

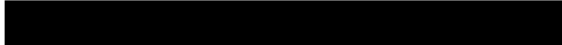
**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	2309752
<b>Decision Date:</b>	12/22/2023	<b>Hearing Date:</b>	11/15/2023
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, RN, Optum



*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 in part; Denied in part	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	12/22/2023	<b>Hearing Date:</b>	11/15/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN, Optum	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Quincy Harbor South	<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 09/12/2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 33 hours and 0 minutes (33:00) of day/evening hours per week for school weeks and 34.00 hours for vacation weeks to 25:15 day/evening hours per week for school weeks and 27:45 for vacation weeks for the dates of service from 09/12/2023 to 09/11/2024 (130 CMR 422.410; Exhibit 1). On 10/11/2023 a timely appeal was filed on the appellant's behalf<sup>1</sup> (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

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

---

<sup>1</sup> The appellant is a minor child who was represented in these proceedings by his mother.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

## Summary of Evidence

Both the appellant's representative and the MassHealth representative appeared telephonically. Exhibits were admitted into evidence (1-4).

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA [REDACTED], Inc. ("provider"), for the dates of service of [REDACTED] to [REDACTED]. In the PA request for PCA services (Exhibit 4), the provider requested 33:00 day/evening hours per week plus 0 daily nighttime attendant hours for school weeks and 34.00 day/evening hours per week for vacation weeks. The appellant is a teenage boy who lives in the community with his mother, grandmother, and [REDACTED]. He has a diagnosis of autism spectrum disorder (Exhibit 4).

The Optum representative testified that on 09/12/2023 MassHealth modified the PCA request to 25:15 day/evening hours per week for school weeks and 27:45 day/evening hours for vacation weeks. Nighttime attendant hours were not requested. Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) tasks of mobility-transfers, dressing, undressing, and eating.

### Mobility-Transfers

The appellant's provider requested 5 minutes, 2 times per day, 5 days per week (5 X 2 X 5) for mobility to and from the school bus on weekdays. The provider also requested 3 X 8 X 5 (school days) and 3 X 10 X 2 (weekends) for transfers. The provider noted the following:

Mobility: He is able to walk - but bolts and wanders if he is not being accompanied. PCA hand-holds him to/from school bus 5 days/week. HE IS NEVER TO BE ALONE. His natural gait has improved - but he loses balance often. Transfers: The need for PCA assistance appears to be lessening, but only if he is guided. On his own, he rushes and prevents safe transfers OOB<sup>2</sup>, on/off all seats, etc. He rushes and-often falls. With PCA assist, he slows down and transfers safely. Repositioning: He is independent with all aspects of repositioning himself.

---

<sup>2</sup> Out of bed.

(Exhibit 4. Emphasis in original.)

MassHealth approved the request for mobility to and from the bus as requested. MassHealth modified the transfer requests to 2 X 8 X 5 and 2 X 10 X 2. The MassHealth representative testified that the time requested is longer than ordinarily necessary for someone with the appellant's abilities. She also testified that the request is for time to supervise or guide the appellant, which is not covered by the PCA program.

The appellant's mother testified that the appellant is "unpredictable," he "runs unexpectedly," and he "needs to be watched." She explained that he once ran and caught his grandmother, hitting her head. The mother testified that she also has a toddler in the home and she is concerned that the appellant is "dangerous to himself and to others." He has no safety awareness and "bolts." The mother stated that the PCA tells the appellant to "get up" and it takes him at least 3 minutes to get him out of a chair.

#### Dressing/Undressing

In the area of dressing, the appellant's PCA provider requested 15 X 1 X 7 for full change of clothes in the morning, preparing for school and 15 X 2 X 7 for a partial change of clothing upon return from school due to soiling and prior to bedtime due to attempt at independent toileting resulting in soiling. The provider requested 10 X 1 X 7 and 7 X 1 X 7 for undressing. The provider noted that the appellant needs physical assistance with both dressing/undressing upper and lower extremities, and he needs assistance with donning and removing footwear.

MassHealth modified the dressing request to 15 X 1 X 7 and 5 X 1 X 7. MassHealth modified the undressing request to 10 X 1 X 7 (approved as requested) and 3 X 1 X 7. The MassHealth representative testified that the time requested was longer than ordinarily necessary for someone with the appellant's abilities.

The appellant's mother testified that it takes 15-20 minutes for the PCA to assist the appellant to dress. She testified that the appellant is dressed and undressed twice a day. He has "sensory issues," and he undresses himself from the waist down. It can take 2 hours a day for the PCA to get the appellant dressed because he "bolts," and the PCA needs to "chase him." He tries to put on his own pants, but he "needs another brain there," and cannot be left along for one minute.

#### Eating

The appellant's provider requested 20 X 3 X 5 (school days) and 20 X 4 X 2 (weekends) for assistance with eating. The appellant receives 3 meals at home and has an additional snack on weekends. The provider notes that the appellant needs physical assistance with eating and drinking, and assistance with utensils/adaptive devices intermittently (1-5 times) per meal. The provider notes:

Although he may start out taking a few morsels (bites), he loses focus due to ADHD and he leaves the table. PCA brings him back to the table and feeds him his meals and fluids to ensure adequate nutrition and hydration. He leaves the table time after time. The PCA has to return him and start again until the meal is completed.

MassHealth modified the request for eating to 15 X 3 X 5 (school days), 15 X 4 X 2 (weekends), and 15 X 4 X 7 (vacations). The MassHealth representative testified that the modified time is the time approved last year. According to documentation, the appellant is able to put food into his mouth. The time requested to chase him and bring him back to the table and to make sure he does not put too much food in his mouth is a non-covered PCA service because it is in the form of cueing, prompting, supervising or coaching.

The appellant's mother testified that the PCA has to remove the spoon from the appellant's mouth when he eats because "he chokes," and "he stuffs food in his mouth." This can take up to 60 seconds. The time is required for safety. The PCA needs to feed the appellant "like a baby." It takes 10 minutes three times a day to assist the appellant to eat.

## Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, UCP MetroBoston, Inc. ("provider"), for the dates of service of 09/12/2023 to 09/11/2024 (Testimony; Exhibit 4).
2. In the PA request for PCA services (Exhibit 4), the provider requested 33:00 day/evening hours per week for school weeks and 34.00 day/evening hours per week for vacation weeks (Testimony; Exhibit 4).
3. No nighttime attendant hours were requested (Testimony; Exhibit 4).
4. The appellant is a teenage boy who lives in the community with his mother, grandmother, and [REDACTED]. He has a diagnosis of autism spectrum disorder (Testimony; Exhibit 4).
5. On 09/12/2023 MassHealth modified the PCA request to 25:15 day/evening hours per week for school weeks and 27:45 day/evening hours for vacation weeks. Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) tasks of mobility-transfers, dressing, undressing, and eating (Testimony; Exhibits 1 and 4).
6. The appellant filed her timely request for a fair hearing with the Board of Hearings on

10/11/2023. A fair hearing was held on 11/15/2023 (Exhibits 2 and 3).

7. The appellant's provider requested 5 minutes, 2 times per day, 5 days per week (5 X 2 X 5) for mobility to and from the school bus on weekdays. The provider also requested 3 X 8 X 5 (school days) and 3 X 10 X 2 (weekends) for transfers. The provider noted the following:

Mobility: He is able to walk - but bolts and wanders if he is not being accompanied. PCA hand-holds him to/from school bus 5 days/week. HE IS NEVER TO BE ALONE. His natural gait has improved - but he loses balance often. Transfers: The need for PCA assistance appears to be lessening, but only if he is guided. On his own, he rushes and prevents safe transfers OOB, on/off all seats, etc. He rushes and-often falls. With PCA assist, he slows down and transfers safely. Repositioning: He is independent with all aspects of repositioning himself.

(Exhibit 4.)

8. MassHealth approved the request for mobility to and from the bus in full. MassHealth modified the transfer requests to 2 X 8 X 5 and 2 X 10 X 2 (Testimony; Exhibit 4).
9. In the area of dressing, the appellant's PCA provider requested 15 X 1 X 7 for full change of clothes in the morning, preparing for school and 15 X 2 X 7 for a partial change of clothing upon return from school due to soiling and prior to bedtime due to attempt at independent toileting resulting in soiling. The provider requested 10 X 1 X 7 and 7 X 1 X 7 for undressing. The provider noted that the appellant needs physical assistance with both dressing/undressing upper and lower extremities, and he needs assistance with donning and removing footwear (Testimony; Exhibit 4).
10. MassHealth modified the dressing request to 15 X 1 X 7 and 5 X 1 X 7. MassHealth modified the undressing request to 10 X 1 X 7 (approved as requested) and 3 X 1 X 7 (Testimony; Exhibit 4).
11. The appellant's provider requested 20 X 3 X 5 (school days) and 20 X 4 X 2 (weekends) for assistance with eating. The appellant receives 3 meals at home and has an additional snack on weekends. The provider notes that the appellant needs physical assistance with eating and drinking, and assistance with utensils/adaptive devices intermittently (1-5 times) per meal. Also, the provider noted

Although he may start out taking a few morsels (bites), he loses focus due to ADHD and he leaves the table. PCA brings him back to the table and feeds him his meals and fluids to ensure adequate nutrition and hydration. He leaves the table time after time. The PCA has to return him and start again until the meal is completed.

(Testimony; Exhibit 4).

12. MassHealth modified the request for eating to 15 X 3 X 5 (school days), 15 X 4 X 2 (weekends), and 15 X 4 X 7 (vacations) (Testimony; Exhibit 4).

13. The MassHealth representative testified that the modified time for eating is the time approved last year (Testimony).

## **Analysis and Conclusions of Law**

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency will 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.

(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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

(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;

(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; or

(G) surrogates, as defined in 130 CMR 422.402.

**(Emphasis added.)**

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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.

The type of PCA services available are described in 130 CMR 422.410 below:

(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 personal care 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 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) 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." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *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).

MassHealth modified the appellant's request for PCA time in three areas where the provider requested time for assistance: mobility-transfers; dressing/undressing; and eating.

In the area of mobility-transfers, the appellant's provider requested 5 minutes, 2 times per day, 5 days per week (5 X 2 X 5) for mobility to and from the school bus on weekdays. The provider also requested 3 X 8 X 5 (school days) and 3 X 10 X 2 (weekends) for transfers. The provider noted the following:

Mobility: He is able to walk - but bolts and wanders if he is not being accompanied. PCA hand-holds him to/from school bus 5 days/week. HE IS NEVER TO BE ALONE. His natural gait has improved - but he loses balance often. Transfers: The need for PCA assistance appears to be lessening, but only if he is guided. On his own, he rushes and prevents safe transfers OOB, on/off all seats, etc. He rushes and-often falls. With PCA assist, he slows down and transfers safely. Repositioning: He is independent with all aspects of repositioning himself.

MassHealth approved the request for mobility to and from the bus in full. MassHealth modified the transfer requests to 2 X 8 X 5 and 2 X 10 X 2. MassHealth based its modification on its opinion that the time requested is longer than normally required for someone with the appellant's abilities and that the request is for time to supervise or guide the appellant, which is not covered by the PCA program. The appellant's mother testified that the appellant is "unpredictable," he "runs unexpectedly," and he "needs to be watched." She explained that he once ran and caught his grandmother, hitting her head. The mother testified that she also has a toddler in the home and she is concerned that he is "dangerous to him and to others." He has no safety awareness and "bolts."

MassHealth's modification is supported by the regulations and the facts in the hearing record. The time requested includes time for cueing, prompting, supervising, and guiding the appellant to complete the task. This time is not covered by the PCA program. Accordingly, this portion of the appeal is denied.

In the area of dressing, the appellant's PCA provider requested 15 X 1 X 7 for full change of clothes in the morning, preparing for school and 15 X 2 X 7 for a partial change of clothing upon return from school due to soiling and prior to bedtime due to attempt at independent toileting resulting in soiling. The provider requested 10 X 1 X 7 and 7 X 1 X 7 for undressing. The provider noted that the appellant needs physical assistance with both dressing/undressing upper and lower extremities, and he needs assistance with donning and removing footwear. MassHealth modified the dressing request to 15 X 1 X 7 and 5 X 1 X 7. MassHealth modified the undressing request to 10 X 1 X 7

(approved as requested) and 3 X 1 X 7. The MassHealth representative testified that the time requested was longer than ordinarily necessary for someone with the appellant's abilities.

The appellant's mother testified that it takes 15-20 minutes for the PCA to assist the appellant to dress. She testified that the appellant is dressed and undressed twice a day. He has "sensory issues," and he undresses himself from the waist down. It can take 2 hours a day for the PCA to get the appellant dressed because he "bolts," and the PCA needs to "chase him." He tries to put on his own pants, but he "needs another brain there," and cannot be left along for one minute.

The mother's testimony is credible that the PCA needs at least 15 minutes to dress the appellant. She provided no specific testimony as to how much time the PCA needs to undress the appellant. Accordingly, MassHealth's modification for undressing is upheld. The modification for dressing is not supported by the evidence in the hearing record. This portion is approved in part (only the dressing in the morning).

The appellant's provider requested 20 X 3 X 5 (school days) and 20 X 4 X 2 (weekends) for assistance with eating. The appellant receives 3 meals at home and has an additional snack on weekends. The provider notes that the appellant needs physical assistance with eating and drinking, and assistance with utensils/adaptive devices intermittently (1-5 times) per meal. Also noted is

Although he may start out taking a few morsels (bites), he loses focus due to ADHD and he leaves the table. PCA brings him back to the table and feeds him his meals and fluids to ensure adequate nutrition and hydration. He leaves the table time after time. The PCA has to return him and start again until the meal is completed.

MassHealth modified the request for eating to 15 X 3 X 5 (school days), 15 X 4 X 2 (weekends), and 15 X 4 X 7 (vacations), the time approved last year (Testimony). MassHealth also credibly testified that the time requested is "in the form of cueing, prompting, supervision, guiding, or coaching," which is not a covered PCA service. The mother the time is required "for safety," to chase the appellant and return him to the table to eat and to make sure that the appellant does not "choke" when he "stuffs food in his mouth."

MassHealth's modification is supported by the regulations above as applied to the facts in the hearing record. The time requested is in the form of supervising the appellant, PCA time that is not covered by MassHealth. This portion of the appeal is therefore denied.

For the foregoing reasons, this appeal is approved in part; denied in part.

## **Order for MassHealth**

For dressing, MassHealth to restore 15 X 1 X 7 for full change of clothes in the morning, retroactive

to 09/12/2023. With regard to other modifications, none.

## **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, Division of Medical Assistance, at the address on the first page of this decision.

## **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.

---

Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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