

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied in part;  
Dismissed in part

**Appeal Number:** 2313760

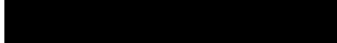
**Decision Date:** 3/20/2024

**Hearing Date:** 01/25/2024

**Hearing Officer:** Thomas Doyle

**Record Open to:**

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, R.N,

**Interpreter:**



*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 in part; Dismissed in part	<b>Issue:</b>	Prior Authorization – PCA Services
<b>Decision Date:</b>	3/20/2024	<b>Hearing Date:</b>	01/25/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, R.N.	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (phone)	<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 December 13, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on December 28, 2023. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (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 is a minor who was represented at hearing via

telephone by his mother. The MassHealth representative testified that the documents submitted show that the appellant has a primary diagnosis of autism, ADHD and PICA. (Ex. 4, p. 10; Testimony). An occupational therapy report indicates appellant wears diapers and handles his feces and is nonverbal and hard of hearing. (Ex. 4, p. 8). The appellant's personal care management (PCM) agency, [REDACTED], submitted a prior authorization request for PCA services requesting 14 hours and 30 minutes per week for 37.28 school weeks and 15 hours and 45 minutes per week for 15 vacation weeks. MassHealth modified the request to 10 hours and 30 minutes per week for 37.28 school weeks and 12 hours and 15 minutes for 15 vacation weeks. (Ex. 4, pp. 2, 124-57; Testimony).

There were seven modifications based upon MassHealth regulations. MassHealth modified Mobility, transfers, taking appellant to and from the school bus, from 3 minutes an episode, 2 episodes a day, 5 days a week to 0. MassHealth modified PROM from 6 minutes an episode, 1 time a day, 7 days a week for lower extremities left and right to 0. MassHealth modified Grooming, nail care, from 5 minutes an episode, 1 episode a day, 1 day a week to 0. MassHealth modified Grooming, lotion, from 3 minutes an episode, 1 episode a day, 7 days a week to 0. MassHealth modified Dressing from 12 minutes an episode, 1 episode a day, 7 days a week to 10 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified Assist with Medications from 5 minutes an episode, 1 episode a day, 7 days a week to 0. MassHealth modified Laundry from 45 a week to 0. These changes reflect hours appellant is in school or on vacation.

After testimony and discussion between the parties and explanation from the MassHealth representative, appellant's mother agreed to the modifications to PROM. MassHealth agreed to restore the requested time for Grooming, nail care and lotion and Dressing. The parties came to an agreement for 15 minutes a week for Laundry. Therefore, these parts of the appeal are dismissed.

Regarding the task of Mobility, transfer, taking appellant to and from the bus stop, MassHealth did not approve any time for this task because this is a parental responsibility due to appellant's age. Appellant's mother testified appellant is walked to the front of the building to get the bus as he has door to door service. She states the PCA does this because she has a new baby and another male child with special needs. MassHealth did not approve any time for Assistance with Medications, stating that it is a parental responsibility and not covered by the PCA regulations. Appellant's mother stated it is difficult to give medicine to appellant because he bites her fingers and she stated she needs help in giving medicine.

## **Findings of Fact**

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

1. The appellant is a minor MassHealth member with a primary diagnosis of autism, ADHD and PICA. (Testimony; Ex. 4, p. 10).
2. MassHealth received a prior authorization requesting 14 hours and 30 minutes per week for 37.28 school weeks and 15 hours and 45 minutes per week for 15 vacation weeks. MassHealth modified the request to 10 hours and 30 minutes per week for 37.28 school weeks and 12 hours and 15 minutes for 15 vacation weeks. (Ex. 4, pp. 2, 124-57; Testimony).
3. The appellant filed this appeal in a timely manner on December 28, 2023. (Ex. 2).
4. At hearing, the parties were able to resolve disputes related to PCA assistance with PROM, Grooming, nail care and lotion, Dressing and Laundry. (Testimony).
5. Appellant requested PCA time assistance with Mobility, transfer, to and from bus stop, as follows: 3 minutes an episode, 2 episodes a day, 5 days a week. (Testimony; Ex. 4, p. 14).
6. MassHealth modified the time requested for Mobility, transfer, to and from bus stop, to 0. (Testimony).
7. Appellant requested PCA time assistance with Assistance with Medications, as follows: 5 minutes an episode, 1 episode a day, 7 days a week. (Ex. 4, p. 25; Testimony).
8. MassHealth modified the time requested for Assistance with Medications to 0. (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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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 appeal is dismissed as to the following ADL's. At hearing, the parties were able to resolve the dispute related to PCA assistance with PROM. After testimony and discussion, the appeal representative agreed with the modification set by MassHealth for 0 time for this task. At hearing, the parties were able to resolve the disputes related to PCA assistance with Grooming, nail care and lotion. After testimony and discussion between the parties, MassHealth agreed to restore the time requested by appellant for both tasks, nail care at 5 minutes an episode, 1 episode a day, 1 day a week and lotion to 3 minutes an episode, 1 episode a day, 7 days a week. At hearing, the parties were able to resolve the dispute related to PCA assistance with Dressing. After testimony and discussion between the parties, MassHealth agreed to restore the time requested by appellant at 12 minutes an episode, 1 episode a day, 7 days a week.. At hearing, the parties were able to resolve the dispute related to PCA assistance with Laundry. After testimony and discussion, the parties agreed to 15 minutes for this task.

Mobility:

Appellant requested 3 minutes an episode, 2 episodes a day, 5 days a week for physical assistance with taking appellant to and from the school bus. (Testimony; Ex. 4, p. 14). MassHealth modified this time to 0. MassHealth denied time for this task because they view it as a parental responsibility due to appellant's age.<sup>1</sup> Appellant's mother stated she needs the PCA to help her take appellant to the bus because she has a new baby in the house and another male child with special needs. It is reasonable to assume the bus driver is watching appellant get on and off the bus. Appellant is independent with level of assist and level of independence regarding mobility. (Ex. 4, pp. 14, 69). Appellant has not met his burden why the PCA must accompany him on his walk to and from the school bus. Furthermore, the PCA accompanying appellant on his walk to and from the bus would be guiding or supervising appellant and that is not covered by the MassHealth regulations. (130 CMR 422.412 (A), (C)).

Therefore, appellant has not met his burden and the request for time for this task is denied.

Assistance with Medications:

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<sup>1</sup> Appellant is a pre-pubescent minor.

Appellant requested 5 minutes an episode, 1 episode a day, 7 days a week for Assistance with Medications. (Testimony; Ex. 4, p. 25). MassHealth modified this time to 0. MassHealth stated they denied time for this task because it is a parental responsibility and not covered by the PCA regulations. (Testimony). Appellant's mother stated it is difficult to give him medication and he bites her fingers. She stated he takes two medications in the morning. Testimony and documentation are clear that parents are responsible for administering medications. The documentation says if there is a physical limitation that prevents the parent from administering medications, the parent must be available to direct assistance. (Ex. 4, p. 25). There was no testimony from appellant's mother that she has any physical limitations that prevent her from administering medications.

Therefore, appellant has not met his burden and the request for time for this task 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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Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:

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