

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2410570
<b>Decision Date:</b>	09/27/2024	<b>Hearing Date:</b>	08/07/2024
<b>Hearing Officer:</b>	Marc Tonaszuck	<b>Record Open to:</b>	08/16/2024

**Appearances 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Prior Authorization – Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	09/27/2024	<b>Hearing Date:</b>	08/07/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OTR/L, Optum	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South	<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 06/07/2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 32:45 (32 hours and 45 minutes) day/evening hours per week to 19.15 day/evening hours per week for dates of service from 06/22/2024 to 06/21/2025 (130 CMR 422.410; Exhibit 1). A timely appeal was filed on the appellant's behalf by his father/guardian<sup>1</sup> on 07/08/2024 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

A fair hearing took place before the Board of Hearings on 08/07/2024. The appellant's parents attended telephonically, as did the MassHealth representative. At the fair hearing, the appellant's parents requested an opportunity to provide documentation in support of the appellant's request for PCA time. Their request was granted, and the record remained open in this matter until 08/09/2024 for their submission and until 08/16/2024 for MassHealth's response (Exhibit 6). Both parties made submissions during the record open period (Exhibits 7 and 8).

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<sup>1</sup> See Exhibit 4.

## Action Taken by MassHealth

MassHealth modified 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 MassHealth representative testified that she is registered occupational therapist who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization (PA) request for PCA services was received on appellant's behalf on 06/04/2024 from his PCA provider, [REDACTED] (Provider), and is a re-evaluation for the dates of service of 06/22/2024 to 06/21/2025. In the PA request for PCA services, the provider requested 32:45<sup>2</sup> day/evening hours per week.

The appellant is [REDACTED] years of age, and he lives with his parents. His father is his legal guardian. The primary diagnosis affecting his ability to function independently is severe autism. According to the documentation included with the PA, the appellant is

a [REDACTED] yo male with the above diagnosis. PMH: ADHD, legally blind (cortical visual impairment), allergy to dust, low bone density, sensory/processing- sensitivity, motor disability-no motor planning, resistive behaviors-doesn't like to be touched-moves head from side to side, inability to initiate/sequence/complete tasks, IBS-gluten free, high choking risk, constipation,- bladder/bowel incontinence callouses on knees, occasional plantar warts-soles of feet, athlete's foot fungus, eczema-legs/arms, acne, boils on buttocks, 2 person lift for bathing, in/out of bed and other times due to resistive behaviors.

(Exhibit 4).

The Optum representative testified that on 06/07/2024, MassHealth modified the PCA request to 19:15 day/evening hours per week. MassHealth modified the request for PCA services in the Activity of Daily Living (ADL) tasks of mobility, transfers, bathing, dressing, eating, and bladder care. MassHealth also modified the request in the Instrumental Activities of Daily Living (IADL) tasks of housekeeping and shopping (Exhibits 1 and 4).

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<sup>2</sup> PCA time is referred to in this format, 32:45, to signify 32 hours and 45 minutes.

MassHealth's modification of time requested for assistance with the ADLs was primarily based on documentation in the PA request that was unclear as to when the appellant is at home with his parents and when he is at boarding school during the week. During the record open period, the appellant's parents provided documentation that supported the request for the time for ADLs. As a result, based on the documentation provided by the appellant's parents, MassHealth restored all time as requested for the ADLs. MassHealth's modifications in the IADLs of housekeeping and shopping remained.

### Housekeeping

The appellant's PCA provider requested 30 minutes per week for assistance with housekeeping. The provider noted that the appellant is "dependent for housekeeping of personal space and bathroom toilet and shower after each use for hygiene due to incontinence and wears depends, autism and blind. Father is legal guardian-works full time, Mom is PCA is not legal guardian" (Exhibit 4).

MassHealth denied the time requested for housekeeping because the appellant lives with his legal guardian, and 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.

The appellant's parents testified that the appellant has irritable bowel syndrome and frequently has diarrhea. He is also incontinent of bowel, causing the need for cleaning of the carpets and floors of the home. The mother testified that she is the appellant's PCA, but not his legal guardian, so the time should be approved. During the record open period, the parents provided photographs of the appellant's bowel movements on the floor and carpets, and feces on the appellant's clothing and in the bathroom tub, toilet and floor of the home (Exhibit 7).

### Shopping

Appellant's PCA provider requested 30 minutes per week for assistance with shopping. The provider noted that the appellant is "dependent for shopping for gluten-free, dairy free, and low sugar due to gastro-intestinal issues and diarrhea that is different from family. He is dependent for purchasing extra cleaning supplies, gloves and detergent due to autism, blind. Father is legal guardian-works full time, Mom is PCA is not legal guardian" (Exhibit 4.)

MassHealth denied the time requested for assistance with shopping because the appellant lives with his legal guardian who is responsible for providing assistance with IADLs.

The appellant's parents testified that the appellant has osteoporosis and needs to drink a "special milk," take vitamins with calcium and drink juice. The parents testified that it is impossible to incorporate the appellant's shopping with the family's shopping.

The MassHealth representative responded

the documentation submitted requested states the additional time for housekeeping and for shopping is needed *because the mother is the PCA and is not the legal guardian and because the legal guardian works full time*. The fact that [Appellant's mother] is not a legal guardian was not considered as there is a legal guardian living in the household. There is no documentation that either parent is disabled or otherwise physically unable to fulfill the legal responsibility to [the appellant]. Work schedules do not typically prevent the performance of household tasks, or shopping, as work is not a 24/7 obligation. [The appellant] is not in the home full time but is there only on weekends, so the amount of housekeeping and shopping responsibilities are proportionally lower than for someone in the home full time. Shopping for calcium enriched products or gluten-free, dairy free, and low sugar products should not greatly increase the shopping burden as these products are easily available in most grocery stores and are easy to find once one knows where to shop and what items are needed. Lastly, there is nothing in the documentation to indicate that the parents are unable to shop during the week or perform as many housekeeping tasks as possible in preparation for a visit they have arranged in advance and know is happening every Friday.

(*Emphasis in original. See Exhibit 8.*)

## Findings of Fact

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

1. A prior authorization (PA) request for PCA services was received by MassHealth on appellant's behalf on 06/04/2024 from his PCA provider, [REDACTED] (Provider), and is a re-evaluation for the dates of service of 06/22/2024 to 06/21/2025 (Testimony; Exhibit 4).
2. In the PA request for PCA services, the provider requested 32:45<sup>3</sup> day/evening hours per week (Testimony; Exhibit 4).
3. The appellant is [REDACTED] years of age, and he lives with his parents. His father is his legal guardian. The primary diagnosis affecting his ability to function independently is severe autism (Testimony; Exhibit 5).
4. According to the documentation included with the PA, the appellant is

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<sup>3</sup> PCA time is referred to in this format, 32:45, to signify 32 hours and 45 minutes.

a ■ yo male with the above diagnosis. PMH: ADHD, legally blind (cortical visual impairment), allergy to dust, low bone density, sensory/processing- sensitivity, motor disability-no motor planning, resistive behaviors-doesn't like to be touched-moves head from side to side, inability to initiate/sequence/complete tasks, IBS-gluten free, high choking risk, constipation, bladder/bowel incontinence callouses on knees, occasional plantar warts-soles of feet, athletes feet fungus, eczema-legs/arms, acne, boils on buttocks, 2 person lift for bathing, in/out of bed and other times due to resistive behaviors.

(Exhibit 4).

5. On 06/07/2024, MassHealth modified the PCA request to 19:15 day/evening hours per week. MassHealth modified the request for PCA services in the Activity of Daily Living (ADL) tasks of mobility, transfers, bathing, dressing, eating, and bladder care. MassHealth also modified the request in the Instrumental Activities of Daily Living (IADL) tasks of housekeeping and shopping (Testimony; Exhibits 1 and 4).
6. A timely appeal was filed on the appellant's request on 07/18/2024 (Exhibit 2).
7. A fair hearing took place on 08/07/2024. The appellant's father is his legal guardian. The father and the appellant's mother appeared at the fair hearing telephonically as the appellant's appeal representatives (Exhibits 2 and 3).
8. MassHealth initially modified the appellant's request for assistance with ADLs based on unclear documentation of when he came home from boarding school for the weekends (Testimony; Exhibit 4).
9. During a record open period, the appellant's parents provided clear information about the appellant's schedule at home and at boarding school.
10. Based on the appellant's parent's submission, MassHealth restored all time requested for ADLs.
11. The appellant's PCA provider requested 30 minutes per week for assistance with the IADL of housekeeping (Testimony).
12. The appellant's PCA provider requested 30 minutes per week for assistance with the IADL of shopping (Testimony).
13. MassHealth denied the request for PCA assistance for the IADL of housekeeping (Testimony; Exhibits 1 and 4).

14. MassHealth denied the request for PCA assistance for the IADL of shopping (Testimony; Exhibits 1 and 4).

## 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.

**(Emphasis added.)**

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 (emphasis added).

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.

Regulations at 130 CMR 422.402 define “family member” as “the spouse of the member, the parent of a minor member, including an adoptive parent, **or any legally responsible relative.**”

**(Emphasis added.)**

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 initially made several modifications to the appellant's PA request for PCA services. After a record open period, during which the appellant's representatives submitted additional information, MassHealth restored all time as requested in the ADLs that had been modified. As a result, this portion of the appeal is dismissed, as MassHealth has made an adjustment and has restored all time for assistance with the ADLs of mobility, transfers, bathing, dressing, eating, and bladder care.

### Housekeeping and Shopping

The appellant's PCA provider requested 30 minutes per week for assistance with housekeeping and 30 minutes per week for assistance with shopping. MassHealth denied both requests because the appellant lives with his family members, including his legal guardian.

The MassHealth representative correctly stated that the fact that appellant's mother is not a legal guardian should not be considered as there is a legal guardian living in the household. Additionally, the MassHealth representative correctly stated that "there is no documentation that either parent is disabled or otherwise physically unable to fulfill the legal responsibility to the appellant. Work schedules do not typically prevent the performance of household tasks, or shopping, as work is not a 24/7 obligation." She also points out that the appellant is away at boarding school most of the week, and at home on weekends.

The appellant's representatives have not shown by a preponderance of the evidence that the appellant's housekeeping and shopping needs cannot be incorporated into the family's needs. Accordingly, this portion of the appeal is denied.

For the foregoing reasons, this appeal is dismissed in part; denied in part.

## **Order for MassHealth**

Restore all time, as requested, for PCA assistance in the ADLs of mobility, transfers, bathing, dressing, eating and bladder care.

## 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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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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