

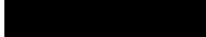
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2311954
<b>Decision Date:</b>	1/8/2024	<b>Hearing Date:</b>	12/21/2023
<b>Hearing Officer:</b>	Paul C. Moore		

**Appearance for Appellant:**

 mother (by telephone)

**Appearance for MassHealth:**

Kelly Rayen, R.N., clinical reviewer, Optum (by telephone)



*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 authorization, PCA services for a child
<b>Decision Date:</b>	1/8/2024	<b>Hearing Date:</b>	12/21/2023
<b>MassHealth Rep.:</b>	Kelly Rayen, R.N.	<b>Appellant Rep.:</b>	Mother
<b>Hearing Location:</b>	Board of Hearings (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 November 1, 2023, MassHealth modified the appellant's prior authorization (PA) request for 25 hours, 30 minutes of personal care attendant (PCA) services per week to 10 hours, 30 minutes of PCA services per week, for the time period November 29, 2023 through November 28, 2024 (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on November 22, 2023 (130 CMR 610.015; Exhibit 2). Modification of a PA request is valid grounds for appeal to BOH (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

### Issue

Was MassHealth correct, pursuant to 130 CMR 422.410(A) and (B), and 130 CMR 450.204(A), to modify the appellant's PA request for PCA services?

## Summary of Evidence

The MassHealth representative, who is a Registered Nurse consultant with Optum, testified that the appellant is a [REDACTED] child who lives in the community with his parents. His medical diagnoses include attention deficit hyperactivity disorder (ADHD), cognitive deficits, and behavioral issues. The MassHealth representative testified that Arc of the South Shore, a Personal Care Management services agency (“PCM agency”), submitted a PA re-evaluation request to MassHealth on the appellant’s behalf on or about October 15, 2023, seeking 25 hours, 30 minutes of PCA services per week, for the time period November 29, 2023 through November 28, 2024.<sup>1</sup> By notice dated November 1, 2023, MassHealth modified the PA request to ten hours, thirty minutes of PCA services per week for the same time period (Testimony, Exh. 3).

The first area modified by MassHealth was for the activity of daily living (ADL) of mobility/transfers.<sup>2</sup> The PCM agency requested, on the appellant’s behalf, 5 minutes, twice per day, five days per week of PCA assistance “bring[ing] the appellant to and from the [school] van for safety” (Exh. 3, pp. 11-12). The MassHealth representative testified that no PCA assistance time was allowed for this ADL, since escorting the appellant to and from his school van is considered cueing, guiding, and supervision, which are not services covered by the PCA program. Further, the MassHealth representative said PCA assistance with this task would be appropriate if the appellant had a history of “bolting” (Testimony).

The appellant’s mother, who is his appeal representative, testified by telephone that the appellant is in the sixth grade, and that he has an individualized education plan (IEP) at school. According to his mother, due to his ADHD, he has little safety awareness. For example, the appellant does not look both ways before crossing a street. The appellant’s mother explained that the school van does not stop directly in front of the family’s condominium, and that the PCA, if present, walks the appellant, hand in hand, from there to the van stop every morning. Most recently, the appellant’s PCA has not come in the mornings, but only in the afternoons. The PCA is present when the appellant returns home from school, and the PCA walks the appellant, hand in hand, from the school van back to his condominium. The appellant’s mother testified that sometimes the appellant needs hands-on assistance ambulating at home as well. At least once, at a mall, the appellant ran away from his parents (Testimony).

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<sup>1</sup> PCA hours requested include day, evening and night hours.

<sup>2</sup> Activities of daily living are defined at 130 CMR 422.402 as (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 bathing, personal hygiene, or grooming; (4) dressing: 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 or bladder needs.

Notes about the appellant contained in the PA request submitted by the PCM agency state:

Unable to initiate, follow through or complete a task without assist – must hold [appellant] in place to task to prevent distraction and bolting.

(Exh. 3, p. 8; p. 15)

The appellant's mother testified that currently, since the appellant does not have a PCA available in the morning, the appellant or her husband always accompany the appellant to the school van in the morning, and arrange their work schedules to accommodate this task (Testimony).

The next ADL about which the MassHealth representative testified is nighttime assistance with bladder care and bowel care. The PCM agency requested, on the appellant's behalf, 10 minutes of PCA assistance every night for bladder care, and 20 minutes of PCA assistance every night for bowel care. MassHealth did not allow any PCA assistance time at night for these ADLs. The MassHealth representative pointed out that notes in the PCM agency evaluation state that the appellant wears pull-ups at night, and she opined that therefore, the appellant should not need assistance with hygiene at night. In addition, the MassHealth representative stated that the appellant has the functional ability to get to and from the bathroom on his own (Testimony, Exh. 3, p. 20).

MassHealth did authorize PCA assistance time for the appellant, for his bladder care and bowel care, during days/evenings (Exh. 3, p. 20).

The appellant's mother testified that the appellant is incontinent of bladder. He is prescribed laxatives by a physician because he has irregular bowel movements. Consequently, he is sometimes incontinent of bowel as well. He sometimes wear pull-ups at night, but occasionally, the pull-ups do not contain his urine or feces completely.<sup>3</sup> He then needs to be changed, and his linens need to be changed. The appellant's mother testified that these episodes occur approximately four to five nights per week (Testimony).

The MassHealth representative testified that the MassHealth PCA program does not pay PCAs to assist with anticipatory or intermittent health care needs, and MassHealth considers these incontinence episodes experienced by the appellant to be intermittent (Testimony).

According to the appellant's mother, when the appellant has bladder or bowel incontinence at night, he will call out to her. No PCA is present in the appellant's home at night. When the appellant needs help at night, the appellant's mother will go to his room, take him to the

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<sup>3</sup> The appellant's mother testified that she buys pull-ups for the appellant when she can afford them. MassHealth covers the cost of absorbent products for members, subject to certain requirements, as set forth at 130 CMR 409.401 *et seq.*

bathroom, and clean him up. She then assists him to change his pajamas and/or pull-ups. When the linens are soiled, she has the appellant wait outside his bedroom, changes his sheets and pillowcase, and applies a paper barrier under his mattress. She then puts the appellant back to bed, and waits for him to fall asleep. On these occasions, she spends approximately 90 minutes assisting the appellant at night (Testimony).

In the PCM agency evaluation, comments state that the appellant “needs assist with changing pull ups at night, along with linen changes” (Exh. 4, p. 20).

## Findings of Fact

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

1. The appellant is a [REDACTED] child who lives in the community with his parents (Testimony).
2. His medical diagnoses include ADHD, cognitive deficits, and behavioral issues (Testimony, Exh. 3).
3. Arc of the South Shore, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant’s behalf on or about October 15, 2023, seeking 25 hours, 30 minutes of PCA services per week, for the time period November 29, 2023 through November 28, 2024 (Exh. 1, Exh. 3).
4. By notice dated November 1, 2023, MassHealth modified the PA request to ten hours, thirty minutes of PCA services per week for the same time period (Testimony, Exh. 3).
5. The appellant filed a timely appeal of the November 1, 2023 notice with the BOH on November 22, 2023 (Exh. 2).
6. The PCM agency requested, on the appellant’s behalf, five minutes, twice per day, five days per week of PCA assistance “bring[ing] the appellant to and from the [school] van for safety” (Exh. 3, pp. 11-12).
7. MassHealth allowed no PCA assistance time for this ADL, since escorting the appellant to and from his school van is considering cueing, guiding, and supervision (Testimony, Exh. 1).
8. Notes about the appellant contained in the PA request submitted by the PCM agency state: “Unable to initiate, follow through or complete a task without assist – must hold [appellant] in place to task to prevent distraction and bolting” (Exh. 3, p. 8; p. 15).

9. The appellant has poor safety awareness, such as failing to look both ways before crossing a street, and he ran away from his parents at a mall on at least one occasion (Testimony).
10. The school van does not stop directly in front of the family's condominium; the PCA, if present, walks the appellant, hand in hand, from there to the van stop every morning (Testimony).
11. When no PCA is present in the morning, the appellant's mother or father walk him, hand in hand, from their home to the school van and arrange their work schedules to accommodate this task (Testimony).
12. A PCA is typically present at the appellant's home in the afternoons, when the appellant returns from school, and the PCA walks the appellant hand in hand from the school van to his residence (Testimony).
13. The PCM agency requested, on the appellant's behalf, 10 minutes of PCA assistance every night for bladder care, and 20 minutes of PCA assistance every night for bowel care (Exh. 3).
14. MassHealth did not allow any PCA assistance time at night for these ADLs, since the appellant wears pull-ups at night and therefore, the appellant should not need assistance with hygiene at night (Testimony).
15. MassHealth asserted that the appellant has the functional ability to get to and from the bathroom on his own (Testimony).
16. The MassHealth representative stated that MassHealth does not authorize PCA assistance for anticipatory or intermittent health care needs, such as periodic instances of incontinence at night (Testimony).
17. The appellant is incontinent of bladder at night (Testimony).
18. The appellant is prescribed laxatives by a physician because he has irregular bowel movements and consequently, is sometimes incontinent of bowel at night as well (Testimony).
19. The appellant sometimes wear pull-ups at night, but occasionally, the pull-ups do not contain his urine or feces completely. He then needs to be changed, and his linens need to be changed. The appellant's mother testified that these episodes occur approximately four to five nights per week (Testimony).
20. The appellant's mother testified that when the appellant has bladder or bowel incontinence at night, he will call out to her. The appellant's mother will go to his room, take him to the bathroom, and clean him up. She assists him to change his pajamas and/or pull-ups. When the linens are soiled, she has the appellant wait outside his bedroom, changes his sheets and

pillowcase, and applies a paper barrier under his mattress. She then puts the appellant back to bed, and waits for him to fall asleep (Testimony).

21. The appellant typically does not have a PCA present in his home overnight (Testimony).
22. On occasions when the appellant experiences incontinence at night, the appellant's mother spends approximately 90 minutes assisting the appellant (Testimony).
23. In the PCM agency evaluation, comments state that the appellant "needs assist with changing pull ups at night, along with linen changes" (Exh. 3, p. 20).

## **Analysis and Conclusions of Law**

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the 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; (2) the member's disability is permanent or chronic in nature; (3) the member 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; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned instrumental activities of daily living.

Pursuant to 130 CMR 422.412, "Non-Covered 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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

Pursuant to 130 CMR 450.204(A), 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by 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.

#### Assistance with Mobility/Transfers

The PCM agency requested, on the appellant's behalf, 5 minutes, twice per day, five days per week of PCA assistance "bring[ing] the appellant to and from the [school] van for safety." MassHealth did not authorize any time for this task.



MassHealth did not assert in its testimony that this is a parental responsibility, but instead, that this not a “hands-on” task for which a PCA may be paid. In addition, the MassHealth representative stated that PCA assistance with this task would be appropriate if, among other things, the appellant had a history of “bolting.”

The record shows that the appellant does, in fact, have a history of bolting, and exhibits a lack of safety awareness. The appellant’s mother credibly testified that the appellant needs to be walked, hand in hand, to the school van in the morning, and that she or her husband perform this task when no PCA is present.

In the afternoon, when a PCA is present, the appellant is walked, hand in hand, from the school van back to his residence.

Most [REDACTED] do not have poor safety awareness and a history of bolting.

I conclude that this type of assistance is indeed “hands-on,” physical assistance. Due to the appellant’s ADHD and cognitive deficits, it is medically necessary for him to have hands-on assistance from a PCA when he is walking from his home to the school van in the morning, and the same hands-on assistance when he returns from school in the afternoon. This service is medically necessary because the appellant could be injured or harmed without such hands-on assistance.

For these reasons, this portion of the appeal is APPROVED.

#### Assistance with Bladder Care/Bowel Care at night

The PCM agency requested, on the appellant’s behalf, 10 minutes of PCA assistance every night for bladder care, and 20 minutes of PCA assistance every night for bowel care. MassHealth did not authorize any PCA assistance time for these tasks, since the PCM agency evaluation reflects that he wears pull-ups at night, and because the appellant purportedly has the functional ability to ambulate to the bathroom on his own.

The record evidence shows that the appellant is incontinent of both bowel and bladder at least four to five nights per week. Moreover, even if the appellant wears pull-ups, they do not always contain all of the appellant’s waste. The appellant’s mother credibly testified that on occasions when the appellant is incontinent at night, she spends time cleaning him up, and changing his sheets and pillowcase. This is hands-on, physical assistance, and typically takes longer than thirty minutes per night.

Most [REDACTED] do not have nighttime incontinence.

I conclude that it is medically necessary for the appellant to have PCA assistance at night for bladder and bowel care, and for changing his linens.

For these reasons, this portion of the appeal is also APPROVED.

### **Order for MassHealth**

For the PA period November 29, 2023 through November 28, 2024, approve the appellant for a total of 25 hours, 30 minutes of PCA services per week. Send notice of implementation; do not include appeal rights.

### **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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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Optum appeals representative