

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



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

**Appeal Number:** 2305039

**Decision Date:** 8/30/2023

**Hearing Date:** 07/27/2023

**Hearing Officer:** Christopher Jones

**Appearance for Appellant:**




**Appearance for MassHealth:**

Mary-Jo Elliott, RN – Optum Rep.



*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; Approved in part	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	8/30/2023	<b>Hearing Date:</b>	07/27/2023
<b>MassHealth's Rep.:</b>	Mary-Jo Elliott, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote	<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 May 19, 2023, MassHealth modified the appellant's request for personal care attendant services, allowing fewer hours than were requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on June 21, 2023. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining that some of the appellant should be allowed less time than requested.

### Summary of Evidence

On or around May 8, 2023, the appellant's personal care management ("PCM") agency submitted a prior authorization reevaluation requesting personal care attendant ("PCA") services for the time period of June 4, 2023, through June 3, 2024. The appellant requested 31 hours and 15 minutes

(1,868 minutes) per week for school weeks and 33 hours (1,978 minutes) per for non-school weeks of day/evening PCA services, and they also requested two hours per night for all weeks. The appellant is a minor child with the primary diagnosis of Trisomy 21 (Down syndrome) and associated diagnoses of delayed speech and global cognitive delays, severe hypotonia ataxia, attention deficit disorder, lowered safety awareness, mild hearing loss, and resistance to care. She is now legally blind due to cortical blindness and was diagnosed with anxiety, possibly related to the blindness. The appellant also has a history of bilateral hip osteotomies and incontinence of bladder and bowel and often constipated.

MassHealth made five modifications to this request for services and authorized 26 hours (1,549 minutes) for school weeks and 26.5 hours (1,579 minutes) for non-school weeks. MassHealth's modifications reduced the requested time for:

- Assistance with stairs from five minutes four times per day (140 minutes per week) down to three minutes four times per day (84 minutes per week);
- Assistance transferring to and from sitting from five minutes six times per day (210 minutes per week) down to two minutes six times per day (84 minutes per week);
- Assistance with dressing from 20 minutes once a day and 10 minutes once a day down to 20 minutes per day (reduction of 70 minutes per week);
- Assistance with undressing from 10 minutes once a day and five minutes once a day down to 10 minutes per day (reduction of 35 minutes per week); and
- Assistance with bladder care from eight minutes eight times per day on non-school days (128 minutes per school weeks and 448 minutes per non-school week) down to eight minutes six times per day on non-school days (96 minutes per school week and 336 minutes per non-school week).

During the hearing, MassHealth agreed to restore all of the time requested for assistance on stairs (56 minutes per week restored). The appellant's new blindness makes her hesitant and her history of hip disorders makes her unsteady even when sighted. MassHealth also partially restored the time for transfers to three minutes per transfer (42 minutes per week restored), as this was just the time it takes to assist the appellant to get up from a bed or a chair. MassHealth's representative testified that it seemed to her that additional time for transferring on or off a toilet was included here instead of in the time for bladder and bowel care. Had she been the initial reviewer, she would have reduced the number of instances of transfers to reflect that this time should have been captured elsewhere on the request. However, she agreed that it was inappropriate to reduce the instances of transferring at this stage in the review. The appellant's mother accepted this modification.

Regarding bladder care, the appellant's mother testified that they give her a lot of fluids as well as MiraLAX every day to help with her constipation. The appellant was recently hospitalized for an issue related to her constipation and incontinence and they are still trying to figure out the best way to manage it. The appellant wears pull-ups as well as padded underwear. She infrequently has accidents because they bring her to the bathroom regularly, about once an hour during the day. Based upon this testimony regarding the appellant's frequent bathroom use, MassHealth agreed to restore all of the time requested (32 minutes per school week and 112 minutes per non-school week).

MassHealth had approved the primary request for dressing and undressing but denied the additional instance of dressing and undressing. Based upon the request for service, the appellant requires "at least a partial change of clothing [due to] soiling and incontinence that occurs throughout the" day. MassHealth's representative testified that any change of clothing due to incontinence should be captured under the toileting category. Unlike the transferring assistance category, however, the initial reviewer did reduce number of instances of assistance. Therefore, MassHealth's representative felt that it was appropriate for the appellant to have their PCM agency submit an adjustment request that correctly categorized these additional clothing changes as toileting assistance if they arose from the appellant's incontinence.

The appellant's mother testified that this care is not entirely incontinence related. While it does happen that she needs changing due to bodily fluids, she also needs changing sometimes due to the mess she makes while she is eating. MassHealth's representative agreed to allow five minutes of time in the undressing category to allow for partial changes resulting from spilling or messiness (35 minutes per week). She also argued that this time should be requested under the eating category of assistance. MassHealth's representative would not go so far as to say that the appellant did not need the additional 10 minutes of dressing time, but rather disputed that this time should not be characterized as "dressing." She referenced the Time for Task Guidelines that MassHealth uses in calculating how much time should be allowed for various tasks, and argued the guidance there requires clothing changes for incontinence be categorized as toileting assistance. The only issue remaining in dispute is the 70 minutes per week for dressing.

## **Findings of Fact**

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

1. The appellant is a minor child with the primary diagnosis of Trisomy 21 and associated diagnoses of delayed speech and global cognitive delays, severe hypotonia ataxia, attention deficit disorder, lowered safety awareness, mild hearing loss, and resistance to care. She is legally blind due to cortical blindness and was diagnosed with anxiety. The appellant also has a history of bilateral hip osteotomies and incontinence of bladder and bowel and constipated. (Exhibit 5, pp. 8-9.)

2. On or around May 8, 2023, the appellant's PCM agency submitted a prior authorization reevaluation for PCA services for the time period of June 4, 2023, through June 3, 2024. The request sought 31 hours and 15 minutes per week for school weeks and 33 hours per week for non-school weeks of day/evening PCA services. It also sought two hours per night for all weeks. (See Exhibit 5.)
3. MassHealth made five modifications to this request for services and authorized 26 hours for school weeks and 26.5 hours for non-school weeks. MassHealth approved all nighttime hours. (Exhibit 1.)
4. During the hearing, MassHealth restored all of the time requested for assistance with stairs (56 minutes), bladder care (32 minutes per school week and 112 minutes per non-school week), and undressing (35 minutes), and restored 42 minutes per week for transferring time. The appellant accepted this partial restoration as resolving this issue. (Testimony by MassHealth's representative; appellant's representative.)
5. MassHealth did not believe a second iteration of dressing should be allowed, as this time should be requested under either the toileting or eating category of assistance. (Testimony by MassHealth's representative.)

## **Analysis and Conclusions of Law**

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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: 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 or bladder needs.

(130 CMR 422.410(A).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth also limits what services it covers within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers “physically assisting” members with their ADLs or the “activity time” of “providing assistance” with IADLs. (See 130 CMR 422.410(A); 422.411(A).) This means that MassHealth does not cover time downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412.)

This appeal is DISMISSED in part with regards to assistance with stairs, bladder care, undressing, and transferring. MassHealth restored a total of 165 minutes per school week and 245 minutes per non-school week for these activities, and the appellant accepted the partial restoration for transferring. Therefore, is no longer a MassHealth action in dispute that requires resolution through a fair hearing decision. (130 CMR 610.051(B).)

The remaining issue solely involves the definition of “dressing.” MassHealth argues that the definition of dressing solely encompasses the action of dressing a person in the morning, and that additional clothing changes resulting from incontinence or messiness should be requested in either toileting to eating assistance. MassHealth’s representative did not argue that the time was not needed, but rather felt that the time should have been categorized differently. This argument is not supported by the regulations, nor is it clear from the Time for Task Guidelines referenced by MassHealth.<sup>1</sup> These Guidelines describe “Dressing” as “[p]utting on, fastening, and taking off all items of clothing, including set-up, donning/removing prosthesis and orthotics.” (Guidelines, p. 7.) There is no reference to clothing in the description of “Eating” and the description of “Toileting” only references assistance with “hygiene and **adjusts** clothes; assist with bowel and bladder and routines; cleans/changes toileting equipment (foley bag, catheter, etc.).” (Guidelines, p. 10 (emphasis added).) MassHealth may allow time for clothing changes under these categories, but it should not deny time for clothing changes requested under “dressing” because it feels the task is better characterized as another category of assistance. This aspect of the appeal is APPROVED. The remaining 70 minutes per week requested for dressing shall be restored as of the beginning of the prior authorization period, June 4, 2023.

## Order for MassHealth

Restore all time agreed to at the hearing (165 minutes per school week and 245 minutes per non-school week) plus 70 minutes per week for dressing as of June 4, 2023. This results in 1,784 minutes per school week and 1,894 minutes per non-school week.

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<sup>1</sup> This document is not available on MassHealth’s website, but it has been made available pursuant to a public records request. (Available at <https://www.masslegalservices.org/system/files/library/Time-for-Tasks%20Guidelines%20for%20the%20MassHealth%20PCA%20Program.pdf> (last visited August 23, 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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Christopher Jones  
Hearing Officer  
Board of Hearings

cc:

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