

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part Denied In Part Dismissed in Part	<b>Appeal Number:</b>	2400864
<b>Decision Date:</b>	4/11/2024	<b>Hearing Date:</b>	02/16/2024
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, RN



*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>	Prior Authorization - PCA
<b>Decision Date:</b>	4/11/2024	<b>Hearing Date:</b>	02/16/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	Father
<b>Hearing Location:</b>	Quincy	<b>Aid Pending:</b>	Yes

### Authority

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

### Jurisdiction

Through notice dated January 5, 2024, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed this appeal in a timely manner on January 18, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

### Issue

The appeal issue is whether MassHealth acted in accordance with the controlling regulations when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

### Summary of Evidence

Both parties appeared by telephone. At the time of hearing, MassHealth submitted a packet of documentation including, *inter alia*, copies of the subject PA request and nurse's evaluation (Exhibit B). Appellant did not file any documentation other than his Fair Hearing Request (Exhibit A).

MassHealth was represented by a nurse reviewer who testified that the subject authorization request revealed the following about Appellant: Appellant is [REDACTED] with a primary diagnosis of Autism, developmental delay, left temporal lobe CVA, seizures, severe behavioral issues with increased resistive behaviors, frequent tantrums, bites, hits, PICA, and sensory issues. He requires two-person assists for transport to/from appointments. Appellant's father works outside of the home and the mother has back pain.

A Prior Authorization (PA) request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on December 30, 2023, by Northeast Arc for 50 hours and 30 minutes/week for 36 school weeks and 52 hours and 30 minutes per week for 16.28 vacation weeks for one year. MassHealth modified the request on January 5, 2024, to 36 hours and 0 minutes/week for 36.28 school weeks and 37 hours and 45 minutes/week for 16 vacation weeks for the period February 3, 2024 – February 2, 2025.

MassHealth modified the request by reducing the time requested for assistance with the following: mobility, stairs, bathing, dressing, undressing, bladder care, meal preparation and travel to medical appointments.

After the parties exchanged testimony, they agreed to the following: bathing – parties agreed to 20 minutes per shower, but Appellant plans to seek an adjustment with provider agency; dressing and undressing – MH restored to time requested; bladder care – Appellant did not dispute modification; meal preparation – parties agreed to 35 minutes, once per day, 5 days per week; medical transportation – Appellant did not dispute, but plans to seek an adjustment with provider agency. By the end of the hearing, the only modifications that remained in dispute were time for assistance with mobility and stairs.

**Mobility:** The Masshealth representative testified that Appellant requested 2 minutes, 6 times per day, 2 days per week and 2 minutes, 4 times per day, 5 days per week to assist with mobility.

MassHealth modified to 1 minute, 6 times per day, 2 days per week and 1 minute, 4 times per day, 5 times per week. The MassHealth representative testified that Appellant is ambulatory and was assessed as a minimal assist (25%) for this activity. According to the MassHealth representative, the standardized "time for task tool", used by clinical reviewers to determine the amount of time needed to assist with a particular activity based on the member's degree of

function, indicates 1 minute for minimal assistance with ambulation. The MassHealth representative also testified that last year, Appellant requested no time to assist with mobility and there is no medical documentation of a deterioration in Appellant's ability to ambulate from last year.

Appellant was represented by his father who testified that due to Appellant's autism, he is unsure of himself and has to be motivated to move. The father testified that Appellant is often scared and resistant because he does not understand the need to move or where he is being moved to. The father testified that Appellant is older and is much bigger and stronger than last year. The father stated he can no longer lift and carry Appellant to move him as he used to do in the past. The father acknowledged that Appellant is ambulatory and moves on his own once he understands the need to move and where he is going.

MassHealth maintained that 1 minute is sufficient for hands-on assistance with mobility noting that what the father described amounts to coaching, cuing and prompting which is not compensable under the PCA program pursuant to regulation 130 CMR 422.412.

**Stairs:** The Masshealth representative testified that Appellant requested 3 minutes, 3 times per day, 2 days per week and 3 minutes, 2 times per day, 5 days per week to assist with the stairs.

MassHealth modified to 2 minutes, 2 times per day, 7 days per week. The MassHealth representative testified that Appellant is ambulatory and was assessed as a minimal assist (25%) for this activity. According to the MassHealth representative, the standardized "time for task tool" used by clinical reviewers to determine the amount of time needed to assist with a particular activity based on the member's degree of function directs 2 minutes for minimal assistance with stairs. The MassHealth representative noted that frequency for stairs is usually requested in even-numbered increments due to the typical need to go down the stairs and then come back up (or vice versa). Here, Appellant requested an odd-number frequency of three times per day. The MassHealth representative also testified that last year, Appellant requested no time to assist with stairs and there is no medical documentation of a deterioration in Appellant's ability to use the stairs from last year.

Appellant's father testified that there is an exercise and recreation room in the basement of the house that Appellant uses once per day. The father stated he did not dispute modifying the frequency from 3 times to 2 times per day (down and back up), but he felt that MassHealth was arbitrarily cutting time and not considering Appellant's ability and need. The father testified that 3 minutes per incident of assistance is required because Appellant is resistant and hesitant and needs to be physically assisted throughout the duration of the task.

## **Findings of Fact**

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant is [REDACTED] with a primary diagnosis of Autism, developmental delay, left temporal lobe CVA, seizures, severe behavioral issues with increased resistive behaviors, frequent tantrums, bites, hits, PICA, and sensory issues.
2. Appellant requires two-person assists for transport to/from appointments.
3. Appellant's father works outside of the home and the mother has back pain.
4. A Prior Authorization (PA) request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on December 30, 2023, by Northeast Arc for 50 hours and 30 minutes/week for 36 school weeks and 52 hours and 30 minutes per week for 16.28 vacation weeks for one year.
5. MassHealth modified the request on January 5, 2024, to 36 hours and 0 minutes/week for 36.28 school weeks and 37 hours and 45 minutes/week for 16 vacation weeks for the period February 3, 2024 – February 2, 2025.
6. MassHealth modified the request by reducing the time requested for assistance with the following: mobility, stairs, bathing, dressing, undressing, bladder care, meal preparation and travel to medical appointments.
7. After the parties exchanged testimony, they agreed to the following: bathing – parties agreed to 20 minutes per shower, but Appellant plans to seek an adjustment with provider agency relative to frequency; dressing and undressing – MH restored to time requested; bladder care – Appellant did not dispute modification; meal preparation – parties agreed to 35 minutes, once per day, 5 days per week; medical transportation – Appellant did not dispute, but plans to seek an adjustment with provider agency.
8. By the end of the hearing, the only modifications that remained in dispute were time for assistance with mobility and stairs.
9. Appellant requested 2 minutes, 6 times per day, 2 days per week and 2 minutes, 4 times per day, 5 days per week to assist with mobility.
10. MassHealth modified time for mobility to 1 minute, 6 times per day, 2 days per week and 1 minute, 4 times per day, 5 times per week.
11. Appellant is ambulatory and was assessed as a minimal assist (25%) for mobility.
12. MassHealth applied the standardized "time for task tool" used by clinical reviewers to

determine the amount of time needed to assist with a particular activity based on the member's degree of function.

13. The time for task tool indicates 1 minute for minimal assistance with ambulation.
14. Appellant requested no time to assist with mobility last year and there is no medical documentation of a deterioration in Appellant's ability to ambulate from last year.
15. Due to Appellant's autism, he is unsure of himself and has to be motivated to move.
16. Appellant is often scared and resistant because he does not understand the need to move or where he is being moved to.
17. Appellant is older and is much bigger and stronger than last year.
18. The father can no longer lift and carry Appellant to move him as he used to do in the past.
19. Appellant moves on his own once he understands the need to move and where he is going.
20. The assistance with mobility described by the father constitutes coaching, cuing and/or prompting.
21. Appellant requested 3 minutes, 3 times per day, 2 days per week and 3 minutes, 2 times per day, 5 days per week to assist with the stairs.
22. MassHealth modified time for stairs to 2 minutes, 2 times per day, 7 days per week.
23. Appellant is ambulatory and was assessed as a minimal assist (25%) for stairs.
24. The standardized "time for task tool" indicates 2 minutes for minimal assistance with stairs.
25. Frequency for stairs is usually requested in even-numbered increments due to the typical need to go down the stairs and then come back up (or vice versa).
26. Appellant requested an odd-number frequency of three times per day.
27. Last year, Appellant requested no time to assist with stairs and there is no medical documentation of a deterioration in Appellant's ability to use the stairs from last year.
28. There is an exercise and recreation room in the basement of the house that Appellant

uses once per day.

29. Appellant does not dispute modifying the frequency from 3 times to 2 times per day (down and back up).

30. 3 minutes per incident of assistance is required because Appellant is resistant and hesitant and needs to be physically assisted throughout the duration of the task.

31. The assistance that Appellant currently requires to go up and down the stairs does not constitute coaching, cuing and/or prompting.

## Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989).

130 CMR 422.412 - Non-covered Services, states in pertinent part:

*MassHealth does not cover any of the following as part of the PCA program or the transitional living program:*

*(C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;*

**Mobility** – Appellant has not met his burden on the matter of time for assistance with mobility. MassHealth applied the standardized time for task tool which directs that a person, such as Appellant, who is ambulatory and deemed to require minimal assistance with mobility would require only 1 minute of hands-on assistance. The hesitancy and initial confusion experienced when commencing to direct Appellant to ambulate, as described by the father, constitutes cuing, coaching and/or prompting which is not compensable under the Masshealth PCA program pursuant to regulation 130 CMR 422.412(C).

**Stairs** - The difference with stairs, as described by the father, is that Appellant requires more than mere guidance, coaching or prompting at the outset of the task (as with mobility). Appellant requires physical hands-on assistance throughout the activity to get him up and down the stairs safely. Accordingly, 130 CMR 422.412(C) does not serve as an adequate basis to reduce the requested time in this instance. Additionally, the fact that Appellant did not request time for assistance with stairs last year has been overcome by the fact that Appellant is now ■■■, he has grown, and is stronger than last year. Consequently, Appellant's father can no longer simply pick him up to move him as he had done in the past.

For the foregoing reasons, the appeal is APPROVED as to time to assist with stairs at 3 minutes, 2 times per day, seven days per week and DENIED as to additional time to assist with mobility. The appeal is dismissed as to the time for assistance with activities agreed to at the hearing.

## **Order for MassHealth**

Remove AID PENDING. In addition to the restorations and agreed-to times made during the hearing, change time for stairs to 3 minutes, 2 times per day, seven days per week.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this notice, you should contact your MEC office. If the MEC office gives you any problems with implementing this decision, you should report this in writing to the Director of the Board of Hearings, MassHealth of Medical Assistance, at the address on the first page of this decision.

## **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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

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