

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2306351
<b>Decision Date:</b>	10/24/2023	<b>Hearing Date:</b>	08/30/2023
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, 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	<b>Issue:</b>	Personal Care Attendant (PCA) – Modification of Prior Authorization (PA) Request
<b>Decision Date:</b>	10/24/2023	<b>Hearing Date:</b>	08/30/2023
<b>MassHealth's Rep.:</b>	Donna Burns, 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 July 13, 2023, MassHealth approved the appellant's PA request for PCA services but with modifications to the time requested for seven Activities of Daily Living ("ADLs") and one Instrumental Activity of Daily Living ("IADL"). (See 130 CMR 422.412(A), (F); 450.204(A)(1); 503.007(B); 517.008(B)(2); Exhibit (Ex.) 1; and Ex. 6, pp. 4-6). The appellant's mother filed this appeal on his behalf in a timely manner on July 31, 2023. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. (See 130 CMR 610.032(A)(3)).

### Action Taken by MassHealth

MassHealth approved the appellant's PA request for PCA services but with modifications to the time requested for two ADLS.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.412(A),(F);

450.204(A)(1); 503.007(B); and 517.008(B)(2) in modifying the requested times for these ADLs .

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical review examiner, stated the following. The appellant is ■ years old. (Ex. 3; Ex. 6, p. 10). The appellant has a diagnosis of autism, and a relevant medical history that includes sensory issues, poor fine motor skills, poor coordination, and poor safety awareness. (Ex. 6, p. 11). On July 6, 2023, the PCM agency submitted an initial PA request for PCA services. (Ex. 6, p. 7). The PCM agency requested a total of nine hours, 45 minutes of day and evening PCA services a week for one year. (Ex. 1; Ex. 6, pp. 3, 6). Through a notice dated July 13, 2023, MassHealth approved seven hours, 30 minutes of day and evening PCA services a week for dates of service from July 13, 2023 through July 12, 2024. (Ex. 1; Ex. 6, pp. 3, 6). In reaching this determination, MassHealth modified the times requested for two activities of daily living (ADLs): nail care and bladder care. (Ex. 1; Ex. 6, pp. 3, 6).

The PCM agency requested five minutes a week for nail care stating that the appellant was dependent for all grooming tasks because of cognitive deficits, poor fine motor skills, and sensory issues. (Ex. 6, p. 19). MassHealth did not approve any time for nail care because: "THE DOCUMENTATION YOU SUBMITTED INDICATES THAT SOME OF THE SERVICES YOU REQUESTED ARE SERVICES PROVIDED BY FAMILY MEMBERS." (Ex. 1; Ex. 6, pp. 3, 5, 6). The MassHealth representative explained that MassHealth would not give time for nail care for a child of the appellant's age because children of that age are generally dependent on others for nail care. The appellant's mother stated that because of his medical condition, the appellant makes it especially difficult to perform nail care. The appellant often requires the participation of more than one person to perform this task. For example, one individual will sit on the appellant's legs to prevent him from wriggling in order that the other person can cut his toenails. The MassHealth representative stated that there are other ways around this behavior and that she was not going to change the MassHealth determination concerning nail care.

The PCM agency requested five minutes, eight times a day, seven days per week for bladder care. (Ex. 1; Ex. 6, pp. 3, 6). The Occupational Therapist (OT) report that accompanied the PA request stated that the appellant was dependent for toileting. (Ex. 6, p. 8). The PCM agency stated the appellant "is following [a] strict potty training schedule; to be taken to the bathroom every 30-60 minutes; clothing management, on/off toilet, hygiene and hand washing r/t incontinence, cognitive deficits, sensory issues, poor gross/fine motor skills[.]" (Ex. 6, p. 23). MassHealth approved five minutes, four times a day, five days a week and five minutes, six times a day, two days a week. (Ex. 1; Ex. 6, p. 5). MassHealth modified the number of approved episodes per day for two reasons. (Ex. 6, p. 5). First, MassHealth modified the time requested because: "SOME OF THE SERVICES YOU HAVE REQUESTED ARE AVAILABLE AT NO COST TO YOU FROM A LEGAL ENTITY ALREADY OBLIGATED TO PROVIDE THOSE SERVICES" citing 130 CMR 450.204(A)(2), 517.008(B)(2), and 503.007(B)(2). (Ex. 1; Ex. 6, p. 5). Second, MassHealth modified this because "SOME OF THE SERVICES YOU HAVE REQUESTED ARE SOCIAL SERVICES (SUCH AS RESPITE CARE, BABYSITTING, OR

VOCATIONAL REHABILITATION) AND ARE NOT COVERED THROUGH THE PERSONAL CARE ATTENDANT OR TRANSITIONAL LIVING PROGRAM” citing 130 CMR 422.412(A). (Ex. 1; Ex. 6, p. 5).

The MassHealth representative stated that the appellant is out of the house at a school or program five days per week, which is why MassHealth split this activity into the five and two day increments. During the five days, the allotment of time changed because the appellant would likely be going to the bathroom at the school/program at least a few times. MassHealth did not approve the requested eight times per day for the two days per week because MassHealth approved two times for bowel assistance, and it is presumed that the appellant would also take care of his bladder needs at that time. The appellant’s mother stated that the appellant is going to the bathroom at least every 30 minutes, sometimes more, per day. The appellant’s mother stated that they were trying to work with the appellant to get him to go to the bathroom on a scheduled basis. The MassHealth representative stated that PCA services cannot be used for activities such as toilet training.

## Findings of Fact

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

1. The appellant is ■ years old. (Ex. 3; Ex. 6, p. 10; Testimony of the appellant’s mother).
2. The appellant has a diagnosis of autism, and his relevant medical history includes sensory issues, poor fine motor skills, poor coordination, and poor safety awareness. (Ex. 6, p. 11).
3. On July 6, 2023, the PCM agency submitted an initial PA request for PCA services. (Ex. 6, p. 7).
4. The PCM agency requested a total of nine hours, 45 minutes of day and evening PCA services a week for one year. (Ex. 1; Ex. 6, pp. 3, 6).
5. Through a notice dated July 13, 2023, MassHealth approved seven hours, 30 minutes of day and evening PCA services a week for dates of service from July 13, 2023 through July 12, 2024. (Ex. 1; Ex. 6, pp. 3, 6).
6. In reaching this determination, MassHealth modified the times requested for nail care and bladder care. (Ex. 1; Ex. 6, pp. 3, 6).
7. The PCM agency requested five minutes a week for nail care stating that the appellant was dependent for all grooming tasks because of cognitive deficits, poor fine motor skills, and sensory issues. (Ex. 6, p. 19).
8. MassHealth did not approve any time for nail care because “THE DOCUMENTATION YOU SUBMITTED INDICATES THAT SOME OF THE SERVICES YOU REQUESTED ARE SERVICES

PROVIDED BY FAMILY MEMBERS.” (Ex. 1; Ex. 6, pp. 3, 5, 6).

9. All children of the appellant’s age are dependent on someone else to perform nail care regardless of medical condition. (Testimony of the MassHealth representative).
10. The PCM agency requested five minutes, eight times a day, seven days a week for bladder care. (Ex. 1; Ex. 6, pp. 3, 6).
11. The OT report that accompanied the PA request stated that the appellant was dependent for toileting. (Ex. 6, p. 8).
12. The PCM agency stated the appellant “is following [a] strict potty training schedule; to be taken to the bathroom every 30-60 minutes; clothing management, on/off toilet, hygiene and hand washing r/t incontinence, cognitive deficits, sensory issues, poor gross/fine motor skills[.]” (Ex. 6, p. 23).
13. MassHealth approved five minutes, four times a day, five days a week and five minutes, six times a day, two days a week. (Ex. 1; Ex. 6, p. 5).
14. MassHealth modified this for two reasons. (Ex. 6, p. 5).
  - a. First, MassHealth modified the time requested because: “SOME OF THE SERVICES YOU HAVE REQUESTED ARE AVAILABLE AT NO COST TO YOU FROM A LEGAL ENTITY ALREADY OBLIGATED TO PROVIDE THOSE SERVICES” citing 130 CMR 450.204(A)(2), 517.008(B)(2), and 503.007(B)(2). (Ex. 1; Ex. 6, p. 5).
  - b. Second, MassHealth modified this because: “SOME OF THE SERVICES YOU HAVE REQUESTED ARE SOCIAL SERVICES (SUCH AS RESPITE CARE, BABYSITTING, OR VOCATIONAL REHABILITATION) AND ARE NOT COVERED THROUGH THE PERSONAL CARE ATTENDANT OR TRANSITIONAL LIVING PROGRAM” citing 130 CMR 422.412(A). (Ex. 1; Ex. 6, p. 5).
15. The appellant goes to a program or school five days a week, which was the reason MassHealth split this into determinations of five and two days per week. (Testimony of the MassHealth representative).

## **Analysis and Conclusions of Law**

MassHealth does 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. (130 CMR 450.204 A service is medically necessary if 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. (130 CMR 450.204(A)(2)). 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits. (Id.). In general, MassHealth does not pay for any health care and related services that are available at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services. (130 CMR 503.007(B)(2)). The MassHealth PCA program specifically does not cover services provided by family members, a term which includes the parent of a minor member. (130 CMR 422.412(F); 130 CMR 422.402)).

A preponderance of the evidence does not demonstrate that MassHealth incorrectly denied the time requested for nail care. The appellant is [REDACTED] years old. According to the records the appellant is dependent on others to perform this activity. The MassHealth representative stated, however, that according to the standard MassHealth uses, all individuals of the appellant's age, regardless of medical condition, are dependent on others to perform nail care. At this age, the appellant's family is responsible for providing this service.

Under the MassHealth PCA program, 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, are not covered. (130 CMR 422.412(A)).

A preponderance of the evidence does not demonstrate that MassHealth incorrectly modified the time requested for bladder care. According to the PCM agency's submission, the primary reason for requesting the number of daily episodes for bladder care was to follow a "strict potty training schedule" of every 30-60 minutes. The appellant's mother seemed to emphasize this, as well, in her testimony. MassHealth, however, does not pay for these types of service.

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:

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