

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



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

**Appeal Number:** 2400384

**Decision Date:** 02/02/2024

**Hearing Date:** 2/1/2024

**Hearing Officer:** David Jacobs

**Appearances for Appellant:**



**Appearances for MassHealth:**

Robin Brown, RN



*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>	Denied in part; Approved in part	<b>Issue:</b>	Prior Authorization (PCA Services)
<b>Decision Date:</b>	02/02/2024	<b>Hearing Date:</b>	2/1/2024
<b>MassHealth Rep:</b>	Robin Brown, RN	<b>Appellant Rep:</b>	Bridget Willis
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through notice dated November 6, 2024, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410) (Exhibit 1). The appellant filed a timely appeal on December 8, 2023. (130 CMR 610.015(B)). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

### Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

## **Summary of Evidence**

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is an adult male under the age of 65 whose provider, The ARC of the South Shore ("PCM"), submitted a renewal request for PCA services on his behalf. The record reflects that the appellant has a primary diagnosis of complex mitochondrial disease, muscular dystrophy, encephalopathy, autism, and epilepsy (Exhibit 5, pg. 7). On October 19, 2023, MassHealth received a re-evaluation prior authorization request for PCA services. The appellant lives in a group home setting and spends Friday evening through Sunday with his family for which the PCA time was requested. The appellant seeks PCA services in the amount of 22 hours per week. On November 28, 2023, MassHealth modified the request and authorized 17 hours and 45 minutes per week. Four modifications were made by MassHealth for eating, bladder care, laundry, and medical transportation. The appellant was represented by his mother at the hearing.

### **1. Eating (Exhibit 5, pg. 18)**

For eating, the evaluating nurse's notes indicate that "PCA provides hand over hand assist with utensils for all meals r/t cognitive deficits and poor fine motor skills" (Ex. 5, pg. 18). The PCM requested 20 minutes, 2 times a day, 3 days a week and 30 minutes, 1 time a day, 3 days a week to represent the three days the appellant is home. That time was modified by MassHealth to 10 minutes, 1 time a day, 1 day a week and 10 minutes, 3 times a day, 2 days a week. The MassHealth representative testified that the frequency was reduced due to the appellant not spending all of Friday with his family and the duration was decreased because it was longer than usually allowed for someone in the appellant's circumstances. The appellant's mother testified that the appellant can feed himself with some hand over hand assistance. However, he needs to be frequently monitored during mealtimes as he cannot chew his food properly and often chokes, can go into seizures, or eats things inappropriate to him, among other challenges. When all this cautionary behavior is considered, it takes the appellant at least 40 minutes to finish a meal. The appellant's mother affirmed the frequency of the appellant's meals. The MassHealth representative responded that MassHealth regulations do not allow monitoring or supervision in the calculation of PCA time and cannot consider the supervision activities that the appellant's mother described.

### **2. Bladder Care (Exhibit 5, pg. 19)**

For bladder care, the evaluating nurse's notes indicate that "Physical assist with toilet hygiene; Physical assist with clothing management; Physical assist with changing absorbent product; Physical assist with regular transfer" (Ex. 5, pg. 19). The PCM requested 10 minutes, 7 times a day, 3 days a week for the day and 10 minutes, 2 times a night, 3 days a week. That time was modified by MassHealth to 10 minutes, 7 times a day, 2 days a week and 10 minutes, 3 times a day, 1 day a week. The MassHealth representative testified that the frequency was reduced due to the appellant not spending all of Friday with his family and the duration was reduced because

the requested time was longer than usually allowed for someone in the appellant's circumstances. The appellant's mother testified that the appellant must be taken to the bathroom to pee every hour because his condition requires him to hydrate frequently, and his medication makes his urine have a "fishy" smell that starts to exude from his pores if he does not urinate often. She further testified that although the appellant is only home on the weekends, she takes him to medical appointments during the week which necessitates additional time for his frequent bladder care needs. MassHealth responded by reiterating that time was reduced due to the appellant not spending all of Friday with the family.

### **3. Laundry (Exhibit 5, pg. 28)**

For laundry, the evaluating nurse's notes indicate that the appellant is "Dependent for all laundry tasks- residential" (Ex. 5, pg. 28). The PCM requested 30 minutes a week. MassHealth approved no time for laundry. The MassHealth representative testified that while the appellant is with his family there is someone who is legally required to provide him with assistance with his laundry. Therefore, no time was approved. The appellant's mother responded that she needs the time because the aforementioned "fishy" smell is quite strong in the appellant's urine. He often soils clothes and bed sheets that creates laundry far beyond what is normally legally required by a guardian. MassHealth responded by reiterating that they cannot cover services that are legally required to be performed by the appellant's mother.

### **4. Medical Transportation (Exhibit 5, pg. 30)**

For medical transportation, the evaluating nurse's notes indicate six appointments the appellant regularly visits throughout the year (Ex. 5, pg. 30). The PCM requested 47 minutes a week, the average weekly time it would take to travel to and from these appointments during the service year. MassHealth approved no time for medical transportation. The MassHealth representative testified that the group home where the appellant stays is legally required to provide for his care during the week which includes medical transportation. As the medical appointments in question take place during weekdays when the appellant is at the group home, no time was approved for medical transportation. The appellant's mother affirmed that the appointments at issue occur during the week and testified she was unsure if the group home offers medical transportation as she has always taken the appellant herself. However, she admits the group home has taken the appellant to some dental appointments in the past. The MassHealth representative responded that she is not knowledgeable in the regulations specifically governing group homes but reiterated that generally PCA services are not provided while the appellant is in the care of such a facility. The appellant's mother challenges this assertion as MassHealth admits they are not aware if the appellant's group home is specifically required to offer medical transportation services. However, she admits she is also not knowledgeable in the relevant regulations herself.

## **Findings of Fact**

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

1. The appellant is an adult male under 65 years of age with primary diagnosis of complex mitochondrial disease, muscular dystrophy, encephalopathy, autism, and epilepsy.
2. The appellant lives in a group home setting and stays with his family from Friday evening through Sunday.
3. On October 19, 2023, the appellant submitted a re-evaluation request for PCA services in the amount of 22 hours a week.
4. On November 6, 2023, MassHealth modified the request and authorized 17 hours, 45 minutes a week.
5. The appellant requested time for PCA assistance for eating of 20 minutes, 2 times a day, 3 days a week and 30 minutes, 1 time a day, 3 days a week; MassHealth modified this time to: 10 minutes, 1 time a day, 1 day a week and 10 minutes, 3 times a day, 2 days a week.
6. The appellant can feed himself with some hand over hand assistance while eating.
7. The appellant requires constant monitoring while eating as he has difficulty chewing and can choke, eats inappropriate things, or often suffers from seizures, among other challenges.
8. The appellant eats one meal in the evening with the family on Friday and 3 meals a day with the family on Saturday and Sunday.
9. The appellant requested time for PCA assistance for bladder care of 10 minutes, 7 times a day, 3 times a week and 10 minutes, 2 times a day, 3 times a week; MassHealth modified this time to: 10 minutes, 7 times a day, 2 days a week and 10 minutes, 3 times a day, 1 day a week.
10. The appellant's condition requires him to intake fluids frequently and is taken to the bathroom every hour to urinate.
11. The appellant's medication gives his urine a fishy smell that comes out of his pores if he does not urinate frequently.
12. The appellant's toilet needs are catered to during the weekends as well as on weekdays when the appellant's mother takes him to his medical appointments.
13. The appellant requested time for PCA assistance for laundry of 30 minutes a week; MassHealth approved no time for laundry assistance.
14. Due to the appellant's frequent need to urinate he often wets his clothes and bed sheets

that need to be washed.

15. The appellant requested time for PCA assistance with medical transportation of 47 minutes a week; MassHealth approved no time for medical transportation.
16. The appellant's mother takes the appellant to a vast majority of his medical appointments.
17. It is unclear if the group home where the appellant resides offers general medical transportation services or is required to.
18. The group home has provided medical transportation for the appellant's dental appointments in the past.

### **Analysis and Conclusions of Law**

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and 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 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(A) Activities of Daily Living (ADLs). 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.

(B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM agency must assume the following.

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
- (2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

#### 422.412: Noncovered 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.

(Emphasis added)

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), 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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

## **1. Eating**

The appellant disputes the modification of time necessary to assist the appellant with eating his meals.

The appellant has not demonstrated that the modified time is not enough to meet the appellant’s needs under the law. The vast majority of the assistance the appellant’s mother testified to during the hearing was for activities that could be described as monitoring or supervision. Watching the appellant to ensure he does not choke, watching to ensure he does not eat inappropriate things, and watching for seizures are all correctly identified by MassHealth as supervision. While the mother persuasively testified of the appellant’s great need for this monitoring for his safety, 130 CMR 422.412(C) considers such activities as noncovered services. As such, the appellant’s appeal for this matter is DENIED.



## **2. Bladder Care**

The appellant disputes the modification of time necessary to assist the appellant with bladder care.

The appellant has demonstrated the requested time is medically necessary for the appellant's needs. MassHealth argued that the time should be reduced due to the appellant not spending the entirety of Friday with his family. However, even in consideration of this argument it is found that the appellant still requires the requested time. The appellant's mother persuasively testified that the appellant's needs for bladder care exceed even that which was requested by his PCM. The mother testified that the appellant needs to be taken to the bathroom every hour due to his high fluid intake and the "fishy" smell caused by some of his medications. Furthermore, the hearing officer finds it persuasive that the appellant, in addition to the weekends, does spend some amount of time with his family during the weekdays for medical appointments which would require more time for bladder care. As such, the appellant's appeal for this matter is APPROVED.

## **3. Laundry**

The appellant disputes the modification of time necessary to assist the appellant with laundry.

The appellant has demonstrated the requested time is medically necessary for the appellant's needs. Due to the above finding that the frequency of the appellant's urination requires special consideration, so too does the resulting laundry. The appellant's mother persuasively testified that the appellant frequently wets his clothes and bedding due to urination that creates a tremendous amount of laundry. Although 130 CMR 422.410(C)(1) requires the appellant's mother to provide assistance with laundry, it is found that the appellant's need to urinate every hour is a special circumstance that creates laundry beyond what the appellant's mother is legally required to do. As such the appeal for this matter is APPROVED.

## **4. Medical Transportation (Exhibit 5, pg. 30)**

The appellant disputes the modification of time necessary to assist the appellant with medical transportation.

The appellant has not demonstrated the requested time for medical transportation is medically necessary for the appellant's needs. The MassHealth representative argued that as per 130 CMR 422.412(D), the group home where the appellant resides is responsible for providing him with his medical transportation. However, she admits that she is unaware if the facility regulations for the kind of group home where the appellant resides dictate specifically that they must provide medical transportation services for him. The appellant's mother testified she is also unsure if the group home provides medical transportation and does not know if other residents receive such services. However, she can confirm that they have provided some transportation to dental appointments for the appellant in the past. Regardless, she argues that she provides the vast majority of transportation services at issue and MassHealth should not be allowed to rely on a law they are not 100% sure is

applicable to the appellant's group home. Here, neither MassHealth nor the appellant's mother are sure if the group home where the appellant resides provides medical transportation or is required to. However, it is noteworthy that the appellant's mother admits that the group home has provided some transportation for dental appointments to the appellant in the past. The fact that there is evidence on the record that the group home does offer some kind of medical transportation, and with no proof otherwise from the appellant's mother that they do not or are not required to, it cannot be said that she has met her burden. As such the appeal for this matter is DENIED.

### **Order for MassHealth**

Rescind notice on appeal, and approve time requested for PCA assistance with bladder care and laundry.

### **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 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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David Jacobs  
Hearing Officer  
Board of Hearings

cc: Optum

