

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; denied in part	<b>Appeal Number:</b>	2408889
<b>Decision Date:</b>	09/26/2024	<b>Hearing Date:</b>	7/10/2024
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	8/9/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, R.N., Optum



*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 services
<b>Decision Date:</b>	09/26/2024	<b>Hearing Date:</b>	7/10/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, R.N.	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Quincy (remote)	<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

By notice dated May 1, 2024, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on June 5, 2024. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032. The hearing record was held open through August 9, 2024 for the submission of additional evidence. Exhibit 5.

### Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of PCA services.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying Appellant's prior authorization request for PCA services.

### Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and provided documents in support, Exhibit 4. Appellant's parent appeared by phone and submitted records after the hearing, Exhibit 6. A summary of testimony and documentation follows. Appellant is in [REDACTED] with diagnoses including cerebral palsy, developmental delay, seizure disorder, ventriculoperitoneal shunt, and blindness. Exhibit 4 at 10. Appellant lives at the [REDACTED] school five days per week.

On April 18, 2024, Tempus, Appellant's Personal Care Management Agency (PCMA), submitted a re-evaluation for PCA services, requesting 34.45 hours of PCA assistance for school weeks and 59.45 for vacation weeks. On May 1, 2024, MassHealth modified the request. On June 25, 2024, MassHealth sent a correction as there had been an error in the request submitted by Tempus. MassHealth approved 19.75 PCA hours during school weeks and 55.75 hours during vacation weeks. MassHealth acknowledged other calculation errors and after confirming from Appellant's parent that Appellant is home three nights per school week, the total amount approved for school weeks would be 23.5 hours. The dates of service for this request are May 12, 2024 through May 11, 2025.

MassHealth modified the requested PCA hours for the following activities of daily living (ADL): mobility, transfers, eating, toileting, passive range of motion (PROM) and nail care. MassHealth and Appellant came to an agreement on mobility, transfers, eating, and toileting, reflected in the order below.

For PROM, Appellant did not dispute how MassHealth modified the school week request for upper extremities, and MassHealth approved in full the time requested for upper extremity PROM during vacation weeks. MassHealth testified that there was an error in MassHealth's calculation, as the documentation only included approval for 80 minutes total for all extremities. *Id.* at 16. The remaining issue in dispute is MassHealth's modification for lower extremity PROM for both school and vacation weeks. The request for PROM is broken down as follows:

**School weeks:**

	Mins/Ep	Ep/Day	Days/Week	Total mins/week
Upper extremity left	3	3	3	27
Upper extremity right	3	3	3	27
			<b>Total:</b>	<b>54</b>
Lower extremity left	10	3	3	90
Lower extremity right	10	3	3	90
			<b>Total:</b>	<b>180</b>

*Id.* at 16.

**Vacation weeks:**

	Mins/Ep	Ep/Day	Days/Week	Total mins/week
Upper extremity left	3	3	7	63
Upper extremity right	3	3	7	63
			<b>Total:</b>	126
Lower extremity left	10	3	7	210
Lower extremity right	10	3	7	210
			<b>Total:</b>	420

*Id.* at 44.

Recognizing that Appellant spends time at home on Fridays after school is dismissed and on Mondays before going to school, MassHealth approved:

**School weeks: Friday and Monday:**

	Mins/Ep	Ep/Day	Days/Week	Total mins/week
Upper extremity left	3	2	2	12
Upper extremity right	3	2	2	12
			<b>Total:</b>	24
Lower extremity left	5	2	2	20
Lower extremity right	5	2	2	20
			<b>Total:</b>	40

**School weeks: Saturday and Sunday:**

	Mins/Ep	Ep/Day	Days/Week	Total mins/week
Upper extremity left	3	3	2	18
Upper extremity right	3	3	2	18
			<b>Total:</b>	<b>36</b>
Lower extremity left	5	3	2	30
Lower extremity right	5	3	2	30
			<b>Total</b>	<b>60</b>

Upper extremity total approved, school weeks: 60 minutes

Lower extremity total approved, school weeks: 100 minutes

**Vacation weeks:**

	Mins/Ep	Ep/Day	Days/Week	Total mins/week
Upper extremity left	3	3	7	63
Upper extremity right	3	3	7	63
			<b>Total:</b>	<b>126</b>
Lower extremity left	5	3	7	105
Lower extremity right	5	3	7	105

The MassHealth representative testified for PROM for the lower extremities, the time requested was longer and more frequent than ordinarily required for someone with the appellant's needs. Appellant disputed MassHealth's reduction of the time approved for each instance of lower extremity PROM, reducing the time from 10 minutes requested to 5 minutes per session.

Appellant's parent testified that Appellant is very tight and needs a lot of stretching before he uses his stander. Appellant's parent emphasized that Appellant requires 30 minutes daily. Appellant's right side is particularly tight. Though Appellant receives a Botox injection every 4-6 months to address the tightness, this wears off after a month or two. Appellant's parent argued that it takes 10 minutes to stretch Appellant's left leg and 15 minutes for his right. Otherwise, he cannot use his stander. When Appellant was [REDACTED] old, he could walk with assistance. After having hip surgery, his right leg and total body alignment is misaligned. He tilts to one side when standing or lying down. Though Appellant receives physical and occupational therapy at school three days a week, they only stretch him for 5 minutes at school. Appellant has more activities at school. Appellant's PCAs stretch him for 30 minutes at home before he uses his stander for 30 minutes.

The MassHealth representative testified that Appellant was approved for 5 minutes 3 times per day last year. Appellant argued that it was not enough last year, and even then, Appellant could stand. He is tighter and has more difficulty standing this year. Appellant is losing the ability to walk because of how misaligned he is. Only approving 5 minutes at a time is "not reality" for Appellant.

The MassHealth representative testified that the purpose of PROM is to move the joints, not strengthen the muscles. Appellant's parent responded that PROM is the foundation to get Appellant to move and that he cannot straighten his legs. The PROM helps him straighten his legs and reduce spasms from tight muscles.

The hearing record was held open for Appellant to submit additional support for the PROM request. Exhibit 5. Appellant submitted a letter from Appellant's orthopedist which stated that Appellant "needs stretching at least 10 min/leg daily." Exhibit 6. MassHealth did not provide a response to this letter.

Regarding nail care, Appellant requested 5 minutes daily. Exhibit 4 at 19, 47. MassHealth approved 5 minutes per week for both school and vacation weeks, arguing that the frequency requested was more often than is ordinarily required for someone with the appellant's needs. Appellant's representative argued that Appellant is extremely averse to nail care and resists the task. A strategy Appellant's PCAs have implemented is to do a little nail care every day to desensitize Appellant to it and make it less of a struggle. Even if Appellant resists the nail care, his PCAs will do some work such as filing to keep the task manageable. Appellant's PCAs can file his nails when he is on his stander. Appellant's school will not perform the task. As Appellant has 20 nails total between his fingers and toes, 5 minutes weekly is not sufficient. Appellant

estimated that it takes at least 2 minutes per nail.

## Findings of Fact

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

1. On April 18, 2024, Tempus, Appellant's Personal Care Management Agency (PCMA), submitted a re-evaluation for PCA services, requesting 34.45 hours of PCA assistance for school weeks and 59.45 for vacation weeks.
2. On May 1, 2024, MassHealth modified the request. On June 25, 2024, MassHealth sent a correction as there had been an error in the request submitted by Tempus. MassHealth approved 19.75 PCA hours during school weeks and 55.75 hours during vacation weeks.
3. MassHealth acknowledged other calculation errors and after confirming from Appellant's parent that Appellant is home three nights per school week, the total amount approved for school weeks was 23.5 hours, for dates of service May 12, 2024 through May 11, 2025.
4. Appellant filed this timely appeal on June 5, 2024. Exhibit 2.
5. Appellant is [REDACTED] with diagnoses including cerebral palsy, developmental delay, seizure disorder, ventriculoperitoneal shunt, and blindness. Exhibit 4 at 10.
6. Appellant lives at school five days per week.
7. For assistance with PROM for lower extremities, Appellant requested 10 minutes, 3 times per day, 3 days per week for school weeks; and 10 minutes, 3 times per day, 7 days per week for vacation weeks. *Id.* at 16, 44.
8. MassHealth modified this request and approved 5 minutes, 2 times per day, 2 days per week for Friday and Monday; and 5 minutes, 3 times per day, 2 days per week for Saturday and Sunday during school weeks. For vacation weeks, MassHealth approved 5 minutes, 3 times per day, 7 days per week.
9. Appellant submitted a letter from Appellant's orthopedist which stated that Appellant "needs stretching at least 10 min/leg daily." Exhibit 6.
10. For assistance with nail care, Appellant requested 5 minutes daily. Exhibit 4 at 19, 47.
11. MassHealth approved 5 minutes weekly for nail care for school and vacation weeks.

12. The MassHealth representative testified that MassHealth could approve up to 10 minutes for nail care per week.
13. Appellant's parent testified that Appellant's PCAs assist with nail care daily due to Appellant's aversion as a strategy to desensitize him to the task.

## **Analysis and Conclusions of Law**

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 personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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 personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
  - (a) mobility, including transfers;
  - (b) medications,
  - (c) bathing/grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting.
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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:

- (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 basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: 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 and bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
  - (a) the care and maintenance of wheelchairs and adaptive devices;
  - (b) completing the paperwork required for receiving personal care services; and
  - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130



CMR 422.410(B) for IADLs, the personal care agency must assume the following.

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
- (2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

Under 130 CMR 422.412(C), MassHealth does not cover as part of the PCA program “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.”

Here, it is undisputed that Appellant qualifies for PCA services. The only issues in dispute are MassHealth’s modifications of PROM for the lower extremities and nail care. The other modifications made by MassHealth were adjusted and/or agreed to at hearing and reflected in the order below.

Regarding PROM, this appeal is denied. Appellant’s parent’s testimony about how often Appellant needs assistance with PROM was understandable, but the doctor’s note provided only established the medical necessity for 10 minutes daily for each lower limb. MassHealth approved 10 minutes daily on Fridays and Mondays and 15 minutes daily on Saturdays, Sundays, and during school vacation weeks for each lower extremity. Appellant may request an adjustment of PCA assistance through his PCMA if the doctor can provide a note establishing the medical necessity for additional time.

Regarding nail care, this appeal is approved in part. Appellant’s parent offered credible testimony that the nail care task is performed in small amounts daily. MassHealth testified that 10 minutes per week could be approved. Based on the testimony of the parties, this appeal is approved to allow 10 minutes of nail care during school weeks and 14 minutes (or 2 minutes, 1 time per day, 7 days per week) of nail care during vacation weeks.

## **Order for MassHealth**

Adjust the prior authorization request to reflect the agreements reached at hearing and with this decision:

Mobility and transfers: 135 minutes per week for school weeks

Eating: 240 minutes per week for school weeks  
Toileting: 174 minutes per week for school weeks

PROM:

- Upper extremities, school weeks: 60 minutes
- Upper extremities, vacation weeks: 126 minutes
- Lower extremities, school weeks: 100 minutes
- Lower extremities, vacation weeks: 210 minutes

Nail care:

- School weeks: 10 minutes per week
- Vacation weeks: 14 minutes per week (2 minutes, 1 time per day, 7 days per week).

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

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