

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2410560
Decision Date:	09/27/2024	Hearing Date:	08/07/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:




Appearance for MassHealth:

Robin Brown, OTR/L, 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

Appeal Decision:	Denied	Issue:	Prior Authorization - Personal Care Attendant (PCA) Services
Decision Date:	09/27/2024	Hearing Date:	08/07/2024
MassHealth's Rep.:	Robin Brown, OTR/L, Optum	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	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 06/28/2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 46 hours and 00 minutes (46:00) of hours per week for school weeks and 51:15 hours per week for vacation weeks to 37:45 hours per week for school weeks and 41:45 hours for vacation weeks for the dates of service from 08/07/2024 to 08/06/2025 (130 CMR 422.410; Exhibit 1). On 07/08/2024 a timely appeal was filed by the appellant (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant 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 personal care attendant services.

Summary of Evidence

The appellant, a minor child, was represented in these proceedings by her mother. The mother and the MassHealth representative appeared telephonically. Exhibits were admitted into evidence (1-4).

The MassHealth representative testified that she is licensed occupational therapist who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that on 06/25/2024 a prior authorization request (PA) for PCA services was received on appellant's behalf from her PCA Agency (PCM), TriValley, Inc. ("provider"), for the dates of service of 08/07/2024 to 08/06/2025. It is a re-evaluation. In the PA request for PCA services (Exhibit 4), the provider requested 46 hours and 00 minutes (46:00) of hours per week for school weeks and 51:15 hours per week for vacation weeks for PCA assistance. The appellant is [REDACTED]. According to the documentation included with the PA:

the appellant resides with her mother and grandmother in a two-story home. Her bedroom is located on the second floor and the family room is also on the second floor. The appellant's diagnosis affecting her ability to complete ADL'S include: STXBP1¹ encephalopathy w/ epilepsy, cortical vision impairment, hypotonia, tremors, and ataxia. She has a diagnosis of dystonia where her left arm contracts and her mother states she has focal and/or tonic/clonic seizures daily. She may be started on Keto diet in hopes of decreasing seizure activity. The appellant now uses SMO'S bilaterally and she walks. She can still stumble due to dystonia and needs hand contact when outside the home due to poor safety awareness/potential for injury if stumbles. She needs to be picked up off the floor as she cannot do that herself and picked up and put down from her seat belted dining chair for her meals and picked up and put down from changing table for her incontinence. The appellant uses her adaptive stroller for longer distances and daily for school. She wears pull ups with a pad which are provided by Charm Medical Supply. The appellant was seen by Urgent Care for tripping and falling resulting in the loss her two front baby teeth and also split her lip which has since healed. She receives music therapy, Reiki and massage at home provided by Pedi-Pals. School schedule/outside services: the appellant attends school five days a week 9:00am-3:00pm. This summer she will again be attending a 3-week intensive therapy program for physical therapy and occupational

¹ STXBP1-related disorders are a group of rare genetic disorders. They are caused by a variation in the STXBP1 gene. The variation changes the way signals are sent in the brain. Brain cells send fewer signals. This causes: Developmental delay, epileptic encephalopathy. Epileptic encephalopathy is a progressive decline in brain function due to frequent seizures (<https://www.childneurologyfoundation.org/disorder/stxbp1-related-disorders/> last seen 09/25/2024.)

therapy and speech therapy.

(Exhibit 4, p. 8.)

On 06/28/2024, MassHealth modified the request for PCA assistance to 37:45 hours per week for school weeks and 41:45 hours per week for vacation weeks. MassHealth modified the time requested in the areas of mobility, transfers, and bathing.

Mobility

The appellant's PCA provider requested 10 minutes, 4 times per day, 7 days a week (10 X 4 X 7) for assistance with mobility for both school weeks and vacation weeks. The provider noted that the appellant

requires hand-held assistance to/from all destinations outside the home due to poor safety awareness/risk for injury due to safety and stumbles. She has a vision impairment that modifies her depth perception. She's not mastered the skill of stepping up or down in part due to vision but is able to walk with some stumbling. [The appellant's] bedroom is on the second floor. The family room is also upstairs. She requires physical assist to go up/downstairs AM/PM & up and down for daily nap. [The appellant] is unable to rise by herself. She needs to be picked up from floor if she stumbles, she needs to be carried to get in and out of her bed, on and off changing table and on and off chair at table for her meals.

(Exhibit 4, p. 12).

The Optum representative testified that the request for assistance with mobility was modified to 3 X 4 X 7 per week for both school weeks and vacation weeks. The representative testified that the time requested is longer than ordinarily requires for someone with the appellant's needs. According to the documentation, the appellant needs "hand-held assistance" only.

The appellant's mother testified that assisting the appellant up and down the stairs is "one of our harder things." The appellant has a "very hard time up and down stairs, mostly down" due to her dystonia. She has a "hard time bending her legs." The mother testified that the appellant cannot get up or down from the floor and needs assistance. The mother is the only one who assists the appellant with this task because she is "unsafe" due to falling. The mother "guesstimated" that it takes 3-5 minutes to assist the appellant up the stairs and 10 minutes to assist her downstairs.

Transfers

The appellant's provider requested 5 X 15 X 2 of assistance per week for weekends, 5 X 10 X 5 for

weekdays (school weeks) and 5 X 15 X 7 for vacation weeks for transfers. MassHealth modified the requested time for transfers to 2 X 15 X 2 per week for weekends, 2 X 10 X 5 for school weeks (weekdays), and 2 X 15 X 7 for vacation weeks. The Optum representative testified that the time requested is longer than ordinarily necessary for someone with the appellant's documented abilities. The task of transfers is simply to assist the appellant to stand up and to sit down. This task does not include assistance up and down stairs.

The appellant's mother testified that the appellant "cannot do it at all." Getting up takes longer than sitting down. The appellant is "constantly up and down." Sitting down takes about 10 seconds and getting up takes about 45 seconds to one minute. The mother testified that she is "guesstimating" the time required, and she requested that the time be increase for this task.

Bathing

The appellant's PCA provider requested 30 X 1 X 7 for assistance with bathing. The provider noted that the appellant is "dependent for all bathing needs. This extends bath time to allow her to learn. She is unable to effectively wash and will need to have that done for her after she tries. She is learning the task of handwashing" (Exhibit 4, p. 15).

MassHealth modified the request for assistance with bathing to 25 X 1 X 6. The MassHealth representative testified that the time requested for assistance with bathing is longer than ordinarily required for someone with the appellant's documented abilities. She was approved for 60 minutes per week for hair washing. Bathing can be incorporated into the hair washing task once per week. The time requested for waiting for the appellant to do her part while she is learning is not covered under the PCA program. Last year the appellant requested and was approved for 20 minutes for bathing. There is no documentation of a significant change in her condition and MassHealth approved 5 additional minutes per instance for bathing.

The appellant's mother testified that the appellant is older and bigger than last year and needs additional time for assistance with bathing. She has sensory issues and the PCA is not counting the "waiting time" for the appellant.

Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, TriValley, Inc. ("provider"), for the dates of service of 08/07/2024 to 08/06/2025 (Testimony; Exhibit 4).

2. In the PA request for PCA services, the provider requested 46.00 hours and 00 minutes (46:00) of hours per week for school weeks and 51:15 hours per week for vacation weeks for PCA assistance (Testimony; Exhibit 4).

3. The appellant is [REDACTED] of age and she

resides with her mother and grandmother in a two-story home. Her bedroom is located on the second floor and the family room is also on the second floor. The appellant's diagnosis affecting her ability to complete ADL'S include: STXBP1² encephalopathy w/ epilepsy, cortical vision impairment, hypotonia, tremors, and ataxia. She has a diagnosis of dystonia where her left arm contracts and her mother states she has focal and/or tonic/clonic seizures daily. She may be started on Keto diet in hopes of decreasing seizure activity. The appellant now uses SMO'S bilaterally and she walks. She can still stumble due to dystonia and needs hand contact when outside the home due to poor safety awareness/potential for injury if stumbles. She needs to be picked up off the floor as she cannot do that herself and picked up and put down from her seat belted dining chair for her meals and picked up and put down from changing table for her incontinence. The appellant uses her adaptive stroller for longer distances and daily for school. She wears pull ups with a pad which are provided by Charm Medical Supply. The appellant was seen by Urgent Care for tripping and falling resulting in the loss her two front baby teeth and also split her lip which has since healed. She receives music therapy, Reiki and massage at home provided by Pedi-Pals. School schedule/outside services: the appellant attends school five days a week 9:00am-3:00pm. This summer she will again be attending a 3-week intensive therapy program for physical therapy and occupational therapy and speech therapy.

(Exhibit 4, p. 8.)

4. On 06/28/2024, MassHealth modified the request for PCA assistance to 37:45 hours per week for school weeks and 41:45 hours per week for vacation weeks. MassHealth modified the time requested in the areas of mobility, transfers, and bathing (Testimony; Exhibits 1 and 4).
5. The appellant filed her timely request for a fair hearing with the Board of Hearings on 07/08/2024. A fair hearing was held on 08/07/2024 (Exhibits 2 and 3).

² STXBP1-related disorders are a group of rare genetic disorders. They are caused by a variation in the STXBP1 gene. The variation changes the way signals are sent in the brain. Brain cells send fewer signals. This causes: Developmental delay, epileptic encephalopathy. Epileptic encephalopathy is a progressive decline in brain function due to frequent seizures (<https://www.childneurologyfoundation.org/disorder/stxbp1-related-disorders/> last seen 09/25/2024.)

6. In the area of mobility, the appellant's PCA provider requested 10 minutes, 4 times per day, 7 days a week (10 X 4 X 7) for both school weeks and vacation weeks. The provider noted the following:

requires hand-held assistance to/from all destinations outside the home due to poor safety awareness/risk for injury due to safety and stumbles. She has a vision impairment that modifies her depth perception. She's not mastered the skill of stepping up or down in part due to vision but is able to walk with some stumbling. [The appellant's] bedroom is on the second floor. The family room is also upstairs. She requires physical assist to go up/downstairs AM/PM & up and down for daily nap. [The appellant] is unable to rise by herself. She needs to be picked up from floor if she stumbles, she needs to be carried to get in and out of her bed, on and off changing table and on and off chair at table for her meals.

(Exhibit 4, p. 12.)

7. MassHealth modified the request for assistance with mobility to 3 X 4 X 7 per week for both school weeks and vacation weeks (Testimony; Exhibit 4).
8. In the area of transfers, the appellant's provider requested 5 X 15 X 2 of assistance per week for weekends, 5 X 10 X 5 for weekdays (school weeks) and 5 X 15 X 7 for vacation weeks (Testimony; Exhibit 4).
9. MassHealth modified the requested time for transfers to 2 X 15 X 2 per week for weekends, 2 X 10 X 5 for school weeks (weekdays), and 2 X 15 X 7 for vacation weeks (Testimony; Exhibit 4).
10. Assistance with transfers involves assisting the appellant from sitting to standing or from standing to sitting (Testimony).
11. Appellant's mother testified that assisting the appellant to sit down takes about 10 seconds and to get up takes about 45 seconds to one minute (Testimony).
12. In the area of bathing, the appellant's PCA provider requested 30 X 1 X 7 for assistance. The provider noted that the appellant is "dependent for all bathing needs. This extends bath time to allow her to learn. She is unable to effectively wash and will need to have that done for her after she tries. She is learning the task of handwashing" (Exhibit 4, p. 13).
13. MassHealth modified the request for assistance with bathing to 25 X 1 X 6 (Testimony; Exhibit 4).
14. In addition to the time modified for bathing, MassHealth approved 60 minutes per week for

hair washing, as requested (Testimony).

15. The MassHealth representative testified that the modified time for bathing includes 5 additional minutes per day than the time approved last year (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA 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;

- (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; or
- (G) surrogates, as defined in 130 CMR 422.402.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of 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 type of PCA services available are described in 130 CMR 422.410 below:

- (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/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.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

MassHealth modified the appellant's request for PCA time in three areas where the provider requested time for assistance: mobility; transfers; and bathing.

In the area of mobility- In the area of mobility, the appellant's PCA provider requested 10 minutes, 4 times per day, 7 days a week (10 X 4 X 7) for both school weeks and vacation weeks. The provider noted the following:

requires hand-held assistance to/from all destinations outside the home due to poor safety awareness/risk for injury due to safety and stumbles. She has a vision impairment that modifies her depth perception. She's not mastered the skill of stepping up or down in part due to vision but is able to walk with some stumbling. [The appellant's] bedroom is on the second floor. The family room is also upstairs. She requires physical assist to go up/downstairs AM/PM & up and down for daily nap. [The appellant] is unable to rise by herself. She needs to be picked up from floor if she stumbles, she needs to be carried to get in and out of her bed, on and off changing table and on and off chair at table for her meals.

MassHealth modified the request for assistance with mobility to 3 X 4 X 7 per week for both school weeks and vacation weeks. MassHealth's modification is based on the documentation that states the appellant requires "hand-held assistance" with mobility up and down the stairs of her two-story home.

Appellant's mother testified that that assisting the appellant up and down the stairs is "one of our harder things." The appellant has a "very hard time up and down stairs, mostly down" due to her dystonia. She has a "hard time bending her legs." She "guestimated" that it takes approximately 5 minutes to assist the appellant up the stairs and 10 minutes to assist her down the stairs.

The mother's vague testimony as to the amount of time needed to assist the appellant up and down the stairs fails to meet her burden of showing MassHealth's decision is incorrect. Without concrete evidence as to the amount of time necessary for assistance with this task, MassHealth's modification in area of mobility is upheld and this portion of the appeal is denied.

In the area of transfers, the appellant's provider requested 5 X 15 X 2 of assistance per week for weekends, 5 X 10 X 5 for weekdays (school weeks) and 5 X 15 X 7 for vacation weeks. MassHealth modified the requested time for transfers to 2 X 15 X 2 per week for weekends, 2 X 10 X 5 for school weeks (weekdays), and 2 X 15 X 7 for vacation weeks. Assistance with transfers involves assisting the appellant from sitting to standing or from standing to sitting. Appellant's mother testified that assisting the appellant to sit down takes about 10 seconds and to get up takes about 45 seconds to one minute. The time, as modified, exceeds the time testified to by the appellant's mother. Accordingly, MassHealth's modification in the area of transfers is upheld and this portion of the appeal is denied.

In the area of bathing, the appellant's PCA provider requested 30 X 1 X 7 for assistance. The provider noted that the appellant is "dependent for all bathing needs. This extends bath time to allow her to

learn. She is unable to effectively wash and will need to have that done for her after she tries. She is learning the task of handwashing.” MassHealth modified the request for assistance with bathing to 25 X 1 X 6. In addition to the time modified for bathing, MassHealth approved 60 minutes per week for hair washing, as requested.

Appellant’s mother testified that the appellant is older and bigger than last year and requires more assistance with bathing than last year; however, there is no documentation in the record to support that the appellant needs more than five additional minutes per day for assistance with bathing than last year. Moreover, MassHealth’s PCA program does not cover time for teaching the appellant to wash herself. Thus, MassHealth’s modification is supported by the regulations and the facts in the hearing record. MassHealth’s modification in the area of bathing is upheld and this portion of the appeal is denied.

For the reasons stated above, this appeal is denied.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

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