

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2309989
<b>Decision Date:</b>	12/26/23	<b>Hearing Date:</b>	11/22/2023
<b>Hearing Officer:</b>	Christine Therrien		

**Appearance for Appellant:**



**Appearance for MassHealth/Optum:**

Donna Burns, RN



*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>	PCA - modification
<b>Decision Date:</b>	12/26/23	<b>Hearing Date:</b>	11/22/2023
<b>MassHealth/Optum Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Quincy Harbor South - telephonic		

### 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 10/3/23, MassHealth/Optum modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 22.25 hours per week. (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 10/18/23. (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/Optum modified the appellant's prior authorization request for PCA services.

### Issue

The appeal issue is whether MassHealth/Optum was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying the appellant's prior authorization request for PCA services.

## Summary of Evidence

The MassHealth/Optum representative testified that a prior authorization request for PCA services was received on the appellant's behalf on 9/22/23 from her PCA provider and is a re-evaluation request for the dates of service from 10/23/23-10/11/24. In the prior authorization request for PCA services, the provider requested 22.25 hours per week. The appellant is [REDACTED] old, and she lives with her mother. The primary diagnoses are hypotonicity, developmental delay, hypothyroidism, and ADHD.

The MassHealth/Optum representative testified that MassHealth modified the PCA request to 21.75 hours per week. One modification was made to the request for PCA services in the area of mobility. (Exhibits 1 and 4). The MassHealth/Optum representative testified that the prior authorization request included 3 minutes, twice a day, five days a week to assist the appellant in and out of the home to van for school. The MassHealth/Optum representative testified that the time was modified to zero minutes because this is considered a parental responsibility.

The appellant's mother testified that she is at work when the van arrives, so the PCA takes the appellant to and from the van.

The MassHealth/Optum representative testified that MassHealth does not pay for babysitting services, so MassHealth would not pay for the PCA to be home alone with the appellant.

## Findings of Fact

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

1. A prior authorization request for PCA services was received on the appellant's behalf on 9/22/23 from her PCA provider.
2. The dates of service are from 10/23/23-10/11/24.
3. The provider requested 22.25 hours per week of PCA services.
4. The appellant is [REDACTED] old, and she lives with her mother.
5. The primary diagnoses are hypotonicity, developmental delay, hypothyroidism, and ADHD.
6. MassHealth modified the PCA request to 21.75 hours per week.
7. One modification was made to the request for PCA services in the area of mobility.

8. The prior authorization request included 3 minutes, twice a day, five days a week to assist the appellant in and out of the home to van for school.
9. The time was modified to zero minutes because this is considered a parental responsibility.
10. The appellant's mother testified that she is at work when the van arrives, so the PCA takes the appellant to and from the van.
11. MassHealth does not pay for babysitting services.

## **Analysis and Conclusions of Law**

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all 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 or grooming;
  - d. dressing or undressing;
  - e. range-of-motion exercises;
  - f. eating; and
  - g. toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

130 CMR 422.403(C).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home. (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA. (130 CMR 422.403). Personal care services consist of physical assistance with activities of

daily living (ADLs). (130 CMR 422.410(A)).

120 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living. 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 the MassHealth agency as being instrumental to the health care of the member.

The requested services must also be medically necessary for prior authorization to be approved. (130 CMR 450.204). MassHealth 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 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. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the MassHealth 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.

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.
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

(emphasis added)

Per 130 CMR 503.007, MassHealth is the payer of last resort and only pays for health care and related services when no other source of payment is available, except as otherwise required by federal law.

- (A) Health Insurance. Every applicant and member must obtain and maintain available health insurance in accordance with 130 CMR 505.000: Health Care

- Reform: MassHealth: Coverage Types. Failure to do so may result in loss or denial of eligibility unless the applicant or member is
- (1) receiving MassHealth Standard or MassHealth CommonHealth; and
  - (2) younger than 21 years old or pregnant.
- (B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available
- (1) through the member's health-insurance, if any; or
  - (2) 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.

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 received a prior authorization request for PCA services on the appellant's behalf from her PCA agency. The appellant is [REDACTED] old, and she lives with her mother. The appellant's primary diagnoses are hypotonicity, developmental delay, hypothyroidism, and ADHD.

The appellant's provider requested 3 minutes, twice a day, five days a week to assist the appellant in and out of the home to van for school. This task falls into the category of parental responsibility. 130 CMR 422.412 describes non-covered PCA services and includes "(F) services provided by family members, as defined in 130 CMR 422.402."<sup>1</sup> The appellant's parent is legally obligated to provide assistance with the appellant's ADLs; therefore, those services are available to the appellant at no cost to her and, as such, are not covered by MassHealth. The appellant's mother testified that she is at work when the van comes and the PCA must assist the appellant to and from the school van. If the appellant's mother is not home, then this task falls into the category of social services, which includes babysitting as defined in 130 CMR 422.412, a non-covered PCA service. MassHealth is correct in denying PCA coverage for assisting the appellant to and from the school van in accordance with 130 CMR 450.204(A)(2) and 130 CMR 422.412(A).

This appeal is denied.

## Order for MassHealth

None.

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<sup>1</sup> 130 CMR 422.402: Family Member - the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.

## 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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Christine Therrien  
Hearing Officer  
Board of Hearings

cc:

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