

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Appeal Number:</b>	2400697
<b>Decision Date:</b>	04/09/2024	<b>Hearing Date:</b>	02/23/2024
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, RN *via* telephone



*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	<b>Issue:</b>	Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	04/09/2024	<b>Hearing Date:</b>	02/23/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	
<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 December 28, 2023, MassHealth approved the appellant's prior authorization (PA) request for PCA services with modifications. (See 130 CMR 422.410(C)(1); and Exhibit (Ex.) 1; Ex. 6, pp. 3-4). The appellant filed this appeal in a timely manner on January 14, 2024. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request for PCA services is valid grounds for appeal. (See 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth approved the appellant's request for PCA services with modifications.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(C)(1) in modifying the request for PCA services.

### Summary of Evidence

MassHealth was represented by a registered nurse and clinical appeals reviewer and the appellant



was represented by her mother. The MassHealth representative and the appellant's representative attended the hearing by telephone.

The MassHealth representative testified to the following. According to submitted documentation, the appellant is under the age of 18 years old with a primary diagnosis of Down syndrome and autism. (Testimony; Ex. 6, p. 5). She has resistive behavior, no safety awareness, and she is incontinent of bladder and bowels. (Testimony; Ex. 6, p. 6). The appellant is now on the toileting schedule of every two hours and wears pull-ups during the day and a diaper at night. (Id.).

A prior authorization re-evaluation request for personal care attendant (PCA) services was submitted to MassHealth by Northeast Arc, Inc. (the PCM agency) on December 8, 2023 for 18 hours and 45 minutes per week for one year. (Testimony; Ex. 1; Ex. 6, pp. 3-4). MassHealth modified this request on December 28, 2023 to 17 hours and no minutes per week for dates of service from January 9, 2024 through January 8, 2025. (Id.).

MassHealth denied the request for PCA assistance with 2 instrumental activities of daily living (IADLs) based on regulations 130 CMR 450.204(A)(1),(2) and (B) regarding medical necessity; 130 CMR 422.410 regarding IADLs, and regulation 130 CMR 422.402. (Id.). The PCM agency requested 60 minutes per week for laundry and 45 minutes per week for housekeeping. (Testimony; Ex. 6, p. 28). MassHealth denied the time requested for laundry and housekeeping. (Testimony; Ex. 1; Ex. 6, pp. 3-4). Under the regulations, when a member is living with family members, a term which includes the parents of a minor, it is expected that the family member provide assistance with IADLs. (Testimony). If the family member is unable to provide IADL assistance for consumers with IADL needs, the PCM agency must provide written justification as to why the family member is unable to provide such assistance. (Testimony). In this case, the PCM agency did not provide any written justification. (Testimony).

The appellant's representative, the appellant's mother, testified to the following. The appellant frequently soils herself. (Testimony). The appellant is on a bathroom schedule, but sometimes evacuates her bowel into her diaper. (Testimony). The appellant has a habit of playing in and with her feces, smearing it, and sometimes eating it. (Testimony). For that reason, it was very important that all soiled clothing be removed from the appellant and that she be cleaned quickly. (Testimony). For the same reason, if the appellant has soiled her bed, it was important that the bedding be removed and cleaned. (Testimony). Any area surrounding the appellant that she has touched also needs to be cleaned. (Testimony). This could be any area in the domicile. (Testimony). The appellant's representative is not able to clean the appellant without assistance from the PCA, who is her son. (Testimony). The appellant's behavior has gotten worse as she has grown and become stronger. (Testimony). The appellant has become more resistant. (Testimony). Prior to putting soiled clothing and bedding into the laundry, the appellant's representative and PCA have to spend quite a bit of time first trying to remove and dispose of the bulk of the feces. (Testimony). Because it is necessary to clean the appellant, as well as do the laundry and housekeeping simultaneously, PCA assistance is needed for laundry and housekeeping. (Testimony). The appellant's representative confirmed that she is not currently physically unable



to perform laundry and housekeeping. (Testimony).

The MassHealth representative acknowledged that the situation described was problematic but that as the parent, it was the appellant's representative's responsibility to take care of the laundry and housekeeping. (Testimony). She stated that this was something that the appellant's representative could perform while PCA cleans the appellant. (Testimony). The MassHealth representative stated that MassHealth has approved 40 minutes per day for bathing, as well as a 10 minute per day quick wash. (Testimony; Ex. 6, pp. 13-14). It was the PCA's responsibility to assist the appellant with bathing. (Testimony).

## **Findings of Fact**

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

1. The appellant is under the age of 18 years old with a primary diagnosis of Down syndrome and autism. (Testimony; Ex. 6, p. 5).
2. The appellant has resistive behavior, no safety awareness, and she is incontinent of bladder and bowel. (Testimony; Ex. 6, p. 6).
3. The appellant is on the toileting schedule of every two hours and wears pull-ups during the day and a diaper at night. (Testimony; Ex. 6, p. 5).
4. On December 8, 2023, the PCM agency submitted a prior authorization reevaluation request for 18 hours and 45 minutes per week of PCA services for one year. (Testimony; Ex. 1; Ex. 6, pp. 3-4).
5. On December 28, 2023, MassHealth modified the request to 17 hours and no minutes per week for dates of service from January 9, 2024 through January 8, 2025. (Testimony; Ex. 1; Ex. 6, pp. 3-4).
6. MassHealth denied the time requested for PCA assistance with laundry and housekeeping, which are IADLs. (Testimony; Ex. 1; Ex. 6, pp. 3-4).
7. MassHealth denied the time requested for these two IADLs in their entirety because the appellant lives with family members who are expected to provide assistance with IADLs. (Testimony; Ex. 1; Ex. 6, pp. 3-4).
8. The appellant frequently soils herself. (Testimony).
9. Although the appellant is on a bathroom schedule, she sometimes has bowel incontinence into her diaper (Testimony).
10. The appellant has a habit of playing in and with her feces, smearing it, and sometimes



eating it which meant that it was very important that all soiled clothing be removed from the appellant and that she be cleaned quickly. (Testimony).

11. For the same reason, if the appellant has soiled her bed, it is important that the bedding be removed and cleaned. (Testimony).
12. Any area surrounding the appellant that she has touched also needs to be cleaned and this could be any area in the domicile. (Testimony).
13. The appellant's behaviors have gotten worse as she has gotten older. (Testimony).

## **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 prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if, amongst other things, 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)(1)).

The PCM agency must request prior authorization from MassHealth as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (*Id.*). MassHealth covers activity time performed by a PCA in aiding with activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs). (130 CMR 422.411(A)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA. (130 CMR 422.402). IADLs include physically assisting with household management tasks that are incidental to the care of the member, such as laundry, shopping, and housekeeping. (130 CMR 422.410(B)(1)).

MassHealth does not cover services provided by family members as part of the PCA program. (130 CMR 422.412(F)). The term "family member" includes the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative. (130 CMR 422.402). In determining the number of hours of physical assistance that a member requires for IADLs, the PCM agency must assume that when a member is living with family members, the family members will provide assistance with most IADLs. (130 CMR 422.410(C)(1)). For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member. (*Id.*). MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs. (130 CMR 422.410(C)(3)).

MassHealth correctly determined that the appellant resides with her mother. According to the regulations, when the MassHealth member lives with a family member, like a parent, the family



member is responsible for assisting with “most” IADLs. The record shows, however, that in this instance there are individual circumstances that exist that support approval of some time for IADLs. The appellant has bowel incontinence and behaviors that result in additional laundry needs. The appellant is a minor child and her routine laundry should be done with that of her family. The appellant’s representative did not testify as to how much extra laundry is generated by the appellant’s incontinence, but one load a day should be sufficient to meet such needs. The requested 60 minutes per week would allow enough time for one load of laundry a day specifically for the appellant. Accordingly, the appellant’s request for 60 minutes a week for PCA assistance with laundry is approved.

Housekeeping is a parental responsibility for a minor child. While it is noted that the appellant sometimes smears feces, there is no evidence to support that this results in an additional 45 minutes of housekeeping per week. MassHealth’s denial of the request for PCA assistance with the IADL of housekeeping is upheld and the appeal is denied as to this issue.

For the above stated reasons, the appeal is APPROVED IN PART and DENIED IN PART.

## **Order for MassHealth**

Modify the notice dated December 28, 2023 and approve the requested 60 minutes per week for PCA assistance with 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 this decision is not implemented within 30 days after the date 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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Scott Bernard  
Hearing Officer  
Board of Hearings

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



