

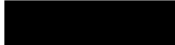
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied, in part, Dismissed, in part	<b>Appeal Number:</b>	2302747
<b>Decision Date:</b>	8/15/2023	<b>Hearing Date:</b>	6/30/2023
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, RN

**Interpreter:**

N/A



*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>	PCA Services
<b>Decision Date:</b>	8/15/2023	<b>Hearing Date:</b>	6/30/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (Tel)	<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 3/23/23, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant requested assistance with various Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) and the time requested included activities that are not covered through personal care attendant services (See 130 CMR 422.412(A) and Exhibit 1) and the time requested was longer than ordinarily required for someone with the Appellant's physical needs (See 130 CMR 422.410(A)(1), 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(4), 130 CMR 422.410(A)(7), 130 CMR 450.204(A)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner (see 130 CMR 610.015(B))<sup>1</sup>. A decision regarding the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

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<sup>1</sup> A Hearing was previously scheduled, but the Appellant did not appear telephonically, and the matter was dismissed. (Exhibit 5). A request to vacate the dismissal was received and allowed (Exhibit 6). This Decision incorporates testimony from the June 30, 2023 Hearing.

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.412(A), 130 CMR 422.410(A)(1), 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(4), 130 CMR 422.410(A)(7), 130 CMR 450.204(A)(1) in modifying the Appellant's prior authorization request for personal care services.

## Summary of Evidence

The Appellant is a MassHealth member whose primary diagnoses includes Autism with Global Developmental Delay. Secondary diagnoses include Encephalopathy, Von Willebrand's Blood Disorder among others. (Exhibit 4, pg. 10, Testimony). On March 23, 2023, MassHealth made 8 modifications to the Appellant's prior authorization request for PCA services. (Exhibit 4, p. 3-7 and Testimony). Specifically, MassHealth modified the following: 1) ADL – Mobility, from 350 minutes per week to 50 minutes per week (Exhibit 4, pg. 13-14, Testimony) 2) ADL – Bathing, from 55 minutes 1 time a day, 7 days a week, second bathing (quick wash) 30 minutes, 1 time a day, 7 days a week, shampoo, 5 minutes, 1 time a day, 7 days a week to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week (Exhibit 4, pg. 16-17, Testimony) 3) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 20 minutes, 1 time a day, 7 days a week for undressing to 15 minutes, 1 time a day, 7 days a week for dressing and 10 minutes, 1 time a day, 7 days a week for undressing (Exhibit 4, pg. 20, Testimony) 4) ADL – Toileting<sup>2</sup>, bladder care, from 25 minutes, 7 times a day, 2 days a week and bladder care, 25 minutes, 4 times a day, 5 days a week to bladder care, 10 minutes, 7 times a day, 2 days a week and bladder care, 10 minutes, 4 times a day, 5 days a week (Exhibit 4, pg. 22-23, Testimony) 5) IADL – Meal Preparation<sup>3</sup>, Dinner from 30 minutes, 7 days a week to 0 minutes, 0 days a week (Exhibit 4, p.31, Testimony) 6) IADL, Laundry, from 90 minutes per week to 60 minutes per week (Exhibit 4, pg. 32, Testimony) 7) IADL, Housekeeping, from 90 minutes per week to 60 minutes per week (Exhibit 4, p. 32, Testimony) 8) IADL, Shopping, from 60 minutes per week to 0 minutes per week (Exhibit 4, pg. 33, Testimony).

Regarding 1) ADL – Mobility, from 350 minutes per week to 50 minutes per week (Exhibit 4, pg. 13-14, Testimony), MassHealth testified the request exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant was seeking 7 minutes for transfer to rooms within the home. The Appellant's representative testified that Appellant is unsteady on his feet, has a history of falling, walks slowly, and cannot be rushed. (Testimony). The Appellant's representative further testified that the Appellant needs to be held when moving, needs direction and cueing and is generally not cooperative. (Testimony) MassHealth testified that MassHealth does not provide cueing services, and that time allotted

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<sup>2</sup> Bowel care was approved as requested at 15 minutes, 2 times a day, 7 days a week. (Exhibit 4, pg. 22-23, Testimony)

<sup>3</sup> Breakfast and Lunch were approved as requested at 15 Minutes, 7 days a week for Breakfast and 30 minutes, 2 days a week for lunch. (Exhibit 4, pg. 31, Testimony)

pursuant to the Regulations was for actually moving. (Testimony) The Appellant's representative testified that the Appellant does not have any stairs within his home, but also requires mobility aide to the van for his day services. (Testimony) Based upon this testimony, MassHealth agreed increase the allotment for time for mobility to 120 minutes per week. (Testimony) The Appellant's representative indicated that this was not enough time, despite the increase. (Testimony) No compromise was reached between the parties on this issue (Mobility) and it is addressed in the Analysis and Conclusions of Law section below.

Regarding 2) ADL – Bathing, from 55 minutes 1 time a day, 7 days a week, second bathing (quick wash) 30 minutes, 1 time a day, 7 days a week, shampoo, 5 minutes, 1 time a day, 7 days a week to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week (Exhibit 4, pg. 16-17, Testimony), MassHealth testified that the requested times exceeded time and frequency ordinarily required for someone with the Appellant's physical needs for physical assistance with bathing. (Testimony) The Appellant's representative described the Appellant's difficulty with bathing and testified regarding the Appellant's incontinence. (Testimony) MassHealth questioned the request for 55 minutes each day for a bath for the Appellant who does not enjoy bathing in addition to the requested second bath (quick wash) requested at 30 minutes per day (Testimony) The Appellant's representative testified regarding the process of bathing, including not filling the tub due to splash from the Appellant's thrashing, and utilizing a bucket of water to rinse. (Testimony). No further testimony was offered regarding the need for 55 minutes each day for a bath for the Appellant who does not enjoy bathing in addition to the requested second bath (quick wash) requested at 30 minutes per day. No compromise was reached between the parties on this issue (Bathing) and it is addressed in the Analysis and Conclusions of Law section below.

Regarding 3) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 20 minutes, 1 time a day, 7 days a week for undressing to 15 minutes, 1 time a day, 7 days a week for dressing and 10 minutes, 1 time a day, 7 days a week for undressing (Exhibit 4, pg. 20, Testimony) MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Dressing and Undressing. (Testimony) The Appellant's representative testified the Appellant requires changing due to his incontinence and difficulty eating. (Testimony). MassHealth inquired about the ability of the Appellant to feed himself and the Appellant's representative responded that although he was fed by others and wore a bib, he sometimes spit out his food. (Testimony). The Appellant's representative testified that those helping the Appellant are aware that she (Appeal representative/mother) does not like to see the Appellant with stains on his clothing. (Testimony) MassHealth stated that the request from the PCM was for one time for dressing and one time for undressing each day, not multiple times. The Appellant's representative stated only requesting one time each day for dressing and undressing must have been a mistake by the PCM Agency. No further details were provided regarding the Appellant's need for the additional time beyond that normally required for someone with the Appellant's physical needs for physical assistance with dressing and undressing. No compromise was reached between the parties on this issue

(Dressing/Undressing) and it is addressed in the Analysis and Conclusions of Law section below.

Regarding 4) ADL – Toileting, bladder care, from 25 minutes, 7 times a day, 2 days a week and bladder care, 25 minutes, 4 times a day, 5 days a week to bladder care, 10 minutes, 7 times a day, 2 days a week and bladder care, 10 minutes, 4 times a day, 5 days a week (Exhibit 4, pg. 22-23, Testimony), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with toileting. (Testimony) MassHealth testified that the bowel care had been approved as at 15 minutes per episode and noted that the bladder episodes were requested at significantly longer time intervals than bowel episodes. (Testimony) No further details were provided regarding the Appellant's need for the additional time beyond that normally required for someone with the Appellant's physical needs for physical assistance with toileting with respect to bladder care. No compromise was reached between the parties on this issue (Toileting, bladder care) and it is addressed in the Analysis and Conclusions of Law section below.

Regarding 5) IADL –Meal Preparation, Dinner from 30 minutes, 7 days a week to 0 minutes, 0 days a week (Exhibit 4, p.31, Testimony). MassHealth testified Breakfast and Lunch were approved as requested, and that Dinner preparation was denied because the Appellant received help from the Department of Developmental Services (DDS) with meal planning and someone was with the Appellant from 4-6PM each weekday. (Testimony, Exhibit 4, pg.48) The Appellant testified that the allotted times noted at Exhibit 4, pg. 48 were older and inaccurate, but provided no updated specific information regarding hours of DDS aid. (Testimony) The Appellant's representative further testified that although an aid from DDS may be present while the PCA is present, the safety of the Appellant required it. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 30 minutes, 7 days a week for Dinner Preparation, which resolved this issue related to the instant appeal (Testimony)

Regarding 6) IADL, Laundry, from 90 minutes per week to 60 minutes per week (Exhibit 4, pg. 32, Testimony), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Laundry. (Testimony) The Appellant's representative testified that the laundry was not located within the home. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 90 minutes per week for Laundry, which resolved this issue related to the instant appeal. (Testimony)

Regarding 7) IADL, Housekeeping, Housekeeping, from 90 minutes per week to 60 minutes per week (Exhibit 4, p. 32, Testimony), MassHealth testified that the time requested exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Housekeeping. (Testimony). MassHealth further noted that the Appellant received PCA services and DDS services and inquired regarding the hours during the evening for the multiple caregivers to coordinate housekeeping duties while working overnight. (Testimony) The

Appellant's representative testified that DDS covered 12AM until 2AM and the PCA covers 2AM until 6AM, therefore there is not overlapping coverage during the nighttime. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 90 minutes per week for Housekeeping, which resolved this issue related to the instant appeal. (Testimony)

Regarding 8) IADL, Shopping, from 60 minutes per week to 0 minutes per week (Exhibit 4, pg. 33, Testimony), MassHealth testified that the DDS paperwork indicated that DDS covers shopping for the Appellant. (Testimony, Exhibit 4, pg. 48). The Appellant's representative agreed that DDS covers shopping for the Appellant. (Testimony) The Appellant ACCEPTED this modification and resolved this issue related to the instant appeal.

## Findings of Fact

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

1. The Appellant is a MassHealth member whose primary diagnoses includes Autism with Global Developmental Delay. Secondary diagnoses include Encephalopathy, Von Willebrand's Blood Disorder among others. (Exhibit 4, pg. 10, Testimony).
2. MassHealth made 8 modifications<sup>4</sup> to the Appellant's prior authorization request for PCA services. (Exhibit 4, p. 3-7 and Testimony).
3. Regarding 1) ADL – Mobility, from 350 minutes per week to 50 minutes per week (Exhibit 4, pg. 13-14, Testimony), MassHealth testified exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant seeks 7 minutes for transfer to room within the home. The Appellant's representative testified that Appellant is unsteady on his feet, has a history of falling, walks slowly, and cannot be rushed. (Testimony). The Appellant's representative further testified that the Appellant needs to be held when moving, needs direction and cueing and is generally not cooperative. (Testimony) MassHealth testified that MassHealth does not provide cueing services, and that time allotted pursuant to the Regulations was for actually moving. (Testimony) The Appellant's representative testified that the Appellant requires mobility aide to the van for his day services. (Testimony) Based upon this testimony, MassHealth agreed increase the allotment for time for mobility to 120 minutes per week. (Testimony) The Appellant's representative indicated that this was not enough time, despite the increase. (Testimony) No compromise was reached between the parties on this issue (Mobility) and it is addressed in the Analysis and Conclusions of Law section below.
4. Regarding 2) ADL – Bathing, from 55 minutes 1 time a day, 7 days a week, second bathing

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<sup>4</sup> Optum testified that there were 9 total modifications. Optum counted the ADL of Dressing and Undressing separately. This decision addresses both Dressing and Undressing together as the third Modification.

(quick wash) 30 minutes, 1 time a day, 7 days a week, shampoo, 5 minutes, 1 time a day, 7 days a week to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week (Exhibit 4, pg. 16-17, Testimony), MassHealth testified that the requested times exceeded time and frequency ordinarily required for someone with the Appellant's physical needs for physical assistance with bathing. (Testimony) The Appellant's representative described the Appellant's difficulty with bathing and testified regarding the Appellant's incontinence. (Testimony) MassHealth questioned the request for 55 minutes each day for a bath for the Appellant who does not enjoy bathing in addition to the requested second bath (quick wash) requested at 30 minutes per day (Testimony) No compromise was reached between the parties on this issue (Bathing) and it is addressed in the Analysis and Conclusions of Law section below.

5. Regarding 3) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 20 minutes, 1 time a day, 7 days a week for undressing to 15 minutes, 1 time a day, 7 days a week for dressing and 10 minutes, 1 time a day, 7 days a week for undressing (Exhibit 4, pg. 20, Testimony) MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Dressing and Undressing. (Testimony) The Appellant's representative testified the Appellant requires changing due to his incontinence and difficulty eating. (Testimony). MassHealth stated that the request from the PCM was for one time for dressing and one time for undressing each day, not multiple times. No compromise was reached between the parties on this issue (Dressing/Undressing) and it is addressed in the Analysis and Conclusions of Law section below.

6. Regarding 4) ADL – Toileting, bladder care, from 25 minutes, 7 times a day, 2 days a week and bladder care, 25 minutes, 4 times a day, 5 days a week to bladder care, 10 minutes, 7 times a day, 2 days a week and bladder care, 10 minutes, 4 times a day, 5 days a week (Exhibit 4, pg. 22-23, Testimony), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with toileting. (Testimony) MassHealth testified that the bowel care had been approved as at 15 minutes per episode and noted that the bladder episodes were requested at significantly longer time intervals than bowel episodes. (Testimony) No compromise was reached between the parties on this issue (Toileting, bladder care) and it is addressed in the Analysis and Conclusions of Law section below.

7. Regarding 5) IADL –Meal Preparation, Dinner from 30 minutes, 7 days a week to 0 minutes, 0 days a week (Exhibit 4, p.31, Testimony). MassHealth testified Breakfast and Lunch were approved as requested, and that Dinner preparation was denied because the Appellant received help from DDS with meal planning and someone was with the Appellant from 4-6PM each weekday. (Testimony, Exhibit 4, pg.48) The Appellant testified that the allotted times noted at Exhibit 4, pg. 48 were older and inaccurate, but provided no updated specific information regarding hours of DDS aid. (Testimony) The Appellant's representative further testified that although an aid from DDS may be present while the PCA is present, the safety of the Appellant required it. (Testimony) After consideration of the testimony of the Appellant's representative,

MassHealth agreed to APPROVE the requested 30 minutes, 7 days a week for Dinner Preparation, which resolved this issue related to the instant appeal (Testimony)

8. Regarding 6) IADL, Laundry, from 90 minutes per week to 60 minutes per week (Exhibit 4, pg. 32, Testimony), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Laundry. (Testimony) The Appellant's representative testified that the laundry was not located within the home. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 90 minutes per week for Laundry, which resolved this issue related to the instant appeal. (Testimony)

9. Regarding 7) IADL, Housekeeping, Housekeeping, from 90 minutes per week to 60 minutes per week (Exhibit 4, p. 32, Testimony), MassHealth testified that the time requested exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Housekeeping. (Testimony). MassHealth further noted that the Appellant received PCA services and DDS services and inquired regarding the hours during the evening for the multiple caregivers to coordinate housekeeping duties while working overnight. (Testimony) The Appellant's representative testified that DDS covered 12AM until 2AM and the PCA covers 2AM until 6AM, therefore there is not overlapping coverage during the nighttime. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 90 minutes per week for Housekeeping, which resolved this issue related to the instant appeal. (Testimony)

10. Regarding 8) IADL, Shopping, from 60 minutes per week to 0 minutes per week (Exhibit 4, pg. 33, Testimony), MassHealth testified that the DDS paperwork indicated that DDS covers shopping for the Appellant. (Testimony, Exhibit 4, pg. 48). The Appellant's representative agreed that DDS covers shopping for the Appellant. (Testimony) The Appellant ACCEPTED this modification and resolved this issue related to the instant appeal.

## **Analysis and Conclusions of Law**

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(A) A service is "medically necessary" if:

(1) 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; 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 MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(A) Activities of Daily Living (ADLs). 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/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.

(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.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Although there were 8 modifications<sup>5</sup> in total, the parties were able to reach agreement on 4 of those modifications. 4 other modifications remain contested in total, or in part. All are discussed below.

Regarding 1) ADL – Mobility, from 350 minutes per week to 50 minutes per week (Exhibit 4, pg. 13-14, Testimony), MassHealth testified exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant was seeking 7 minutes for transfer to room within the home. The Appellant's representative testified that Appellant is unsteady on his feet, has a history of falling, walks slowly, and cannot be rushed. (Testimony). The Appellant's representative further testified that the Appellant needs to be held when moving, needs direction and cueing and is generally not cooperative. (Testimony) MassHealth testified that MassHealth does not provide cueing services, and that time allotted pursuant to the Regulations was for actually moving. (Testimony) The Appellant's representative testified that the Appellant does not have any stairs within his home, but also requires mobility aide to the van for his day services. (Testimony) Based upon this testimony, MassHealth agreed increase the allotment for time for mobility to 120 minutes per week. (Testimony) The Appellant's representative indicated that this was not enough time, despite the increase Optum approved

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<sup>5</sup> See Footnote 3

based upon testimony provided at the Hearing. (Testimony) I find that the Appellant has not met his burden to show the invalidity of MassHealth's determination. No further explanation of the need for 7 minutes for transfer from rooms within an apartment with no stairs was provided. Therefore, the appeal related to the first modification, the ADL of Mobility, is DENIED.

Regarding 2) ADL – Bathing, from 55 minutes 1 time a day, 7 days a week, second bathing (quick wash) 30 minutes, 1 time a day, 7 days a week, shampoo, 5 minutes, 1 time a day, 7 days a week to bathing, 30 minutes, 1 time a day, 7 days a week, second bathing (quick wash) 10 minutes, 1 time a day, 7 days a week (Exhibit 4, pg. 16-17, Testimony), MassHealth testified that the requested times exceeded time and frequency ordinarily required for someone with the Appellant's physical needs for physical assistance with bathing. (Testimony) The Appellant's representative described the Appellant's difficulty with bathing and testified regarding the Appellant's incontinence. (Testimony) MassHealth questioned the request for 55 minutes each day for a bath for the Appellant who does not enjoy bathing in addition to the requested second bath (quick wash) requested at 30 minutes per day (Testimony) The Appellant's representative testified regarding the process of bathing, including not filling the tub due to splash from the Appellant's thrashing, and utilizing a bucket of water to rinse. (Testimony). I find that the Appellant has not met his burden to show the invalidity of MassHealth's determination. No further testimony was offered regarding any need for 55 minutes each day for a bath for the Appellant who does not enjoy bathing nor any testimony to support the requested second bath (quick wash) seeking 30 minutes additional bathing time per day. Therefore, the appeal related to the second modification, the ADL of Bathing, is DENIED.

Regarding 3) ADL – Dressing/Undressing, from 30 minutes, 1 time a day, 7 days a week for dressing and 20 minutes, 1 time a day, 7 days a week for undressing to 15 minutes, 1 time a day, 7 days a week for dressing and 10 minutes, 1 time a day, 7 days a week for undressing (Exhibit 4, pg. 20, Testimony) MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Dressing and Undressing. (Testimony) The Appellant's representative testified the Appellant requires changing due to his incontinence and difficulty eating. (Testimony). MassHealth inquired about the ability of the Appellant to feed himself and the Appellant's representative responded that although he was fed by others and wore a bib, he sometimes spit out his food. (Testimony). The Appellant's representative testified that those helping the Appellant are aware that she (Appeal representative/mother) does not like to see the Appellant with stains on his clothing. (Testimony) MassHealth stated that the request from the PCM was for one time for dressing and one time for undressing each day, not multiple times. The Appellant's representative stated only requesting one time each day for dressing and undressing must have been a mistake by the PCM Agency. I find that the Appellant has not met his burden to show the invalidity of MassHealth's determination. No further details were provided regarding the Appellant's need for the additional time beyond that normally required for someone with the Appellant's physical needs for physical assistance with dressing and undressing for the one time, each, for dressing and undressing as requested by the PCM. Therefore, the appeal related to the third modification, the ADL of

Dressing/Undressing, is DENIED.

Regarding 4) ADL – Toileting, bladder care, from 25 minutes, 7 times a day, 2 days a week and bladder care, 25 minutes, 4 times a day, 5 days a week to bladder care, 10 minutes, 7 times a day, 2 days a week and bladder care, 10 minutes, 4 times a day, 5 days a week (Exhibit 4, pg. 22-23, Testimony), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with toileting. (Testimony) MassHealth testified that the bowel care had been approved as at 15 minutes per episode and noted that the bladder episodes were requested at significantly longer time intervals than bowel episodes. (Testimony) I find that the Appellant has not met his burden to show the invalidity of MassHealth's determination. No further details were provided regarding the Appellant's need for the additional time beyond that normally required for someone with the Appellant's physical needs for physical assistance with toileting with respect to bladder care. Specifically, no explanation was given regarding any need for the requested time for bladder care which was significantly longer than the time requested, and approved, for bowel care. Therefore, the appeal related to the fourth modification, the ADL of Toileting Care (Bladder), is DENIED.

Regarding 5) IADL –Meal Preparation, Dinner from 30 minutes, 7 days a week to 0 minutes, 0 days a week (Exhibit 4, p.31, Testimony). MassHealth testified Breakfast and Lunch were approved as requested, and that Dinner preparation was denied because the Appellant received help from DDS with meal planning and someone was with the Appellant from 4-6PM each weekday. (Testimony, Exhibit 4, pg.48) The Appellant's Representative testified that the allotted times noted at Exhibit 4, pg. 48 were older and inaccurate, but provided no updated specific information regarding hours of DDS aid. (Testimony) The Appellant's representative further testified that although an aid from DDS may be present while the PCA is present, the safety of the Appellant required it. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 30 minutes, 7 days a week for Dinner Preparation, which resolved this issue related to the instant appeal (Testimony) Therefore, the appeal related to the fifth modification, the IADL of Meal Preparation, is DISMISSED. (130 CMR 610.051(B)).

Regarding 6) IADL, Laundry, from 90 minutes per week to 60 minutes per week (Exhibit 4, pg. 32, Testimony), MassHealth testified that the requested times exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance with Laundry. (Testimony) The Appellant's representative testified that the laundry was not located within the home. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 90 minutes per week for Laundry, which resolved this issue related to the instant appeal. (Testimony) Therefore, the appeal related to the sixth modification, the IADL of Laundry, is DISMISSED. (130 CMR 610.051(B)).

Regarding 7) IADL, Housekeeping, Housekeeping, from 90 minutes per week to 60 minutes per week (Exhibit 4, p. 32, Testimony), MassHealth testified that the time requested exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance

with Housekeeping. (Testimony). MassHealth further noted that the Appellant received PCA services and DDS services and inquired regarding the hours during the evening for the multiple caregivers to coordinate housekeeping duties while working overnight. (Testimony) The Appellant's representative testified that DDS covered 12AM until 2AM and the PCA covers 2AM until 6AM, therefore there is not overlapping coverage during the nighttime. (Testimony) After consideration of the testimony of the Appellant's representative, MassHealth agreed to APPROVE the requested 90 minutes per week for Housekeeping, which resolved this issue related to the instant appeal. (Testimony) Therefore, the appeal related to the seventh modification, the IADL of Housekeeping, is DISMISSED. (130 CMR 610.051(B)).

Regarding 8) IADL, Shopping, from 60 minutes per week to 0 minutes per week (Exhibit 4, pg. 33, Testimony)., MassHealth testified that the DDS paperwork indicated that DDS covers shopping for the Appellant. (Testimony, Exhibit 4, pg. 48). The Appellant's representative agreed that DDS covers shopping for the Appellant. (Testimony) The Appellant ACCEPTED this modification and resolved this issue related to the instant appeal. Therefore, the appeal related to the eighth modification, the IADL of Shopping, is DISMISSED. (130 CMR 610.051(B)).

## **Order for MassHealth**

Approve the following PCA hours:

- 1) Mobility: 120 minutes per week
- 2) Meal Preparation<sup>6</sup>: Breakfast – 15 minutes, 7 days a week, Lunch – 30 minutes, 7 days a week, Dinner – 45 minutes, 7 days a week,
- 3) Laundry: 90 minutes per week
- 4) Housekeeping: 90 minutes per 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

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<sup>6</sup> Breakfast and Lunch has already been approved, and remains: Breakfast – 15 minutes, 7 days a week, Lunch – 30 minutes, 7 days a week,

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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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

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