

**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>	2310843
<b>Decision Date:</b>	01/19/2024	<b>Hearing Date:</b>	12/07/2023
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



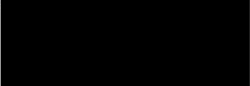
**Appearance for MassHealth:**

Kelly Rayan



*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
<b>Decision Date:</b>	01/19/2024	<b>Hearing Date:</b>	12/07/2023
<b>MassHealth's Rep.:</b>	Kelly Rayan	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<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 26, 2023, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant filed this appeal in a timely manner on November 3, 2023. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services.

### Summary of Evidence

All parties appeared by telephone. The appellant's grandmother, who is also his legal guardian, appeared with the appellant's PCA. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 4. The appellant is under the age of 18 and has a primary diagnosis of autism. The appellant is non-verbal, resistive to care, has cognitive deficits and cannot initiate a task. (Testimony; Exhibit 4). On October 4, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services from the Arc of the South Shore. (Testimony; Exhibit 4).

The appellant requested 28.25 day/evening hours each week. (Testimony; Exhibit 4). MassHealth modified this request and approved 4.75 hours each week. (Testimony; Exhibit 4). Dates of service are October 30, 2023 through October 29, 2024. (Testimony; Exhibit 4). MassHealth modified the time requested for 10 tasks. (Testimony; Exhibit 4). At hearing, MassHealth restored the time requested for: mobility (5 minutes, 2 times each day, 5 days each week); showering (15 minutes, 1 time each day); and hair care (3 minutes, 1 time each day).

During the course of the hearing, MassHealth agreed to adjust their decision and approve 1 minute each day for "other" grooming tasks. The appellant's representative initially agreed with that modification. However, at the end of the hearing, the appellant's representative stated that she was not in agreement with any of the adjustments made by MassHealth. Therefore, this decision will address the 7 tasks where MassHealth did not approve the time requested.

The appellant requested 10 minutes, 1 time each week for assistance with nailcare. MassHealth denied this time as the agency determined that it is expected of a parent or legal guardian to perform this task on a child of the appellant's age.

The appellant's personal care attendant (PCA) testified that the appellant's grandmother is his legal guardian and has difficulty performing this task on her own due to the appellant's strength. It was noted at the hearing that the appellant has been approved for the time requested in the past. At the hearing, the MassHealth representative agreed to offer 5 minutes each week for assistance with this task. The appellant's representative did not agree with this proposed adjustment noting that it takes more than 5 minutes to complete the task with more than one person performing the task as one must hold the appellant while the other attempts to file or trim the nails.

The appellant requested 3 minutes, 1 time each day, 7 days each week for assistance with other grooming tasks. The MassHealth representative noted that there was no information provided regarding these "other" tasks so MassHealth denied the time requested. Initially, neither the appellant's PCA nor his grandmother could explain the reason for this request. They then discussed the possibility of the time being requested for assistance with the application of lotion in the morning.

The appellant's PCA testified that the appellant has eczema and requires the application of a lotion to help reduce inflammation. The PCA testified that the appellant originally had a prescription to

treat an outbreak and once that treatment completed, the doctor recommended that the appellant continue with the application of an over-the-counter lotion each morning. The lotion is applied to areas where the appellant is more susceptible to outbreaks. At hearing, the MassHealth representative agreed to approve 1 minute, 1 time each day, 7 days each week for this task. As noted above, the appellant's representative originally agreed with this new modification but then at the end of the hearing determined that she did not.

The appellant requested 8 minutes, 2 times each day for assistance with dressing. MassHealth initially denied all of the time requested for assistance with dressing. The appellant cannot dress himself at all and requires hands-on assistance with the entire process of dressing. The appellant wears a pull-up and often has accidents during the day. The appellant's PCA testified that the appellant often strips off his clothes and then requires assistance in getting them back on during the day. The PCA testified that the appellant also vomits frequently and needs to be changed when that occurs.

At hearing, the MassHealth representative offered to provide 5 minutes, 2 times each day to allow time for getting dressed in the morning and at night. The MassHealth representative testified that other behavioral issues are not within the scope of approving time for PCA services as they seem anticipatory. The appellant's PCA testified that the appellant has been approved for the time requested in the past so did not understand the adjustment made this year as the appellant's condition has not improved.

The appellant requested 15 minutes, 2 times each day, 5 days each week and 15 minutes, 3 times each day, 2 days each week for assistance with eating. MassHealth denied all of the time requested.

The appellant's PCA testified that the appellant sits in a booster seat and requires hands on assistance with utensils. The appellant can hold a fork and spoon but cannot bring them to his mouth on his own. The appellant will not use any modified utensils. The appellant also has developed gastrointestinal issues that cause vomiting at times. The appellant's PCA testified that eating often involves texture issues for the appellant and he will vomit if he does not want the food. The appellant does not eat at school other than snacks that he can eat with his fingers due to his inability to use utensils.

At hearing, MassHealth agreed to provide 5 minutes for assistance with eating as the MassHealth representative testified that the agency only provides time for hands-on assistance with tasks. The appellant's PCA testified that meals take longer than 15 minutes and the time requested is for hands-on assistance as the appellant requires assistance with eating the entire meal.

The appellant requested 4 minutes, 7 times each day, 2 times each week and 4 minutes, 5 times each day, 5 days each week for assistance with bladder care. The appellant requested 10 minutes, 1 time each day, 7 days each week for assistance with bowel care. MassHealth modified this

request and approved 10 minutes, 2 times each day for assistance with toileting. MassHealth did not specify time for bladder or bowel care.

The appellant has incontinence issues and uses pull-ups when he is at home. The appellant wears underwear to school and brings a change of clothing to school. The appellant is able to use the toilet but requires assistance with clothing. The appellant often has accidents and needs frequent changes to pull-ups or underwear.

The PCA testified that the appellant goes to the bathroom twice before going to school and then uses the bathroom at least 4 times when he is home from school in the afternoon and evening. On the weekends, the appellant goes to the bathroom about 7 times each day and also requires frequent changes to the pull-ups. The appellant's PCA testified that the pull-ups are changed almost every time the appellant uses the toilet. The PCA testified that the appellant is better at using the toilet at school than at home. The MassHealth representative testified that MassHealth does not approve time for cueing, prompting, guiding and coaching.

Initially, the appellant's representative did not challenge the modification to the time requested for bladder and bowel care but as noted above, at the end of the hearing, the appellant's representative stated that she did not agree with any of the modifications.

The appellant requested 10 minutes each night for assistance with toileting. Pursuant to MassHealth Transmittal Letter PCA-13, MassHealth will round up the time to two billable hours when the request for nighttime services is for 120 minutes or less per night and round up to the nearest billable hour for requests for activity time over 120 minutes. In this case, the appellant requested time that was rounded up to two billable hours for nighttime assistance with bladder care.

The appellant wears pull-ups at night. The appellant wakes up frequently and requires changes to the pull-ups due to accidents. Additionally, the appellant wears pajamas backwards to prevent him from taking them off at night. When the appellant wakes up at night to use the bathroom, he needs assistance in getting ready to use the toilet. The appellant's PCA testified that the appellant has bowel movements at night that often result in having to change a pull-up. The appellant also wakes up at night and does not go back to sleep as he cannot distinguish daytime from nighttime so often requires assistance with other ADLs at night.

## **Findings of Fact**

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

1. The appellant is under the age of 18 and has a primary diagnosis of autism.
2. The appellant is non-verbal, resistive to care, has cognitive deficits and cannot initiate a task.
3. On October 4, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services.
4. The appellant requested 28.25 day/evening hours each week.
5. MassHealth approved 4.75 hours each week.
6. Dates of service are October 30, 2023 through October 29, 2024.
7. MassHealth modified the time requested for 9 tasks.
8. At hearing, MassHealth restored the time requested for:
  - mobility (5 minutes, 2 times each day, 5 days each week);
  - showering (15 minutes, 1 time each day); and
  - hair care (3 minutes, 1 time each day).
9. The appellant requested 10 minutes, 1 time each week for assistance with nailcare.
10. MassHealth denied the time requested for nailcare due to the expectation that this was a task to be performed by a parent or legal guardian on a child of the appellant's age.
11. The appellant's grandmother is his legal guardian and has difficulty performing this task on her own due to the appellant's strength.
12. The appellant has been approved for the time requested for nailcare in the past.
13. The appellant needs to be held down and it takes more than one person and at least 10 minutes or more to complete nailcare.
14. The appellant requested 3 minutes, 1 time each day, 7 days each week for assistance with "other" grooming tasks.
15. The prior authorization form did not provide any information regarding "other" grooming tasks.

16. The appellant requires assistance with the application of lotion each morning to reduce inflammation caused by eczema.
17. The appellant requested 8 minutes, 2 times each day for assistance with dressing.
18. MassHealth denied all of the time requested for assistance with dressing.
19. The appellant requires hands-on assistance with the entire process of dressing.
20. The appellant wears a pull-up and often has accidents that require clothing changes.
21. The appellant often strips off his clothes and then requires assistance in getting them back on.
22. The appellant's frequent vomiting requires clothing changes.
23. The appellant requested 15 minutes, 2 times each day, 5 days each week and 15 minutes, 3 times each day, 2 days each week for assistance with eating.
24. MassHealth denied all of the time requested for assistance with eating.
25. During meals, the appellant sits in a booster seat.
26. The appellant requires hands on assistance with utensils.
27. The appellant can hold a fork and spoon but cannot bring them to his mouth on his own.
28. The appellant will not use any modified utensils.
29. The appellant does not eat at school other than snacks that he can eat with his fingers.
30. The appellant requested 4 minutes, 7 times each day, 2 times each week and 4 minutes, 5 times each day, 5 days each week for assistance with bladder care.
31. The appellant requested 10 minutes, 1 time each day, 7 days each week for assistance with bowel care.
32. MassHealth approved 10 minutes, 2 times each day for assistance with toileting.
33. The appellant has incontinence issues and uses a pull-up when he is at home.
34. The appellant wears underwear and has a change of clothes at school.

35. The appellant is able to use the toilet but requires assistance in getting ready to go on to the toilet.
36. The appellant often has accidents and needs frequent changes to his pull-ups or underwear.
37. The appellant goes to the bathroom twice before going to school and then uses the bathroom at least 4 times when he is home from school in the afternoon and evening.
38. On the weekends, the appellant goes to the bathroom about 7 times each day and requires changes to the pull-ups.
39. The appellant requested 10 minutes for assistance with toileting each night.
40. The appellant wears pull-ups at night.
41. The appellant wakes up frequently and requires changes to the pull-ups due to accidents.
42. The appellant wears pajamas backwards to prevent him from taking them off at night.
43. The appellant requires assistance in getting ready to use the toilet at night.

## **Analysis and Conclusions of Law**

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). 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 PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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. assistance with medications or other health related needs;



- c. bathing/grooming;
- d. dressing or undressing;
- e. passive range-of-motion exercises;
- f. eating; and
- g. toileting.

(4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets these conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as “medically necessary” if 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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

Upon hearing testimony and reviewing evidence at hearing, MassHealth adjusted their decision and approved the time requested for the following tasks: mobility (5 minutes, 2 times each day, 5 days each week); showering (15 minutes, 1 time each day); and hair care (3 minutes, 1 time each day). As MassHealth restored the time requested for these tasks, the issue on appeal has been resolved regarding these tasks. Therefore, this part of the appeal is dismissed. (130 CMR 610.035; 130 CMR 610.051).

Activities of daily living include physically assisting a member with bathing, personal hygiene, or grooming. (130 CMR 422.410(A)(3)). Records and testimony presented at hearing demonstrate that the appellant requires the time requested for assistance with nailcare as appellant’s current behavioral issues and strength require more than one person to complete the task and this strength will likely increase due to his age and physical growth. As the records and testimony presented at hearing indicate that the time requested for assistance with nailcare is medically necessary, the modification made by MassHealth was not correct. (130 CMR 422.410(A)(3); 130 CMR 450.204). This part of the appeal is approved.

The appellant requested time for “other” grooming tasks. Despite the lack of clarification by the Personal Care Management (PCM) agency and representatives at hearing, MassHealth agreed to adjust their decision and approve 1 minute, 1 time each day, 7 days each week for the application of lotion. This part of the appeal is approved in part to support the decision made by MassHealth at hearing to provide some time for these “other” grooming tasks but not all of the time requested

due to a lack of clarity in the records from the PCM agency and testimony at hearing. (130 CMR 422.410(A)(3); 130 CMR 450.204).

Activities of daily living include physically assisting a member with dressing and undressing. (130 CMR 422.410(A)(4)). Similar to testimony and evidence regarding the time requested for nailcare and documentation indicating that the appellant is resistive to care and cannot initiate a task, the appellant demonstrated that the time requested for dressing was medically necessary. The modification made by MassHealth was not correct. (130 CMR 422.410(A)(4); 130 CMR 450.204). This part of the appeal is approved.

Activities of daily living include physically assisting a member with eating. (130 CMR 422.410(A)(6)). Testimony and evidence presented at hearing demonstrate that the appellant requires the time requested for this task. In addition to records showing a resistance to care, inability to initiate a task, and cognitive deficits, testimony of the appellant's PCA regarding the appellant only having snacks at school and not a meal indicate that the appellant requires hands-on assistance at each meal. The time requested, 15 minutes is reasonable as the appellant's PCA testified that the entire meal often takes more than 15 minutes and the appellant requires hands-on assistance with each bite. As the appellant demonstrated that the time requested for eating was medically necessary, the modification made by MassHealth was not correct. (130 CMR 422.410(A)(6); 130 CMR 450.204). This part of the appeal is approved.

Activities of daily living include physically assisting a member with bowel or bladder needs. (130 CMR 422.410(A)(7)). Records presented by MassHealth and testimony of the appellant's PCA and grandmother demonstrate that the appellant requires the time requested for assistance with bowel and bladder care as the appellant has incontinence issues and requires assistance in getting on the toilet partly due to his inability to initiate a task. Additionally, MassHealth was not clear as to how they determined that 10 minutes, 2 times each day was sufficient for toileting as most individuals use a toilet more than two times each day. The agency should not be able to modify time in this manner when they require a PCM agency to submit requests based on time for each individual task. As the appellant demonstrated that the time requested for toileting was medically necessary, the modification made by MassHealth was not correct. (130 CMR 422.410(A)(7); 130 CMR 450.204). This part of the appeal is approved.

In addition to time for day/evening hours, the appellant requested 10 minutes for assistance with toileting at night. Pursuant to MassHealth Transmittal Letter PCA-13, MassHealth will round up the time to 2 billable hours when the request for nighttime services is for 120 minutes or less per night and round up to the nearest billable hour for requests for activity time over 120 minutes. In this case, the appellant requested less than 120 minutes and MassHealth rounded up to two billable hours for nighttime assistance with toileting.

As noted above, MassHealth approved time for toileting during the day. Additionally, the appellant's PCA and grandmother testified that the appellant wears his pajamas backwards to

prevent him from undressing at the night resulting in the need for assistance in getting undressed to use the toilet at night. Also, the appellant wears a pull-up at night but requires it to be changed most nights. It is not clear why MassHealth would approve time for toileting during the day but not at night. As the appellant demonstrated that the time requested for toileting at night is medically necessary, the modification made by MassHealth was not correct. (130 CMR 422.410(A)(7); 130 CMR 450.204; MassHealth Transmittal Letter PCA-13). This part of the appeal is approved.

As noted above, this appeal is dismissed in part, denied in part and approved in part.

## **Order for MassHealth**

Adjust the modifications made to the time requested for PCA services and approve the following as of October 3, 2023:

- Mobility: 5 minutes, 2 times each day, 5 days each week;
- Showering: 15 minutes, 1 time each day, 7 days each week;
- Hair Care: 3 minutes, 1 time each day, 7 days each week;
- Nail Care: 10 minutes, 1 time each week;
- “Other” Grooming: 1 minute, 1 time each day, 7 days each week;
- Dressing: 8 minutes, 2 times each day, 7 days each week;
- Eating: 15 minutes, 2 times each day, 5 days each week and 15 minutes, 3 times each day, 2 days each week;
- Bladder Care: 4 minutes, 7 times each day, 2 times each week and 4 minutes, 5 times each day, 5 days each week;
- Bowel Care: 10 minutes, 1 time each day, 7 days each week; and
- Nighttime: 2 hours each night.

## **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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

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