

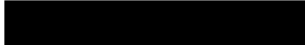
**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved-in-part; Dismissed-in-part	<b>Appeal Number:</b>	2404911
<b>Decision Date:</b>	6/24/2024	<b>Hearing Date:</b>	05/10/2024
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Robin Brown, OTR/L, Clinical Reviewer, Optum,  
MassHealth



*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; Dismissed-in-part	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	6/24/2024	<b>Hearing Date:</b>	05/10/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OTR/L	<b>Appellant's Rep.:</b>	Parent
<b>Hearing Location:</b>	Board of Hearings (Remote)	<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 thereunder.

### Jurisdiction

Through a notice dated 3/21/24, MassHealth informed Appellant that it modified her prior authorization (PA) request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. On 3/27/24, Appellant's mother and court appointed permanent legal guardian, filed a timely request to appeal the notice on Appellant's behalf. See 130 CMR 610.015(B); Exhibit 2. Modification of a PA request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

### Summary of Evidence

At the hearing, MassHealth was represented by a licensed occupational therapist and clinical appeals reviewer. Appellant was represented by her mother / court appointed permanent legal guardian. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth representative presented the following information: Appellant is over the age of 18 and is enrolled as a “consumer” in the MassHealth personal care attendant (PCA) program. On 3/8/24, a registered nurse (R.N.) from [REDACTED] Appellant’s personal care management (PCM) agency, performed a PCA re-evaluation of Appellant to determine her ongoing needs for physical assistance in performing activities of daily living (ADLs) and instrumental activities of daily living (IADLs). See Exh. 4, p. 6-7. In the assessment, the PCM nurse noted that Appellant is non-verbal, has a primary diagnosis of down syndrome, and a past relevant medical history including autism spectrum disorder (ASD), hypothyroidism, poor vision, sleep disorders, cardiac defects, a 2018 cardiac surgery, 2023 aneurysm, scar tissue removal, menorrhagia alopecia, and a history of fungal rashes due to drooling. See id.

Pursuant to its assessment, the PCM agency sent MassHealth an prior authorization (PA) request seeking 33 hours and 30 minutes per-week of PCA services for dates of service beginning 3/30/2024 and ending 3/29/2025. Id. at 2.

On 3/21/24, MassHealth modified Appellant’s PA request by authorizing 28 hours and 15 minutes per-week of PCA services. Id. MassHealth approved the times as requested for all ADLs and IADLs except for two subcategories of “grooming,” specifically (1) hair care and (2) “other” grooming tasks. Id.

According to the PA request, and pursuant to the PCM nursing evaluation, Appellant lacks independence in all grooming activities. See id. at 16-17. Under the grooming subcategory of “hair care,” the PCM agency requested moderate PCA physical assistance five minutes, once per-day (5x1x7) *and* thirty minutes once per-day (30x1x7), amounting to a total request of 35 minutes per-day (35x1x7) for hair care. Additionally, the PCM agency requested 20 minutes per-day (20x1x7) for maximum physical assistance to perform “other” grooming activities. See id. In support thereof, the PCM nurse evaluator made the following comments:

[Appellant requires assistance with] hair nails clip and clean[;] oral[;] she will put brush in mouth but does nothing with it[;] [assistance with] lotion application to face and scalp[;] [assistance] with shaving underarms and legs[;] [assistance with] set up and clean up Medicated Cream to Facial Rash ketoconazole: and Application of Ointment to all Alopecia sites bid: 5 x 2 x 7 clobetasol cream[.] Please note wears a hair piece this must be applied daily with double sided tape mid length washed and dried 30 x 1 x 7 time averaged[;] needs [assistance] to clean glasses under other as well[.]

Exh 4, p. 16.

The MassHealth representative explained that the PCM agency appeared to be requesting the 5 minutes to apply the hair piece daily and 30 minutes to wash and maintain the hair piece. MassHealth modified the request by approving a total of 5 minutes daily (5x1x7) and denied the requested line item of 30 minutes per-day. See id. at 2. Upon discussion at hearing, however, MassHealth offered to authorize an additional 20 minutes for a total of 25 minutes per-day (25x1x7) for hair care. Appellant's mother agreed with the proposed change, thus resolving the modification to hair care.

Next, MassHealth modified Appellant's request for 20 minutes of "other" grooming activities to 5 minutes per-day (5x1x7). See id. at 2. The MassHealth representative testified that the PCM agency's comments made it somewhat unclear as to what it sought to encompass under this grooming subcategory. The MassHealth representative opined that because the parties resolved the tasks involving Appellant's hair piece, and because MassHealth already approved the times requested for nail care, oral care, and shaving, the PCM agency most likely intended the "other" category to include assistance with cleaning glasses, applying body lotion, and applying topical medications to Appellant's facial rash and alopecia sites. Id. at 16.

The MassHealth representative testified that its decision to modify the request for "other grooming" to 5 minutes was to clean Appellant's glasses and apply body lotion. MassHealth noted that the portion of the request related to applying topical medication creams should have been requested under the ADL category related to "medication assistance." Because the request was incorrectly placed, MassHealth was unable to authorize this portion of the request. The representative explained that Appellant's PCM agency may, however, submit a request for an adjustment by requesting the time for medication assistance appropriately.

In response, Appellant's mother testified that she disagreed with the reduction in time approved for other grooming activities. For background, Appellant's mother explained that for years, Appellant has been approved for 37 hours of PCA services per-week. When their PCM agency was switched to [REDACTED] it was the first time that there was a reduction in the amount of services requested. Specifically, Tempus requested only 33.5 hours per-week, which MassHealth, through its decision, has further reduced. Appellant is not getting any better, and the level of care she requires only increases with age. Appellant is over 18 years old, but she behaves like a toddler. Her glasses need to be cleaned multiple times per-day, as they quickly develop a buildup of food remnants and dirt from Appellant's tendency to handle them throughout the day. Appellant's mother testified that Appellant is prescribed three different topical medications, including: Betazol, which is applied to her scalp for alopecia; a medication to treat toenail fungus; and Ketoconazole, for the treatment of her facial rash caused by drooling. All three medications are applied twice daily. Appellant's mother testified that, in addition to topical medications, Appellant requires full assistance with applying daily body moisturizer

post-shower, facial lotion twice daily, and daily deodorant application. Because of Appellant's condition, every aspect of assistance takes longer due to her resistant behaviors and/or her tendency to wiggle around when receiving care. Appellant's mother clarified that the additional time is not a result of waiting, but rather, because of the additional hands-on assistance required by the PCA to complete the necessary grooming task in spite of the resistant behaviors.

A review of the PA request shows Appellant's medication list to include Levothyroxine, Ketoconazole as needed for facial rash, and ASA 81mg. See id. at 7. As MassHealth testified, the PCM agency did not request any time under the section of the PA request allotted for "medication assistance." Comments in this section indicate that Appellant's legal guardian is able to assist with medications. See id. at 22.

## Findings of Fact

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

1. Appellant is over the age of 18 and is enrolled as a "consumer" in MassHealth's PCA program.
2. Appellant is non-verbal, has a primary diagnosis of down syndrome, and a past relevant medical history including ASD, hypothyroidism, poor vision, sleep disorders, cardiac defects, a 2018 cardiac surgery, 2023 aneurysm, scar tissue removal, menorrhagia alopecia, and a history of fungal rashes due to drooling.
3. On 3/20/24, Appellant's PCM agency sent MassHealth an PA request seeking 33 hours and 30 minutes per-week of PCA services for dates of service beginning 3/30/2024 and ending 3/29/2025.
4. On 3/21/24, MassHealth modified the request to 28 hours and 15 minutes per-week; specifically, by reducing the requested time for assistance with hair care and "other" grooming tasks.
5. Appellant requires assistance with all grooming activities.
6. In the PA request, the PCM agency made the following comments in support of the times requested for grooming tasks: *[Assistance with] hair nails clip and clean[;] oral she will put brush in mouth but does nothing with it[;] [assistance with] lotion application to face and scalp[;] [assistance] with shaving underarms and legs[;] [assistance with] set up and clean up Medicated Cream to Facial Rash ketoconazole: and Application of Ointment to all Alopecia sites bid: 5 x 2 x 7 clobetasol cream[.] Please note wears a hair*

*piece this must be applied daily with double sided tape mid length washed and dried 30 x 1 x 7 time averaged[;] needs [assistance] to clean glasses under other as well[.]* (Exh. 4, p. 16).

7. Under the grooming task of “hair care,” the PCM agency requested moderate physical assistance of five minutes, once per-day (5x1x7) *and* thirty minutes once per-day (30x1x7), for a total request of 35 minutes per-day (35x1x7) for hair care.
8. The times requested were to allow the PCA to provide physical assistance in applying/removing and maintaining Appellant’s hair piece.
9. Through its 3/21/24 notice, MassHealth modified the request for hair care by authorizing a total of 5x1x7 (i.e., denying the additional request of 30x1x7).
10. At hearing MassHealth offered to authorize an additional 20 minutes for hair care for a total of 25 minutes per-day (25x1x7) for this task, which was accepted by Appellant.
11. Appellant requested 20 minutes per-day (20x1x7) for maximum physical assistance to perform “other” grooming activities, including cleaning Appellant’s glasses, applying body lotion, and applying topical medications to Appellant’s facial rash and alopecia sites.
12. Appellant’s glasses need to be cleaned multiple times per-day as they are prone to food and dirt build-up.
13. Appellant applies multiple daily topical medications, including Betazol, for alopecia; Ketoconazole, for facial rash; as well as a medication to treat Appellant’s toenail fungus.
14. Appellant relies on her PCA to apply daily body moisturizer post-shower, facial lotion twice daily, and deodorant daily.
15. All grooming tasks take longer to perform due to Appellant’s tendency to wiggle or resist care, in this involves more hands-on assistance time by the PCA to accomplish grooming tasks.

## **Analysis and Conclusions of Law**

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:<sup>1</sup> First, the services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair the member’s functional ability to perform [at least two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive physical assistance to meet her ADL needs. MassHealth covers PCA assistance for the following ADLs:

(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

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<sup>1</sup> PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.002.

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.

See 130 CMR 422.410 (emphasis added).

MassHealth will reimburse for the “activity time performed by a PCA in providing assistance with the ADL.” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that 20 minutes per-day (20x1x7), as requested, is necessary for her PCA to provide adequate physical assistance to perform “other” grooming ADL tasks. The evidence shows that Appellant is over the age of 18 and due to her complex medical conditions, she is unable to perform any grooming tasks independently. She relies on her PCA to clean her glasses multiple times throughout the day as they quickly develop a buildup of food and dirt from Appellant’s frequent touching. Appellant also requires PCA assistance with applying body lotion after her daily shower, which is in addition to the topical medications that are applied to her face, scalp, and affected areas daily. Although not expressly referenced by the PCM agency in the PA request, Appellant’s mother credibly testified that Appellant requires, and receives, PCA assistance with daily deodorant application and face lotion application twice daily, which would fall within the subcategory of “other” grooming tasks. Appellant’s mother provided credible testimony detailing how such activities take longer than ordinarily expected due to Appellant’s tendency to resist care or wiggle while receiving care. These tendencies ultimately require more hands-on assistance by the PCA to complete the grooming task. Given the multiple tasks that fall within “other” grooming needs, the complexity of Appellant’s medical condition, and resistive behaviors that prolong the time it takes to accomplish each task, the requested time of 20 minutes per-day (20x1x7) is medically necessary and within the scope of coverage of PCA program regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410(A)(3). The appeal is APPROVED as to the issue of “other grooming tasks.”

The appeal is DISMISSED with respect to “hair care,” as the parties stipulated a total of 25 minutes per-day (25x1x7) for this task, as discussed at hearing.



## Order for MassHealth

Remove aid pending. For the PA beginning 3/30/2024 and ending 3/29/2025, adjust the grooming ADL tasks as follows:

- Other grooming tasks: 20x1x7 as requested in PA request; and
- Hair care: increase approved time to 25x1x7, as agreed-to at hearing.

## 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 contact your MassHealth Enrollment Center. 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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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

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