

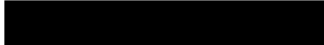
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2401593
<b>Decision Date:</b>	4/29/2024	<b>Hearing Date:</b>	03/07/2024
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, RN *via* videoconference



*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>	Dismissed in part; Denied in part	<b>Issue:</b>	Prior Authorization Personal Care Attendant Services
<b>Decision Date:</b>	4/29/2024	<b>Hearing Date:</b>	03/07/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<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 January 11, 2024, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services. (See 130 CMR 422.410(A)(3)(6)(7),(C)(1); 450.204(A)(1); Exhibit (Ex.) 1; Ex. 6, pp. 3-5). The appellant filed this appeal in a timely manner on January 31, 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 modified the appellant's request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(3)(6)(7),(C)(1); and 450.204(A)(1), in modifying the request for PCA services.

## Summary of Evidence

MassHealth was represented by a registered nurse and clinical appeals reviewer who appeared by video. The appellant was represented by her mother and both the appellant and her mother appeared in person at the Taunton MassHealth Enrollment Center.

The MassHealth representative testified to the following. According to documentation, the appellant is under the age of 18 years old and has diagnoses of autism with self-stimulating behaviors; cognitive impairment; and developmental delay. (Testimony; Ex. 6, pp. 7-8). The appellant resides at home with her mother. (Testimony; Ex. 6, p. 6). On December 22, 2023, the [REDACTED] (the PCM agency) submitted a PA reevaluation request for PCA services. (Testimony). Specifically, the PCM agency requested 35 hours and 45 minutes for 50.28 school weeks; and 44 hours and 45 minutes for 2.00 vacation weeks. (Testimony). In the notice dated January 11, 2024, MassHealth approved 29 hours and 15 minutes for 50.28 school weeks; 31 hours and 15 minutes for 02.00 vacation weeks for dates of service from January 11, 2024 through January 10, 2025. (Testimony; Ex. 1; Ex. 6, pp. 3-5). In coming to this determination, MassHealth made seven modifications to the PA request. (Id.).

After considering the appellant's mother's testimony, the MassHealth representative overturned the modifications to grooming (nail care) and grooming (hair care) in their entirety. (Testimony). The MassHealth representative therefore approved 10 minutes per week for both school and vacation weeks for nail care; and five minutes, two times per day, seven days per week for hair care for both school and vacation weeks, which was what the PCM agency requested. (Testimony; Ex. 6, pp. 15, 42). The MassHealth representative also partially overturned the modification to grooming (shaving), and offered five minutes, three times per week (which were limited to assisting the appellant with shaving her underarms and legs<sup>1</sup>). (Testimony). The appellant's mother accepted this partial restoration to the time for shaving. (Testimony).

The following four modifications remained in dispute at the conclusion of the hearing: bladder care, bowel care, laundry, and eating. (Ex. 6, pp. 18, 19, 23, 46, 49).

### Bladder Care

The PCM agency requested 10 minutes, four times a day, five days a week and 10 minutes, six times a day, two days a week during school weeks; and 10 minutes six times a day, seven days a week during vacation weeks. (Ex. 6, pp. 19, 46). In its comments the PCM agency indicated that the appellant was resistant to assistance with various parts of hygiene assistance and that despite wearing pull ups at night, she soaks bed linens, and pads. (Id.). MassHealth modified the time to six minutes, four times per day, five days a week and six minutes, six times per day, two days a week

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<sup>1</sup> The PCM agency requested 20 minutes, three times per week. (See Ex. 6, p. 15). According to the appellant's mother, this time included time for shaving the appellant's pelvic area, which the MassHealth representative specifically excluded from the restoration.

during school weeks; and six minutes, six times per day, two days a week during vacation weeks. (Ex. 1; Ex. 6, p. 4). Citing 130 CMR 422.410(A)(7) and 450.204(A)(1), MassHealth explained that it modified the time requested for assistance with toileting because it was longer than ordinarily required for someone with the appellant's physical needs. (Id.).

The MassHealth representative testified that the appellant received five minutes, four times per day last year for bladder care. (Testimony). The appellant's mother stated that the appellant wears pullups at night and that she does not know how to wipe. (Testimony). Continuing, she stated that if left to her own devices the appellant will pull up her clothing and leave the bathroom as soon as she has finished without cleaning herself. (Testimony). The appellant's mother confirmed that the PCA provides assistance with peri-care and hand washing. The appellant's mother stated that the PCA also assists with clothing maintenance. (Testimony). When asked what the difference for bladder care was compared to last year, the appellant's mother stated that the appellant was not having as many accidents in that she is better at indicating when she has to go to the bathroom. (Testimony). The appellant's mother stated that the appellant also is better at holding it. (Testimony). The appellant's mother stated that as she stated before, the appellant was worse about waiting to receive assistance with cleaning. (Testimony).

#### Bowel Care

The PCM agency requested 15 minutes, one time a day, seven days during school and vacation weeks. (Ex. 6, pp. 19, 46). In its comments the PCM agency indicated that the appellant was resistant to assistance with various parts of hygiene assistance and that despite wearing pull ups at night, she soaks bed linens and pads. (Id.). MassHealth modified the time to seven minutes, one time per day, seven days a week during both school and vacation weeks. (Ex. 1; Ex. 6, p. 4). Citing 130 CMR 422.410(A)(7) and 450.204(A)(1), MassHealth explained that it modified the time requested for assistance with toileting because it was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).

The MassHealth representative commented that the time MassHealth approved was the same as it approved last year. (Testimony). The appellant's mother stated that the appellant was now older and taller. (Testimony). The appellant is not able to perform any hygiene on herself. (Testimony). Like with bladder care, if left to her own devices, the appellant will leave the bathroom without cleaning herself. (Testimony). The appellant's mother did not know whether the appellant was not able to do this or whether she just forgets. (Testimony).

#### Other Healthcare Needs (Laundry)<sup>2</sup>

The PCM agency requested 60 minutes per week for laundry stating that due to the appellant's

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<sup>2</sup> The PCM agency incorrectly requested this under "Other Healthcare Needs" which is a category used to request times for ADLs which are healthcare related. Laundry is considered an IADL, and time requested for this IADL should be requested under this specified category.

incontinence, the PCA has to do soiled laundry separately. (Ex. 6, pp. 23, 49). MassHealth denied time for laundry because assistance with laundry is an instrumental activity of daily living (IADL) and since the appellant lived with family members, it expected family members to provide non-reimbursable assistance with her IADLs. (Ex. 1; Ex. 6, p. 4).

The MassHealth representative stated that generally MassHealth requires that family members provide assistance with IADLs. (Testimony). MassHealth does allow for exceptions when family members are not able to perform IADLs, but the PCM agency must provide an explanation as to why family members are not able to perform IADLs. (Testimony). In this case, the PCM agency provided no explanation as to why family members were not able to provide IADL assistance and for that reason MassHealth did not approve any time for laundry. (Testimony). The appellant's mother stated that because she was incontinent, the appellant requires extra time for laundry. (Testimony). She stated, however, that there was nothing otherwise hindering her from assisting with laundry. (Testimony).

### Eating

The PCM agency requested 10 minutes for PCA assistance with eating breakfast and 20 minutes for PCA assistance with eating dinner every day. (Ex. 6, pp. 18, 45). The PCM agency stated that the appellant requires hand over hand assistance with eating, otherwise she would resort to just eating with her hands. (Ex. 6, p. 18). MassHealth modified this time to 10 minutes for breakfast and 15 minutes for dinner every day because the time requested for eating was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).

The MassHealth representative stated that assistance with eating meant the time the PCA would be actively, physically assisting the appellant putting food on utensils, and putting food in the appellant's mouth using the utensils. It did not encompass the time waiting while the appellant chewed and swallowed the food. (Testimony). The appellant's mother stated that the appellant was not able to pick up utensils because she has a condition where she cannot use her fingers. (Testimony). The appellant generally eats finger foods. (Testimony). When it is something like soup, stew, or spaghetti the appellant does require PCA assistance because she is not able to hold forks, spoons, or knives. (Testimony). The MassHealth representative again emphasized that MassHealth gives time for the active portion of helping the appellant with eating and did approve 10 minutes for breakfast and 15 minutes for the larger meal. (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 and has diagnoses of autism with self-stimulating behaviors; cognitive impairment; and developmental delay. (Testimony; Ex. 6, pp. 7-8).

2. The appellant resides at home with her mother. (Testimony; Ex. 6, p. 6).
3. On December 22, 2023, the PCM agency submitted a PA reevaluation request for PCA services. (Testimony).
4. Specifically, the PCM agency requested 35 hours and 45 minutes for 50.28 school weeks; and 44 hours and 45 minutes for 2.00 vacation weeks. (Testimony).
5. In the notice dated January 11, 2024, MassHealth approved 29 hours and 15 minutes for 50.28 school weeks; 31 hours and 15 minutes for 02.00 vacation weeks for dates of service from January 11, 2024 through January 10, 2025. (Testimony; Ex. 1; Ex. 6, pp. 3-5).
6. In coming to this determination, MassHealth made seven modifications to the PA request. (Testimony; Ex. 1; Ex. 6, pp. 3-5).
7. After considering the appellant's mother's testimony, the MassHealth representative fully overturned two modifications, thereby approving 10 minutes per week for both school and vacation weeks for nail care; and five minutes, two times per day, seven days per week for hair care for both school and vacation weeks. (Testimony).
8. After considering the appellant's mother's testimony, the MassHealth representative partially overturned the modification to grooming (shaving), and offered five minutes, three times per week (limited to assisting the appellant to shave her underarms and legs) which the appellant's mother accepted. (Testimony; Ex. 6, pp. 15, 42).
9. The following four modifications remained in dispute at the conclusion of the hearing: bladder care, bowel care, laundry, and eating. (Ex. 6, pp. 18, 19, 23, 46, 49).

A. Bladder Care

1. The PCM agency requested 10 minutes, four times a day, five days a week and 10 minutes, six times a day, two days a week during school weeks; and 10 minutes six times a day, seven days a week during vacation weeks. (Ex. 6, pp. 19, 46).
2. In its comments the PCM agency indicated that the appellant was resistant to assistance with various parts of hygiene assistance and that despite wearing pull ups at night, she soaks bed linens and pads. (Ex. 6, pp. 19).
3. MassHealth modified the time to six minutes, four times per day, five days a week and six minutes, six times per day, two days a week during school weeks; and six minutes, six times per day, two days a week during vacation weeks. (Ex. 1; Ex. 6, p. 4).
4. Citing 130 CMR 422.410(A)(7) and 450.204(A)(1), MassHealth explained that it

modified the time requested for assistance with toileting because it was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).

5. The appellant received five minutes, four times per day last year for PCA assistance with bladder care. (Testimony).
6. As compared to last year, the appellant was not having as many accidents and was better at indicating when she had to go to the bathroom. (Testimony).
7. The appellant was worse about waiting to receive assistance with cleaning. (Testimony).

B. Bowel Care

1. The PCM agency requested 15 minutes, one time a day, seven days during school and vacation weeks. (Ex. 6, pp. 19, 46).
2. In its comments the PCM agency indicated that the appellant was resistant to assistance with various parts of hygiene assistance and that despite wearing pull ups at night, she soaks bed linens and pads. (Ex. 6, pp. 19).
3. MassHealth modified the time to seven minutes, one time per day, seven days a week during both school and vacation weeks. (Ex. 1; Ex. 6, p. 4).
4. Citing 130 CMR 422.410(A)(7) and 450.204(A)(1), MassHealth explained that it modified the time requested for assistance with toileting because it was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).
5. MassHealth approved the same amount of time for bowel care last year. (Testimony).
6. In addition to be older, the appellant is taller than last year. (Testimony).
7. Like with bladder care, if left to her own devices, the appellant will leave the bathroom without cleaning herself. (Testimony).

C. Other Healthcare Needs (Laundry)

1. The PCM agency requested 60 minutes per week for laundry stating that due to the appellant's incontinence, the PCA has to do soiled laundry separately. (Ex. 6, pp. 23, 49).

2. MassHealth denied time for laundry because assistance with laundry is an IADL and since the appellant lived with family members, it expected family members to provide non-reimbursable assistance with her IADLs. (Ex. 1; Ex. 6, p. 4).
3. Generally MassHealth requires family members to provide assistance with IADLs. (Testimony).
4. MassHealth does allow for exceptions when family members are not able to perform IADLs, but the PCM agency must provide an explanation as to why family members are not able to perform IADLs. (Testimony).
5. The appellant's incontinence causes there to be a need for extra laundry and extra time to do laundry. (Testimony).
6. The family is not otherwise hindered from performing assistance with laundry. (Testimony).

D. Eating

1. The PCM agency requested 10 minutes for breakfast and 20 minutes for dinner every day. (Ex. 6, pp. 18, 45).
2. The PCM agency stated that the appellant required hand over hand assistance with eating, otherwise she would resort to just eating with her hands. (Ex. 6, p. 18).
3. MassHealth approved the 10 minutes requested for PCA assistance with eating for breakfast and modified the time requested for PCA assistance with eating dinner to 15 minutes every day because the time requested for eating was longer than ordinarily required for someone with the appellant's physical needs. (Ex. 1; Ex. 6, p. 4).
4. Time for assistance with eating encompasses physically assisting the appellant in putting food on utensils, and putting food in the appellant's mouth using the utensils and does not encompass the time waiting while the appellant chews and swallows the food. (Testimony).
5. The appellant is not able to pick up utensils because she has a condition where she cannot use her fingers. (Testimony).
6. The appellant generally eats finger foods, but does need assistance when eating something like soup, stew, or spaghetti because the appellant is not able to hold forks, spoons, or knives. (Testimony).

## Analysis and Conclusions of Law

MassHealth may make an adjustment in the matters at issue before or during an appeal period and if the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (130 CMR 610.051(B)). After considering the appellant's mother's testimony, the MassHealth representative overturned the modifications to nail care and hair care in their entirety, approving the time the PCM agency requested. The MassHealth representative also partially restored the time for shaving, which the appellant's mother accepted. As these adjustments resolve the dispute in favor of the appellant with regard to these modifications, the appeal is hereby DISMISSED as to those modifications.

As a prerequisite to payment for PCA services, the PCM agency must request prior authorization from MassHealth. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (Id.). MassHealth does not pay providers for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service where such service is not medically necessary. (130 CMR 450.204). A service is medically necessary if 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)).

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)). ADLs are those specific activities that are performed by a PCA to physically assist a member, for example, with eating and toileting. (130 CMR 422.402; 130 CMR 422.410(A)(6),(7)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA, such as physically assisting with laundry. (130 CMR 422.402; 422.410(B)(1)). In determining the number of hours of physical assistance that a member requires for IADLs, the PCM agency must assume, amongst other things, 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 and meal preparation and clean-up should include those needs of the member. (Id.). MassHealth does not cover services provided by family members. (130 CMR 422.412(F)).

A preponderance of the evidence does not show that there is a medical necessity for the times requested for bladder care, bowel care, and eating. The appellant's mother did describe in adequate detail why the assistance was required, and what assistance the PCA provided the appellant. The appellant's mother did not or could not describe the amount of time of active assistance the PCA needed to provide or why the times approved were not adequate to assist the appellant with these activities.

Similarly, the time requested for laundry is not supported by the regulations. The appellant resides at home with her mother. As laundry is an IADL, MassHealth expects family members to assist with laundry. The MassHealth representative did state that MassHealth will make exceptions, but the appellant's mother could not describe any circumstances that would indicate that she was not capable of doing the appellant's laundry.

For these reasons, the appeal is DENIED IN PART.

## **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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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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