to teach an individual how to perform these tasks. This decision is based solely on the individual circumstances regarding the appellant's inability to perform these tasks on his own and testimony regarding conditions that make the time more than what would ordinarily be provided by a family member.

This appeal is approved.

## **Order for MassHealth**

Approve the time requested for meal preparation and laundry as of May 12, 2023.

## **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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

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