

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2313172
<b>Decision Date:</b>	3/4/2024	<b>Hearing Date:</b>	01/19/2024
<b>Hearing Officer:</b>	Marc Tonaszuck	<b>Record Open to:</b>	01/26/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, 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>	Denied	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	3/4/2024	<b>Hearing Date:</b>	01/19/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<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 11/30/2023, MassHealth informed the appellant<sup>1</sup> that it modified the Prior Authorization (PA) request for MassHealth Personal Care Attendant (PCA) services submitted on his behalf by his provider, Northeast ARC, Inc. (see 130 CMR 422.410(A)(5), 422.412(A), 450.204(A)(1) and Exhibit 1). On 12/14/2023, a timely appeal was filed on the appellant's behalf (see 130 CMR 610.015(B) and Exhibit 2). Modifications to a PA request are valid grounds for appeal (see 130 CMR 610.032).

A fair hearing took place on 01/19/2024, at which time, the appellant's representative submitted two letters from the appellant's treating providers in support of the request for PCA time for passive range of motion (PROM) exercises (Exhibit 3). At the hearing officer's request, the record was left open until 01/26/2024 in order to permit MassHealth to respond to appellant's submissions (Exhibits 5 and 6). The MassHealth representative did not make a submission during the record open period.

### Action Taken by MassHealth

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

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<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 130 CMR 422.410(A)(5), 422.412.(A) and 450.204(A)(1), in determining that the appellant's PA request for PCA services should be modified.

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, stated the following. The appellant is under the age of 20 and has primary diagnoses of autism, developmental disability, hyperkinesia, ADHD, seizure disorder, cardiac insufficiency, and has received chemotherapy for leukemia in the past. A reevaluation PA request for PCA services was submitted by Northeast ARC, Inc. (the provider) on 10/30/2023 for 17 hours and 45 minutes of day and evening services per week for one year. On 11/20/2023, MassHealth notified the appellant that it was approving 13 hours and 00 minutes of day and evening PCA services from 11/20/2023 to 11/19/2024 (Exhibits 1 and 4).

MassHealth made one modification to the time requested for assistance with passive range of motion (PROM) exercises. The appellant's PCA provider requested 15 minutes, 2 times per day, 7 days per week (15 X 2 X 7) for each lower extremity. The appellant's provider noted that the PCA assists the appellant "with special PT exercises from physical therapist. Parent reports bilateral lower extremity (BLE) and feet muscle weakness and heel cord tightness, special exercise plan to stretch and strengthen BLEs to relieve stiffness. [Appellant] does not initiate, sequence or complete program as ordered twice daily" (Exhibit 4, p. 13).

MassHealth modified the request for assistance with PROM to 5 X 2 X 7 for each lower extremity. The MassHealth representative first testified that the documentation submitted indicated that the requested service did not meet professionally recognized standards of health care. Next, she stated that MassHealth approved the time to apply and remove ankle foot orthotic (AFO) braces twice per day. These are applied to stretch the appellant's tight heel cords. PROM exercises are generally for someone who is unable to move their own joints to prevent contractures and not for someone who is ambulatory. The MassHealth representative testified that this issue was addressed by a prior appeal decision<sup>2</sup> that approved 5 X 2 X 7 per lower extremity for the appellant's PROM needs based on the same information presented with this PA request. Additionally, MassHealth asserted that the assistance with PROM is partially provided by the appellant's physical therapist. The time, as modified by MassHealth, is for the PCA to assist the appellant to alleviate some of the tightness and to prevent muscle contracture. It does not include the time to don/doff the AFO's or for cueing or supervising the appellant during the task.

The appellant's representative, his mother, testified that she is a nurse. She clarified that the

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<sup>2</sup> See Board of Hearings appeal no. 2153731.

appellant attends physical therapy appointments once per week for 30 minutes. The PCA time for PROM is “not just for physical therapy exercises, but for putting braces on, checking his skin and putting on his socks.” The PCA takes 25 to 30 minutes to assist him with PROM. The exercises are necessary to help prevent the appellant from falls. The appellant submitted with his request for a fair hearing two letters from his treating sources in support of the request for assistance with PROM:

A letter dated 12/13/2023 from Anthony Rodrigues, MD, that states in pertinent part

Appellant requires assistance with his brace for heel cord tightness. Therefore, I recommend the current hours of PCA assistance for this patient.

A letter dated 12/08/2023 from Sarah Simeone, PT, DPT, PCS, that states

I have been working with [the appellant] as his physical therapist since August 2023 to address seizure disorder related fatigue and imbalance as well as chronic heel chord tightness secondary to medical treatments in childhood that have continued to impact his gait. [REDACTED] wears night splits to manage his chronic heel chord tightness and requires hands on assistance to don and doff these and reduce risk of skin injury. A process taking 10-20 minutes due to [REDACTED] cognitive status and can vary from day to day. He has been provided with a home exercise program consisting of passive stretches {PROM, 2 x daily, morning and night) as well as active exercise to further address his gait, balance and endurance.

He requires direct supervision with verbal and tactile cuing to complete this program appropriately for optimal benefit and reduced risk of strain or injury. This program takes approximately 20 minutes to complete.

Please continue providing coverage for assistance with these ongoing medical needs to allow [the appellant] optimal participation and safety in his home, school and community. Without these services his risk of functional decline from worsening tightness and gait disturbance is significant.

(The two letters were marked collectively as Exhibit 5.)

The two letters submitted by the appellant were forwarded to the MassHealth representative who requested an opportunity to respond. Her request was granted and the record remained open in this matter until 01/26/2024 for her response (Exhibit 6). The MassHealth representative made no submission during the record open period.

## **Findings of Fact**

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

1. The appellant is under the age of 20 (Exhibit 4).
2. The appellant has primary diagnoses of autism, developmental disability, hyperkinesia, ADHD, seizure disorder, cardiac insufficiency, and has received chemotherapy for leukemia in the past (Exhibit 4).
3. A reevaluation PA request for PCA services was submitted by the provider, Northeast ARC, Inc. on 10/30/2023 for 17 hours and 45 minutes (17:45) of day and evening services per week for one year (Testimony; Exhibit 4).
4. On 11/20/2023, MassHealth notified the appellant that it was approving 13 hours and 00 minutes of day and evening PCA services for the dates of service from 11/20/2023 to 11/19/2024 (Testimony; Exhibits 1 and 4).
5. MassHealth made modifications to the time requested for PROM exercises (Testimony; Exhibits 1 and 4).
6. For PROM exercises, the provider requested 15 X 2 X 7 for each of the appellant's legs (Testimony; Exhibits 1 and 4).
7. MassHealth modified this time to 5 X 2 X 7 for each leg (Testimony; Exhibits 1 and 4).
8. The appellant can ambulate (Testimony).
9. MassHealth approved time to apply and remove AFOs, which are applied to stretch the appellant's tight heel cords, twice per day (Testimony; Exhibit 4).
10. PROM exercises are generally for someone who is unable to move their own joints to prevent contractures and not for someone who is ambulatory (Testimony of the MassHealth representative).
11. PROM exercises are different from stretching or AROM, which require a trained practitioner (Testimony of the MassHealth representative).
12. The MassHealth representative acknowledged that some amount of PROM exercises would be reasonable (Testimony of the MassHealth representative).
13. The appellant receives physical therapy services once per week (Testimony).
14. PCA assistance with PROM takes approximately 25-30 minutes, including time to don/doff AFO's and for guiding and cueing the appellant (Testimony of the appellant's mother).

## **Analysis and Conclusions of Law**

MassHealth does 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. (130 CMR 450.204). A service is considered 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. (130 CMR 450.204(A)).

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. (130 CMR 450.204(B)).

The regulations define PROM exercises as movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move. (130 CMR 422.402).

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.)***

The appellant has not shown by a preponderance of the evidence that all the time requested for PROM exercises is medically necessary. The MassHealth representative stated in her testimony the amount of time the provider requested, 15 X 2 X 7 for each leg, was at the same level as what would be approved for someone who is completely bedbound. The record shows that the appellant is ambulatory.

One of the letters submitted by the appellant, from Physical Therapist Sarah Simeone states that assistance with PROM takes 20 minutes, 2 times per day totaling 40 minutes per day. Appellant's mother testified that the assistance takes 25 – 30 minutes, 2 times per day totaling 50 - 60 minutes per day. Both agree that the time requested includes time for assistance donning/doffing AFO's and for supervising and cueing the appellant.

MassHealth approved in full the request for assistance donning and doffing the AFO's under "dressing/undressing." That time must be reduced from the requested time for assistance with PROM. Additionally, pursuant to the above regulations, the time requested for assistance with PROM in the form of "cueing, prompting, supervision, guiding, or coaching" is not a covered service. The time requested must also be reduced by the amount of time for cueing or guiding the appellant.

MassHealth approved 5 X 2 X 7 of PCA assistance for each lower extremity. As the appellant has been unable to show that the time approved in accordance with the MassHealth regulations, as modified, does not meet the appellant's medical needs, MassHealth's modification is supported by the facts in the hearing record. Accordingly, this appeal is denied.

## **Order for MassHealth**

None.

## 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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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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