

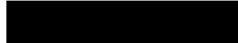
# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2308787
Decision Date:	12/18/2023	Hearing Date:	10/26/2023
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:



Appellant's Mother

Appearances for MassHealth:

Donna Burns, R.N.



*Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Office of Medicaid*  
*Board of Hearings*  
100 Hancock Street  
Quincy, MA 02171

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Prior Approval (PCA Services)
<b>Decision Date:</b>	12/18/2023	<b>Hearing Date:</b>	10/26/2023
<b>MassHealth's Rep.:</b>	Donna Burns, R.N.	<b>Appellant's Rep.:</b>	Appellant's Mother
<b>Hearing Location:</b>	Board of Hearings (Telephonic)	<b>Aid Pending:</b>	No

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated August 15, 2023, MassHealth modified the appellant's request for prior authorization for Personal Care Attendant (PCA) services by denying some of the time requested (Exhibit 1). The appellant filed this appeal in a timely manner on September 25, 2023, seeking approval of the denied time (130 CMR 610.015(B) and Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

## Summary of Evidence

The MassHealth representative, a registered nurse, appeared at the hearing telephonically. She testified that the appellant is a [REDACTED] child with a diagnosis of autism. On August 7, 2023, the appellant's provider submitted a prior authorization (PA) request and re-evaluation for PCA services. The provider requested PCA services in the amount of 4.75 day/evening hours per week, as well as 14 nighttime hours per week, for the prior authorization period of August 23, 2023, to August 22, 2024.<sup>1</sup> MassHealth approved the 4.75 day/evening hours that were requested but denied the nighttime hours (between midnight and 6 a.m.).

The MassHealth representative testified that the time at issue is the request for ten minutes per night for toileting. The PCA evaluation, which is part of MassHealth's hearing packet, reflects that the appellant wears two pull-ups to bed and also sleeps on absorbent pads, but still leaks through to the bed underneath. The evaluation also indicates that the appellant's behavioral therapist recommended the appellant be woken up around 11 p.m. for toileting and changing, and that he also wakes up soaked through and needing to be changed at 5 a.m. The MassHealth representative testified that MassHealth denied this time because there are family members available who can assist with this task and that PCA assistance is not medically necessary during nighttime hours.

The appellant's mother appeared at the hearing telephonically. She explained that the appellant wakes up "saturated" at night and that his ABA therapist helped them devise a strategy that includes waking him up around midnight, toileting him, changing his briefs and pads, and putting him back to bed.<sup>2</sup> In response to notes in the evaluation indicating this occurs at 11 p.m. (before the nighttime PCA hours start), the mother stated that they have shifted this task back to midnight because he is in a deeper sleep at that time and tends to fall back to sleep more easily. In addition, the mother testified that the appellant wakes up needing to be toileted again at around 4:30 or 5 a.m. She added that the PCA is scheduled to go out on maternity leave and that her teenaged daughter (who sometimes works as the appellant's PCA during the day) is not permitted to work at night. She also explained that she works as a nurse and is not always available during these hours.

## Findings of Fact

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

1. The appellant is a [REDACTED] child with a diagnosis of autism.

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<sup>1</sup> The appellant sought only ten minutes per night, but MassHealth rounds up nighttime requests to a minimum of two hours per night (fourteen hours per week).

<sup>2</sup> This information is also reflected in records that the appellant's mother submitted from a September 2023 doctor's visit. See Exhibit 5.

2. On August 7, 2023, the appellant's PCA provider submitted a prior authorization request and re-evaluation for PCA services. The provider requested PCA services in the amount of 4.75 day/evening hours per week, plus 14 nighttime hours per week, for the PA period of August 23, 2023, through August 22, 2024.
3. On August 15, 2023, MassHealth approved the day/evening hours as requested. MassHealth denied the request for nighttime hours.
4. The appellant sought PCA time at night for tasks related to toileting and incontinence care.
5. The appellant wears two pull-ups and sleeps on absorbent pads but still soaks through to the bed. At the recommendation of the appellant's ABA therapist, the appellant is awakened around midnight for toileting and change of his absorbent products. He then wakes up around 4:30 or 5 a.m. and needs to be toileted and changed again.

## **Analysis and Conclusions of Law**

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 or 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 personal care services; and

(c) other special needs approved by MassHealth as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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.

In this case, MassHealth modified the appellant's PA request for PCA services by approving the day/evening hours as requested and denying nighttime services. The appellant's request for nighttime PCA assistance was for tasks around toileting. Specifically, the appellant sought PCA time to assist with waking the appellant during the night for toileting and to change his absorbent products (pull-ups and absorbent pads), and for similar activities at around 4:30 or 5 a.m. MassHealth testified at hearing that this aspect of the PA request was denied because the appellant has family members available to do this task at night and there was no medical necessity for PCA assistance during this time frame.

The appellant has demonstrated the medical necessity of PCA assistance with nighttime toileting. Though there is some information in the PCA evaluation that suggests the appellant is awakened for toileting and related activities at 11 p.m. (which would be before the nighttime PCA shift begins), the mother testified credibly that this is now done around midnight because the appellant is in a deeper sleep at that time. Furthermore, the record indicates that the appellant again requires toileting assistance at around 4:30 or 5 a.m., which plainly falls within the overnight PCA hours. MassHealth has also not pointed to anything in the regulations that would require family members – even if available – to assist with the nighttime toileting routine in lieu of a PCA.<sup>3</sup> Notably, the appellant was approved for PCA assistance with toileting during the day/evening hours, and there is no apparent reason to make a distinction for nighttime hours.

The appellant has demonstrated the medical necessity of the requested nighttime PCA assistance. This appeal is approved.

## **Order for MassHealth**

Approve the appellant's prior authorization request for PCA services in full for the PA period of August 23, 2023, through August 22, 2024.

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<sup>3</sup> Under 130 CMR 422.410(C), when a member is living with family members, the family members will provide assistance with most *instrumental* activities of daily living (such as routine laundry, housekeeping, shopping, and meal preparation). This provision does not apply to activities of daily living such as toileting.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Optum