

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2404622
<b>Decision Date:</b>	6/14/2024	<b>Hearing Date:</b>	05/03/2024
<b>Hearing Officer:</b>	Emily Sabo		

**Appearance for Appellant:**



**Appearance for MassHealth:**


Robin Brown, Optum

**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	<b>Issue:</b>	Prior Authorization, Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	6/14/2024	<b>Hearing Date:</b>	05/03/2024
<b>MassHealth's Rep.:</b>	Robin Brown	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South (Telephone)	<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 February 14, 2024, MassHealth modified the Appellant's initial prior authorization request for personal care attendant (PCA) services from the requested 7 hours, 30 minutes of PCA assistance per week, to 6 hours of PCA assistance per week. 130 CMR 422.410(A)(3), 130 CMR 450.204(A)(1), and Exhibit 1. The Appellant filed this appeal with the Board of Hearings in a timely manner on March 20, 2024. 130 CMR 610.015 and Exhibit 2. Modification of a prior authorization request is valid grounds for appeal to the Board of Hearings. 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization request for PCA services.

## Issue

Was MassHealth correct, pursuant to 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1), to modify the Appellant's prior authorization request for PCA services from the requested 7 hours, 30 minutes of PCA assistance per week, to 6 hours of PCA assistance per week?

## Summary of Evidence

The hearing was conducted by telephone. The Appellant, who is [REDACTED] years old, was represented by his mother, who testified through an interpreter and verified the Appellant's identity.

The MassHealth representative, who is an Occupational Therapist and clinical appeals reviewer, testified that the Appellant lives in the community and is a MassHealth Standard member. The Appellant's medical history includes autism, attention deficit disorder, and oppositional defiant disorder. The MassHealth representative testified that on January 28, 2024, ARC of the South Shore, a personal care management services agency, submitted an initial evaluation request to MassHealth on the Appellant's behalf for 7 hours, 30 minutes of PCA assistance per week. The MassHealth representative testified that by notice dated February 14, 2024, MassHealth modified the request to allow for 6 hours of PCA assistance per week. The time period for this prior authorization request is February 14, 2024, through February 13, 2025. Exhibits 1 & 5. The MassHealth representative testified that MassHealth's regulations do not cover PCA services for assistance provided in the form of cueing, prompting, supervision, guiding and/or coaching. Rather, MassHealth covers PCA services for hands-on care. The MassHealth representative also explained that MassHealth could not approve additional time beyond what ARC of the South Shore requested.

The MassHealth representative testified that MassHealth modified the request in two categories of activities of daily living as follows:

- **Bathing**
  - o 210 total minutes requested weekly modified to 140 minutes weekly
  - o ARC of the South Shore requested 30 minutes daily, 7 days a week for assistance with showering
    - o MassHealth granted 20 minutes daily, 7 days a week for assistance with showering
- **Grooming (specifically shaving)**
  - o 40 total minutes requested weekly modified to 20 minutes weekly
  - o ARC of the South Shore requested 10 minutes, 4 times a week for assistance with shaving
    - o MassHealth granted 5 minutes, 4 times a week for assistance with shaving

The MassHealth representative testified that the modified amounts of time that MassHealth

granted for bathing and shaving were longer than ordinarily required for someone with the Appellant's physical needs. The MassHealth representative explained that the evaluating Occupational Therapist found that the Appellant needed minimal assistance with bathing and that the evaluating nurse found that the Appellant needed moderate assistance with bathing. Exhibit 5 at 5-6, 15.<sup>1</sup> The MassHealth representative testified that "minimal assistance" means that the PCA does 25% of the work of the activity or less and that "moderate assistance" means that the PCA does 50% of the work of the activity or less. The MassHealth representative explained that in their review MassHealth weighed the Occupational Therapist's evaluation more significantly due to their training and the type of activity. With regard to shaving, the MassHealth representative testified that typically 2 minutes would be granted for someone who needs minimal assistance and 3 minutes would be granted for someone who needs moderate assistance.

The Appellant's mother testified that her son is hypersensitive and does not like to have his head washed, so bathing is very challenging. His hypersensitivity and obstinacy also make shaving a challenge. She testified that the PCA needs to make sure the Appellant is comfortable and not hurt. The Appellant's mother also explained that autism is a broad term for a lot of different types of issues and there are different levels for her son's needs. She explained that as her son has grown and is physically bigger, it has made his care more challenging. The Appellant's mother testified that the Appellant has a lot of curly hair and a beard and that it takes longer than twenty minutes to bathe a day. The Appellant's mother testified that the PCA shaves the Appellant twice a week for twenty minutes. The Appellant's mother testified that more time is needed for the Appellant's care than what ARC of the South Shore requested.

The MassHealth representative testified that if the Appellant was only being shaved twice a week, the twenty minutes approved by MassHealth equated to 10 minutes for each shave, which was the amount of time that ARC of the South Shore requested for the activity.

## Findings of Fact

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

1. The Appellant is a ■-year-old who lives in the community and is a MassHealth Standard member (Testimony, Exhibit 4).
2. The Appellant's medical history includes autism, attention deficit disorder, and oppositional defiant disorder (Testimony, Exhibit 5).
3. On January 28, 2024, ARC of the South Shore, a personal care management services agency, submitted an initial evaluation request to MassHealth on the Appellant's behalf for 7 hours,

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<sup>1</sup> Exhibit 5 indicates that the Appellant needs minimal assistance with bathing and grooming. Exhibit 5 at 5-6. It indicates the Appellant is dependent regarding medications but is otherwise independent or requires minimal assistance with the activities of daily living. *Id.*

30 minutes of PCA assistance per week (Testimony).

4. By notice dated February 14, 2024, MassHealth modified the request to allow for 6 hours of PCA assistance per week. The time period for the prior authorization request is February 14, 2024, through February 13, 2025 (Testimony, Exhibits 1 & 5).
5. The Appellant filed a timely appeal on March 20, 2024 (Exhibit 2).
6. MassHealth modified the request in the areas of bathing and grooming (specifically shaving) as follows:
  - **Bathing**
    - o 210 total minutes requested weekly modified to 140 minutes weekly
    - o ARC of the South Shore requested 30 minutes daily, 7 days a week for assistance with showering
    - o MassHealth granted 20 minutes daily, 7 days a week for assistance with showering
  - **Grooming (specifically shaving)**
    - o 40 total minutes requested weekly modified to 20 minutes weekly
    - o ARC of the South Shore requested 10 minutes, 4 times a week for assistance with shaving
    - o MassHealth granted 5 minutes, 4 times a week for assistance with shaving(Testimony, Exhibits 1 & 5).
7. I credit the MassHealth representative's testimony regarding the amount of time granted for PCA assistance for bathing and shaving being greater than what is normally allocated for an individual with the Appellant's physical needs (Testimony, Exhibit 5).

## Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living and instrumental activities of daily living as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).

(4) The MassHealth agency has determined that the PCA services are medically necessary.

Pursuant to 130 CMR 450.204(A), a service is 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 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 MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

(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 bathing, personal hygiene, or grooming;

(4) dressing: 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 or bladder needs.

130 CMR 422.410(A).

The MassHealth regulations at 130 CMR 422.412 provide:

422.412: Non-covered 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.

Here, MassHealth modified the request in reducing the amount of PCA time for bathing and grooming (shaving). The evidence in the record supports that the Appellant needs minimal assistance to moderate assistance with these activities. As stated above, I credit the MassHealth representative's testimony regarding the amount of MassHealth time granted for PCA assistance for bathing and shaving being greater than what is normally allocated for an individual with the Appellant's physical needs. While I credit the Appellant's mother's testimony regarding the challenges of her son's care, and am sympathetic to her situation, the Appellant has not demonstrated evidence sufficient to support overturning MassHealth's modification.<sup>2</sup> Therefore, the appeal is denied.

## Order for MassHealth

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<sup>2</sup> The Appellant's representative can also discuss with ARC of the South Shore whether additional time should be requested for PCA services or if the request should be adjusted.

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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Emily Sabo  
Hearing Officer  
Board of Hearings

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