

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	APPROVED	<b>Appeal Number:</b>	2409825
<b>Decision Date:</b>	09/17/2024	<b>Hearing Date:</b>	08/02/2024
<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	<b>Issue:</b>	Prior Authorization - PCA
<b>Decision Date:</b>	09/17/2024	<b>Hearing Date:</b>	08/02/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Quincy		

### 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 May 14, 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 for this appeal in a timely manner on June 24, 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 properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

## Summary of Evidence

MassHealth was represented by a registered nurse and clinical appeals reviewer who testified that a written Prior Authorization (PA) request for Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on May 30, 2024, by Boston Center for Independent Living on behalf of Appellant seeking 9 hours and 30 minutes/week for one year.

The MassHealth representative testified that according to documentation submitted with the request, Appellant is a preteen male with a primary diagnosis of autism. He has decreased attention span, poor safety awareness and difficulty with sequencing tasks or completing them.

MassHealth modified the request on May 14, 2024, to 9 hours/week for one year with effective dates of service: June 4, 2024, to June 3, 2025. The MassHealth representative testified that 1 modification was made; Masshealth reduced requested time for assistance with bowel care. MassHealth cited regulations 130 CMR 422.410(A)(7): Activities of Daily Living and 130 CMR 450.204: Medical Necessity (A)(1)(2) and (B) in support of its modifications.

### **Bowel Care:**

Appellant requested 10 minutes, once per day, seven days per week to assist with bowel care. Masshealth approved 5 minutes, once per day, seven days per week on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs and that according to the evaluation notes, the task was limited to post toileting management (hygiene and clothes). MassHealth also noted that last year Appellant was reported to be independent with bladder care. On this request, Appellant was approved for 3 minutes, twice per day, seven days per week to assist with bladder care. Upon questioning, the MassHealth representative testified that last year Appellant was allowed 10 minutes, twice per day, seven days per week for bowel care.

Appellant was represented by his mother accompanied by a representative of the PCM agency. Appellant's mother testified that assistance with toileting is becoming more demanding as Appellant gets older and stronger. Appellant's mother testified that Appellant cannot do bowel care himself or he will hold it and become backed up. Appellant has to be physically brought to the bathroom and physically directed to remain on the toilet multiple times. Appellant's mother also testified that the PCA has to assist Appellant with taking down and pulling up his underwear and pants and performs all hygiene and cleanup including when Appellant has an accident and soils the toilet area and/or himself.

In response, the Masshealth representative testified that reminding and cuing are not compensable under the PCA program. According to the Masshealth representative, only the pants up/down and the wiping are compensable with toileting.

## Findings of Fact

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

1. A written PA request for Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on May 30, 2024, by Boston Center for Independent Living on behalf of Appellant seeking 9 hours and 30 minutes/week for one year.
2. Documentation submitted with the request indicates that Appellant is a preteen male with a primary diagnosis of autism.
3. Appellant has decreased attention span, poor safety awareness and difficulty with sequencing tasks or completing them.
4. MassHealth modified the request on May 14, 2024, to 9 hours/week for one year with effective dates of service: June 4, 2024, to June 3, 2025.
5. MassHealth made one modification reducing time for assistance with bowel care.
6. Appellant requested 10 minutes, once per day, seven days per week to assist with bowel care.
7. Last year Appellant was allowed 10 minutes, twice per day, seven days per week for bowel care.
8. This year, Masshealth approved 5 minutes, once per day, seven days per week on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs and that according to the evaluation notes, the task was limited to post toileting management (hygiene and clothes).
9. Assistance with toileting is becoming more demanding as Appellant gets older and stronger.
10. Appellant cannot do bowel care himself or he will hold it and become backed up.
11. Appellant has to be physically brought to the bathroom and physically directed to remain on the toilet multiple times.
12. The PCA has to assist Appellant with taking down and pulling up Appellant's underwear and pants and perform all hygiene and cleanup including when Appellant has an accident and soils the toilet area and/or himself.

13. According to the nurse's evaluation, Appellant requires "maximum" assistance with bowel care (Exhibit B, page 19).
14. According to the nurse's evaluation, the *"PCA assist with all post-toileting hygiene and clothing management. Consumer will not participate or initiate, forgets to wipe, wash hands, can't manage clothing. PCA assist when consumer has accident, often resistive to care, with behavioral outbursts"* (Id).

## 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)). Appellant has met his burden.

MassHealth erred in reducing the requested time on the grounds that only pants up/down and wiping were compensable.

While the nurse evaluator only listed the activities of bowel care as: "[p]hysical assist with toilet hygiene; [p]hysical assist with clothing management" in the comments she also wrote, "PCA assists with all post-toileting hygiene and clothing management. Consumer will not participate or initiate, forgets to wipe, wash hands, can't manage clothing. PCA assist when consumer has accident, often resistive to care, with behavioral outbursts" (Exhibit B, page 19). This is consistent with the mother's testimony.

According to the "Time-For-Tasks Guidelines for the MassHealth PCA Program" (11-16-11) page 10 of 14, activities of toileting pertinent here include assistance with the toilet, transfers, performing all hygiene (not just wiping) adjusting clothes and assisting with the bowel routine. The Guidelines also state that when assessing time for assistance with toileting, MassHealth is to consider, inter alia, the member's functional ability, severity of symptoms; effects of mental status; member's ability to self-direct the activity; and the level of the member's cooperation with activity. From the nurse's comments and the mother's testimony it is clear that Appellant cannot self-direct his toileting and that hygiene often includes more than just wiping.

According to the Guidelines, the average range of assistance with bowel care is 6 to 25 minutes per incident of assistance. MassHealth's allowance of only 5 minutes is below and outside of this range. Moreover, the allowed 5 minutes is far less than the 19 minutes indicated in the Guidelines for a person requiring "maximum" assistance with bowel care, such as Appellant.

Lastly, it is difficult to understand a reduction in the 10 minutes per incidence requested when MassHealth approved this amount last year at an even greater frequency of 2 times per day instead of the once per day requested this year. The fact that Appellant was independent with

bladder care last year and allowed time this year is irrelevant. The number of incidences of bladder care may be influenced by how often a person also needs bowel care, but not the other way around. Whereas urination often accompanies a bowel movement, bowel movements do not typically follow the need to urinate.

For the foregoing reasons, the appeal is APPROVED.

## **Order for MassHealth**

Restore time for assistance with bowel care per request backdated to the beginning to the beginning of the PA period.

## **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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

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