

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part; Dismissed in part	<b>Appeal Number:</b>	2310660
<b>Decision Date:</b>	1/5/2024	<b>Hearing Date:</b>	11/28/2023
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*



**Appearance for MassHealth:**

*Via telephone:*

Donna Burns, Optum 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>	Approved in part; Denied in part; Dismissed in part	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	1/5/2024	<b>Hearing Date:</b>	11/28/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Quincy Harbor South, 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 October 24, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on October 30, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

## Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant, a minor, was represented at hearing via telephone by his mother.

The MassHealth representative testified that the documentation submitted shows the appellant is a minor child with a primary diagnosis of Albright's Hereditary Disease with osteodystrophy. Relevant medical history shows he also experiences growth disorder, pseudoparathyroidism, hypothyroidism, hypertonia, poor coordination, very poor balance, skeletal defects, autism with notable ADHD, chronic lung disease, dysphagia, GERD with intermittent vomiting, severe allergic manifestations especially scattered rashes, and behavioral issues. The appellant is resistive, bolts, wanders, has tantrums, is aggressive towards others, and has no safety awareness. He has an aversion to water on his head and face. His needs continue to increase as he is getting older and bigger because tasks take longer to ensure safety due to resistance to care.

On September 15, 2023, the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services requesting 61 hours and 30 minutes per week for 40.28 school weeks, and 60 hours and 30 minutes per week for 12 vacation weeks, for dates of service of October 18, 2023 through October 17, 2024. On September 27, 2023, MassHealth informed the appellant that it modified the request to 51 hours and 15 minutes per week for 40.28 school weeks, and 53 hours and 30 minutes per week for 12 vacation weeks.<sup>1</sup> MassHealth made modifications related to PCA assistance with the following activities of daily living (ADLs): mobility – assistance in/out of home to van for school; mobility – assistance up/down stairs; transfers; bathing; grooming – nail care; grooming – hair care; grooming – other (applying creams and ointments); dressing; undressing; and other healthcare needs – finger soaks. At hearing, parties were able to resolve the disputes related to mobility – school van; mobility – stairs;<sup>2</sup> bathing;<sup>3</sup> dressing; undressing;<sup>4</sup> and other health care needs – finger soaks.<sup>5</sup> PCA

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<sup>1</sup> On October 24, 2023, MassHealth issued a new notice, which approved the appellant for the same number of hours and also approved the appellant's transfer to a new PCM agency. The appellant appealed the October 24, 2023 notice.

<sup>2</sup> The appellant accepted MassHealth's modifications for mobility – school van at 5 minutes, 2 times per day, 5 days per week and for mobility – stairs at 5 minutes, 6 times per day, 7 days per week, both of which were the times he had for these ADLs last year.

<sup>3</sup> MassHealth fully restored the time as requested for bathing at 20 minutes, 1 time per day, 7 days per week for a quick wash, and 30 minutes, 1 time per day, 7 days per week for a main shower/bath.

<sup>4</sup> MassHealth and the appellant arrived at the following compromise on dressing and undressing: 20 minutes, 1 time per day, 7 days per week and 10 minutes, 2 times per day, 7 days per week for dressing and 10 minutes, 1 time per day, 7 days per week and 10 minutes, 2 times per day, 7 days per week for undressing.

<sup>5</sup> MassHealth and the appellant arrived at the following compromise on other healthcare needs – finger soaks: 7 minutes, 2 times per day, 7 days per week.

assistance with transfers, grooming – nail care, grooming – hair care, and grooming – ointments/creams remain at issue.

As background, the appellant's mother explained Albright's Hereditary Disease and its associated issues. Her son's organs do not work properly. He gets calcifications (pieces of bone developing under the skin) and has numerous skin issues. As it is a hormonal disease, many issues and behaviors have worsened with puberty. He aspirates on certain foods, and needs to be careful how he sits when eating. He also gags on certain foods and throws up at least two times per day. He has constipation issues and has accidents and/or leaking three to four times per day. He can walk on his own; however, he trips often, has balance issues, falls all the time, and gets dizzy very easily. He sees ten to twelve specialists.

### **Transfers**

For transfers, the appellant requested 4 minutes, 4 times per day, 5 days per week on school days and 4 minutes, 8 times per day, 2 days per week on weekends. MassHealth modified the request to 3 minutes, 4 times per day, 5 days per week and 3 minutes, 8 times per day, 2 days per week. The MassHealth representative testified that this is the amount of time he received last year. Additionally, she noted that time for PCA assist is approved for hands-on-help, not cueing, coaching, or managing behaviors.

The appellant's mother explained that it is not a full assist, but the appellant is floppy and his muscles hurt. To help him up, he needs hands under or behind him. He is growing and bigger than he was last year, so it takes longer to assist him with transfers. His behaviors, including fighting and resisting, add to the time it takes. He will be transferred up, then sit down again, and then the PCA has to help him out of the chair or bed all over again. His behaviors are particularly hard in the mornings and evenings. He is ambulatory when he chooses to be, but as it is a hormonal disease and he is hitting puberty, everything is much more unmanageable now. It is not just cueing, but physical assistance because within that one transfer, the PCA must help him up three separate times.

### **Grooming – Nail Care**

The appellant requested 12 minutes, 1 time per day, 4 days per week for nail care. MassHealth modified the request to 6 minutes, 1 time per day, 4 days per week, which is the amount of time he received last year, because the time requested is longer than ordinarily required for this ADL, and there is also time for nail care approved in the finger soaks under other healthcare needs.

The appellant's mother testified that the appellant is prone to ingrown nails and infections in his fingers and toes, which require a lot of nail care. In addition to the twice daily finger soaks, his nails need to be cut, filed, and antibiotic ointment applied to avoid infections and ingrown nails on his hands and feet. It is hands on the entire time because he does not want it done, and it is not

something he can do himself.

MassHealth stated that cutting and filing nails is an acceptable task for a PCA, but applying an antibiotic cream is parental responsibility. Additionally, ingrown nails are an avenue for infection and, as such, not a PCA task. The appellant's mother stated that the antibiotic ointment was only bacitracin. MassHealth agreed that bacitracin would be acceptable for a PCA to apply.

### **Grooming – Hair Care**

The appellant requested 5 minutes, 1 time per day, 7 days per week for hair care. MassHealth modified the request to 3 minutes, 1 time per day, 7 days per week, which is the amount of time he received last year, because the time requested is longer than ordinarily required for this ADL.

The appellant's mother testified that he has a rash and cradle cap on his scalp. The dry skin must be brushed out every day to keep it manageable. He also uses a special shampoo for it daily. MassHealth responded that removing cradle cap would fall under parental responsibility because it involves assessing how much to brush and knowing when to stop. The MassHealth representative explained that the PCA is not a skilled clinician and assessing how much is enough or too much is not for the PCA to do. The appellant's mother responded that it is not a medical procedure. The person brushing stops if there is raw skin.

### **Grooming – Other (applying creams and ointments)**

The appellant requested 5 minutes, 1 time per day, 7 days per week for applying antifungal ointment to toes and feet and medicated ointment to body rashes and 5 minutes, 1 time per day, 7 days per week for applying ointment to calcifications on feet which, if untreated, impacts mobility. MassHealth modified the request to 5 minutes, 1 time per day, 7 days per week for applying regular creams, but any medicated creams or ointments are parental responsibility because the PCA is not allowed to administer medications for children under the age of eighteen.

The appellant's mother explained that none of the creams or ointments (antifungal, medicated ointment for body rashes, or the ointment for calcifications) are prescription. The medicated ointment for the body rash is just hydrocortisone.

MassHealth responded that because something is over-the-counter does not mean it is not medicated. As they are used to treat medical conditions, it falls under parental responsibility. The antifungal and hydrocortisone creams/ointments are stronger over-the-counter creams/ointments than bacitracin.

## Findings of Fact

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

1. The appellant is a minor child with a primary diagnosis of Albright's Hereditary Disease (Testimony and Exhibit 4).
2. On September 15, 2023, MassHealth received a prior authorization request for PCA services requesting 61 hours and 30 minutes per week for 40.28 school weeks, and 60 hours and 30 minutes per week for 12 vacation weeks, for dates of service of October 18, 2023 through October 17, 2024 (Testimony and Exhibit 4).
3. On September 27, 2023, MassHealth modified the request to 51 hours and 15 minutes per week for 40.28 school weeks and 53 hours and 30 minutes per week for 12 vacation weeks (Testimony and Exhibit 4).
4. On October 24, 2023, MassHealth sent another notice informing the appellant of the same modifications and approving the transfer to a different PCM agency (Exhibit 1).
5. The appellant timely appealed the October 24, 2023 notice on October 30, 2023 (Exhibit 2).
6. At hearing, parties were able to resolve the disputes related to mobility – school van; mobility – stairs; bathing; dressing; undressing; and other health care needs – finger soaks (Testimony).
7. The appellant seeks time for PCA assistance with transfers as follows: 4 minutes, 4 times per day, 5 days per week on school days and 4 minutes, 8 times per day, 2 days per week on weekends (Testimony and Exhibit 4).
8. MassHealth modified the request to 3 minutes, 4 times per day, 5 days per week and 3 minutes, 8 times per day, 2 days per week (Testimony and Exhibit 4).
9. The appellant is bigger than he was last year and assisting with transfers takes longer than in the past. Additionally, due to his resistive behaviors, each transfer involves multiple hands-on assists. (Testimony).
10. The appellant seeks time for PCA assistance with grooming – nail care as follows: 12 minutes, 1 time per day, 4 days per week (Testimony and Exhibit 4).
11. MassHealth modified the request to 6 minutes, 1 time per day, 4 days per week (Testimony and Exhibit 4).

12. The appellant is prone to ingrown nails and infections in his fingers and toes. To avoid that, his nails need to be cut, filed, and antibiotic ointment applied (Testimony).
13. The appellant seeks time for PCA assistance with grooming – hair care as follows: 5 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
14. MassHealth modified the request to 3 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
15. The appellant has a rash and cradle cap on his scalp which requires the dry skin to be brushed out every day (Testimony).
16. The appellant seeks time for PCA assistance with grooming – other (applying creams and ointments) as follows: 5 minutes, 1 time per day, 7 days per week for applying antifungal ointment to toes and feet and medicated ointment to body rashes, and 5 minutes, 1 time per day, 7 days per week for applying ointment to calcifications on feet (Testimony and Exhibit 4).
17. MassHealth modified the request to 5 minutes, 1 time per day, 7 days per week for applying regular creams, but any medicated creams or ointments are parental responsibility (Testimony and Exhibit 4).
18. None of the ointments or creams (antifungal, medicated ointment for body rashes, and ointment for calcifications) are prescription. The medicated ointment for the body rashes is hydrocortisone. (Testimony).

## **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 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 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.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.  
See 130 CMR 450.204



Pursuant to 130 CMR 422.410(A), 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.

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.

See, 130 CMR 422.412 (emphasis added).

The part XXVI(A) of the PCA Operating Standards states the following regarding PCA evaluation requests:

2) The PCM Agency Nurse Evaluator evaluates **non-skilled care** and assesses if the task can be safely performed for the child by the PCA. The following tasks are examples that may be considered non-skilled services and can be requested if assessed to be safely performed for the child by the PCA:

- a) Gastrostomy tube (G-tube) feedings
- b) G-tube site care (as part of bathing)
- c) Oral suctioning

3) The PCM Agency Nurse Evaluator identifies if skilled care services are required for the consumer. **Skilled care services are not appropriate services to be completed by a PCA and generally should not be requested.** Skilled care services are considered to be high risk and unsafe tasks to be performed by a PCA and therefore, should be performed by a skilled clinician, parent, legal guardian or designee. These services require individuals with training in specialized skills, clinical assessment, and judgment to promote safe and effective care for consumers whose conditions may be complex. The following tasks are examples of skilled care services that are generally performed by trained healthcare professionals:

- a) Feeding a child with a high aspiration risk
- b) Medication administration
- c) Oxygen administration
- d) Tracheal care and suctioning
- e) Chest physical therapy (Chest PT)
- f) Cough assist therapy
- g) Chest vest therapy
- h) Nebulizer treatments
- i) Complex Wound Care
- j) Catheterizations
- k) Peripherally Inserted Central Catheter (PICC) line and central line dressing changes
- l) Total Parenteral Nutrition (TPN)
- m) Intravenous (IV) therapy and IV medication administration.

The appeal is dismissed as to PCA assistance with mobility – school van; mobility – stairs; bathing; dressing; undressing; and other health care needs – finger soaks because at hearing the parties were able to resolve those disputes. The appellant accepted MassHealth’s modifications for mobility – to and from the school fan and mobility – stairs. MassHealth fully restored the time as requested for bathing at 20 minutes, 1 time per day, 7 days per week for a quick wash and 30 minutes, 1 time per day, 7 days per week for a main shower/bath. MassHealth and the appellant agreed to compromise on dressing and undressing as follows: 20 minutes, 1 time per

day, 7 days per week and 10 minutes, 2 times per day, 7 days per week for dressing, and 10 minutes, 1 time per day, 7 days per week and 10 minutes, 2 times per day, 7 days per week for undressing. MassHealth and the appellant agreed to compromise on other healthcare needs – finger soaks as follows: 7 minutes, 2 times per day, 7 days per week.

As to the appellant's request for PCA assistance with transfers, the appeal is approved. The appellant requested 4 minutes, 4 times per day, 5 days per week on school days and 4 minutes, 8 times per day, 2 days per week on weekends, but MassHealth only approved 3 minutes per episode. The appellant has demonstrated that transfers take longer than the time approved. The appellant's mother credibly testified that the hands-on task of transfers takes at least 4 minutes every time. Not only is the appellant bigger than last year, requiring additional time, but due to his behaviors, each transfer actually involves multiple hands-on transfers because the appellant will be transferred out of the bed or chair, then sit back down and need to be transferred out again. This happens about three times per transfer. For this reason, the appellant has shown that additional PCA assistance with transfers is necessary. The appellant is approved for transfers as requested: 4 minutes, 4 times per day, 5 days per week on school days and 4 minutes, 8 times per day, 2 days per week on weekends.

Regarding the appellant's request for PCA assistance with grooming – nail care, the appeal is approved in part and denied in part. The appellant has demonstrated that PCA assistance takes longer than the time approved (6 minutes, 1 time per day, 4 days per week), but has not sufficiently demonstrated that it takes the 12 minutes requested, especially given that additional time for nail care is incorporated into the time allowed for other healthcare needs – finger soaks. The appellant's mother credibly testified that the appellant is prone to infections and ingrown nails. Time is needed for cutting, filing, and applying bacitracin to fingernails and toenails to reduce infections. MassHealth agreed that the PCA could apply bacitracin, but not other stronger creams or ointments. The appellant is not always cooperative, and the entire task is hands-on. For these reasons, the appellant has shown that additional time is medically necessary for grooming – nail care and he is approved for 9 minutes, 1 time per day, 4 days per week.

Regarding the appellant's request for PCA assistance with grooming – hair care, the appeal is denied. The appellant has not shown demonstrated that PCA assistance with hair care takes longer than the time approved. While the appellant needs his scalp brushed daily for cradle cap, that involves assessment that is beyond the scope of a PCA's role, and is the parent's responsibility.

Regarding the appellant's request for PCA assistance with grooming – other (applying creams and ointments), the appeal is approved. The appellant requested 5 minutes, 1 time per day, 7 days per week for applying antifungal ointment to toes and feet, and medicated ointment (hydrocortisone) to body rashes and 5 minutes, 1 time per day, 7 days per week for applying ointment to calcifications on feet. All of the ointments are over-the-counter and not prescriptions.

MassHealth stated that the PCA could apply bacitracin. I see little distinction between bacitracin and the other over-the-counter ointments and creams, which include hydrocortisone and antifungal foot ointment. As simple, over-the-counter medications that are applied as any lotion would be, administering them does not equate to a “high risk, unsafe” task or “skilled care services generally performed by a trained healthcare professional.” According to the PCA Operating Standards, G-tube feedings, G-tube site care, and oral suctioning are examples of non-skilled care that a PCA can safely complete. A PCA should be able to safely apply the requested over-the-counter ointments and creams, a simpler task than G-tube feedings, G-tube site care, and oral suctioning. Therefore, the appellant is approved for grooming – other (applying creams and ointments) as requested as follows: 5 minutes, 1 time per day, 7 days per week for applying antifungal ointment to toes and feet and medicated ointment to body rashes and 5 minutes, 1 time per day, 7 days per week for applying ointment to calcifications on feet.

## **Order for MassHealth**

Approve the appellant for 4 minutes, 4 times per day, 5 days per week on school days and 4 minutes, 8 times per day, 2 days per week on weekends for transfers. Approve the appellant for 9 minutes, 1 time per day, 4 days per week for grooming – nail care. Approve the appellant for 5 minutes, 1 time per day, 7 days per week for applying antifungal ointment to toes and feet and medicated ointment to body rashes and 5 minutes, 1 time per day, 7 days per week for applying ointment to calcifications on feet for grooming – other (applying ointments and creams). Implement the agreements made at hearing for mobility – school van; mobility – stairs; bathing; dressing; undressing; and other healthcare needs – finger soaks.

## **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.

## 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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Alexandra Shube  
Hearing Officer  
Board of Hearings

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