

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Approved in part; Denied in part	<b>Appeal Number:</b>	2414169
<b>Decision Date:</b>	12/06/2024	<b>Hearing Date:</b>	10/18/2024
<b>Hearing Officer:</b>	Christopher Jones		

**Appearances for Appellant:**




**Appearance for MassHealth:**

Robin Brown, OT



*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>	Dismissed in part; Approved in part; Denied in part	<b>Issue:</b>	Prior Authorization; PCA
<b>Decision Date:</b>	12/06/2024	<b>Hearing Date:</b>	10/18/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OT	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Virtual/Telephonic	<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 September 5, 2024, MassHealth modified the appellant's request for personal care attendant services, allowing less time than was requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on September 13, 2024, and the appellant's previously approved hours are protected pending the outcome of this appeal.<sup>1</sup> (Exhibit 2; 130 CMR 610.015(B); 610.036.) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

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<sup>1</sup> MassHealth's representative testified that the protected hours are 160 hours and 45 minutes per week.

## Issue

The appeal issue is whether MassHealth is correct, pursuant to 130 CMR 422.000, in determining that the appellant should be allowed less time for PCA assistance than requested.

## Summary of Evidence

On or around August 27, 2024, the appellant's personal care management ("PCM") agency, [REDACTED], submitted a reevaluation for personal care attendant ("PCA") services. This request sought 164 hours per week of PCA services (9,838 minutes per week, including 840 nighttime minutes). The prior authorization period for this request runs from October 2, 2024, through October 1, 2025. The appellant's primary diagnosis is advanced multiple sclerosis with quadriplegia and impaired respiratory function. His other diagnoses include: history of seizures, vertigo, depression, bipolar disorder, glaucoma in left eye, pericarditis, myocardial infarction, stent placement, history of pneumonia, anemia, dysphagia, impaired speech, neuropathic pain in neck and feet, bowel and bladder incontinence, hemorrhoids, contractures, and pressure ulcer on right buttocks.

MassHealth made 7 modifications and allowed 146 hours and 30 minutes of PCA services per week (8,784 total minutes per week, including 840 nighttime minutes). The modifications listed on MassHealth's notice were: "Nebulizer assist 10x3x7, ... suction 2x6x7, nighttime suction 2x2, cough assist 20x3x7 ... . Wound care 0x0 ... . Other #1 0x0 ... . Shopping 45x1 ... . PCA paperwork 5x1 ... ." (Exhibit 5, p. 5.)

Regarding the nebulizer, the appellant requested 15 minutes, 3 times per day (315 minutes per week). MassHealth's representative explained that a nebulizer is a machine that vaporizes asthma medication to be inhaled by the patient. The medication needs to be placed into the machine, a hose with a mask is connected to the machine and then placed over the patient's nose and mouth. MassHealth's representative explained that 10 minutes, 3 times per day was approved to cover how long it takes the PCA to set up the machine, put the medication in, turn it on, put the mask on the appellant's face, and then take the mask off when it is done (210 minutes per week). The time approved is not meant to cover the time while the machine is running. It can take quite a while to vaporize all the medication, but there is no active task for the PCA to do associated with that.

The appellant testified that his doctor has recommended that he use it more than 3 times per day because his lungs continue to deteriorate, and it helps clear mucus from his lungs. The appellant also takes a double dose of medication, which takes even longer than normal to operate. The appellant explained that the machine stays in the bathroom, so the PCA needs to go and get the machine and bring it back to set it up. After every use, the PCA needs to wash the machine and wipe it with disinfecting wipes and dry it with a cloth. The appellant testified that his doctor has ordered that the machine be cleaned after every use to prevent infections, which is what takes so long for each dose.

MassHealth's representative testified that she is not very familiar with the workings of nebulizers, and that she deferred to the nurse who reviewed the request originally. MassHealth's representative testified that MassHealth approved 35 minutes per week for PCA assistance with equipment maintenance, and she believed that the additional cleaning of the nebulizer could be completed within this time for equipment maintenance. The appellant has many pieces of equipment, which all require maintenance. The appellant felt that this time was already being used to maintain all of his equipment.

The next four modifications were all under the general heading of "Other Healthcare Needs." The appellant requested 4 minutes, 6 times per day for suctioning (168 minutes per week). MassHealth's notice allowed 2 minutes, 6 times per day (84 minutes per week). The appellant explained that the suctioning wand stays on a table that follows him around everywhere, and he needs to be suctioned regularly throughout the day. The wand needs to be disinfected every time they use it. While testifying regarding this, the appellant required suctioning. The suctioning took 90 seconds, and the appellant testified that the cleaning of the machine took another 90 seconds afterward. The appellant testified that he sometimes uses a mask instead of the wand, and that cleaning the mask is slightly more involved. MassHealth's representative agreed to restore the requested time for suctioning because the appellant continued to have hospitalizations related to his need for suctioning. This restored 84 minutes per week.<sup>2</sup>

There was some confusion regarding the remaining "Other Healthcare Needs" modifications. The appellant sought "Cough Assist" for 20 minutes, 4 times per day (560 minutes per week); "Other (specify)" for 20 minutes, 4 times per day (560 minutes per week); and "Other (specify)" for 20 minutes per day (140 minutes per week). The "Other Healthcare Needs Comments" stated the appellant

is dependent on PCA for setup of Cpap/O2 @noc, nebulizer treatments, cough assist/suctioning to manage secretions and maintain airway patency.

20x3x7 Chest vest (apply vest, connect hoses, remove) 20 minutes/Treatment TID)

20x1x7 Wound care for pressure ulcer right- buttock/testicles - application of topical ointment and dressing once daily including removing old dressing, unpacking, measuring (currently 6.5 cm), packing and redressing[.]

(Exhibit 5, pp. 26-27.)

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<sup>2</sup> The modification to nighttime suctioning never changed the total time allowed, as MassHealth rounds up nighttime services to at least 2 hours per night.

MassHealth's representative testified that the modification to cough assist was made because the request documented that the appellant only uses the chest vest three times per day.<sup>3</sup> The appellant confirmed that he only uses the chest vest three times per day, but that each time he uses the vest, it is for an hour. The vest has three settings: vibration, percussion, and drainage. Each of these settings runs for 20 minutes. The appellant's PCA stepped in to explain that while the vest is operating during each setting, she performs other tasks like passive range of motion exercises or cleaning. The appellant's PCA testified that in between each setting, the appellant needs to take a 5-to-10-minute break to rest. They will often use the suction wand or the cough assist machine during this time. MassHealth's representative responded that it sounds like the activity time associated with the vest was only 20 minutes. Time was approved for PROM and cleaning separately, so it would be duplicative to approve the down time with the chest vest as well. Also, MassHealth was simply approving what was requested and documented. The request sought 20 minutes for using the chest vest 4 times per day but documented that it was only used 3 times per day (560 minutes per week and 420 minutes per week, respectively). The appellant remained adamant that he needed 60 minutes, 3 times per day for the chest vest.

MassHealth's representative believed that there was only one other modification in the "Other Healthcare Needs" category, to "wound care." The parties agreed that the "Other" activity requesting 20 minutes, once per day (140 minutes per week) referred to "wound care." MassHealth's representative testified that when a wound requires "packing" it is considered a skilled service, and therefore not something that should be done by a PCA. MassHealth's representative testified that a nurse or a well-trained family member should be performing this care instead of the PCA. MassHealth's representative clarified that she is not a nurse, but she was aware that "packing" a wound is specifically taught in nursing school, and when a wound requires packing, it is generally considered to be complex. The appellant testified that he goes to a wound clinic on a monthly basis with his PCA. The PCA is trained on how to change the dressing, and the wound clinic nurses all say what a great job his PCAs are doing. The PCA who usually does the dressing change is actually a licensed practical nurse, and she helps the appellant train the other PCAs if they ever have to do the dressing changes. The appellant also felt it would cost MassHealth more money if they sent out a nurse every day. MassHealth's representative referred to the PCA Operating Standards as to where this guidance was published, but did not otherwise identify a legal basis for the reduction in service.<sup>4</sup>

It was noted that the total time approved for "Other Healthcare Needs" was 644 minutes. The total time requested was 1,568 minutes per week. The modifications to suctioning, chest vest, and wound care was a total reduction of 364 minutes, leaving 560 minutes missing per week. It was

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<sup>3</sup> It was eventually determined that "cough assist" was a different device than the chest vest. The chest vest is the "Other (specify)" line for 20 minutes, 4 times per day.

<sup>4</sup> The PCA Operating Standards are not available on MassHealth's website, but it has been made available pursuant to a public records request. (Available at <https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf> (last visited November 26, 2024).)

further pointed out that an “Other #1” line was modified to zero in the notice, which was different from cough assist or wound care. MassHealth’s representative testified that she did not believe it was modified. Eventually it was determined that the cough assist device was different than the chest vest device. The appellant testified that the cough assist device was a box that helps get food and mucus out of the appellant’s throat and mouth. The appellant explained that it looks like an oxygen mask, and he uses it a lot but at irregular intervals. The appellant testified that sometimes he uses it for 5 minutes, but other times it can last an hour. The PCA needs to physically hold the mask onto his face and apply pressure for it to work. Once MassHealth’s representative was convinced that this time had been modified, she agreed to restore all time as requested for cough assist. The “Other #1” activity that corresponded to the chest vest was then partially restored to 20 minutes, 3 times per day.

The final two modifications were to grocery shopping and paperwork assistance. MassHealth’s representative agreed to restore all requested time, which was 15 minutes per week for shopping and 10 minutes per week for paperwork. Because the appellant’s wife was diagnosed with cancer, she can no longer go shopping, and the appellant has so many PCA hours that he needs to authorize payroll every day to keep up with it. MassHealth’s agreed that he requires at least 5 minutes per day to do PCA paperwork, but she could only restore the time requested, which was 15 minutes for the week.

The parties agreed that the only disputed modifications remaining were the modifications to nebulizers, chest vest, and wound care.

## **Findings of Fact**

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

- 1) The appellant’s primary diagnosis is advanced multiple sclerosis with quadriplegia and impaired respiratory function. His other diagnoses include: history of seizures, vertigo, depression, bipolar disorder, glaucoma in left eye, pericarditis, myocardial infarction, stent placement, history of pneumonia, anemia, dysphagia, impaired speech, neuropathic pain in neck and feet, bowel and bladder incontinence, hemorrhoids, contractures, and pressure ulcer on right buttocks. (Exhibit 5, pp. 8-9.)
- 2) On or around August 27, 2024, the [REDACTED] submitted a reevaluation for PCA services. This request sought 164 hours per week of PCA services (9,838 minutes per week, including 840 nighttime minutes). The prior authorization period for this request runs from October 2, 2024, through October 1, 2025. (Exhibit 5, pp. 2, 39.)
- 3) Through a notice dated September 5, 2024, MassHealth made 7 modifications and allowed 146 hours and 30 minutes of PCA services per week. The modifications listed on MassHealth’s notice were: “Nebulizer assist 10x3x7, ... suction 2x6x7, nighttime suction

2x2, cough assist 20x3x7 ... . Wound care 0x0 ... . Other #1 0x0 ... . Shopping 45x1 ... . PCA paperwork 5x1 ... ." (Exhibit 5, pp. 4-5.)

- 4) MassHealth restored all of the requested time for suctioning, cough assist, shopping, and PCA paperwork. (Testimony by MassHealth's representative.)
- 5) It takes 15 minutes for the appellant's PCA to get his nebulizer, set it up and turn it on, then turn it off, take it away, clean, disinfect, and dry it. This extra cleaning is ordered by the appellant's physician. (Testimony by the appellant and the appellant's PCA.)
  - a. MassHealth's representative deferred to the experience of the nurse who made the modification. (Testimony by MassHealth's representative.)
- 6) MassHealth denied the requested 20 minutes per day for wound care because packing a wound is a skilled service that is inappropriate for a PCA to perform. (Testimony by MassHealth's representative.)
- 7) The primary PCA who performs the wound care is an LPN who was specifically trained to change the appellant's wound dressing by the wound clinic the appellant visits monthly. The appellant's wound care has been approved of by the nurses at the wound clinic. (Testimony by the appellant.)
- 8) The appellant requested 20 minutes, 4 times per day for a line labeled "Other #1." The notes under the request stated "20x3x7 Chest vest (apply vest, connect hoses, remove) 20 minutes/Treatment TID)." (Exhibit 5, pp. 26-27.)
- 9) MassHealth modified the requested time for chest vest usage to 20 minutes, 3 times per day, as that is what the notes indicated was needed. (Testimony by MassHealth's representative.)
- 10) The appellant uses the chest vest 3 times per day for 60 minutes each time. The vest has three settings, and each setting runs for 20 minutes. The appellant's PCA is able to perform other tasks while each setting runs. (Testimony by the appellant and the appellant's PCA.)

## **Analysis and Conclusions of Law**

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416.) The regulations for MassHealth define a service as "medically necessary" if 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. (130 CMR 450.204(A).) "Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of

such medical necessity and quality.” (130 CMR 450.204(B).) A provider must make those records, including medical records, available to MassHealth upon request. (130 CMR 450.204(B)); 42 U.S.C. § 1396a(a)(30), 42 CFR §§ 440.230, 440.260.)

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).) Members are responsible for hiring and training their own PCAs. (130 CMR 422.420(A)(6); see also 130 CMR 422.422(A) (PCM agency must confirm member is able to employ and direct PCAs, or else have a surrogate.).)

ADLs include:

- (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 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.

(130 CMR 422.410(A).)

IADLs include:

- (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 PCA services; and
- (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

- (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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

MassHealth restored all of the requested time for suctioning (84 minutes per week), cough assist (560 minutes per week), shopping (15 minutes per week), and PCA paperwork (10 minutes per week). This appeal is DISMISSED with regards to these modifications. (130 CMR 610.035; 610.051.)

Regarding wound care, MassHealth testified that complex wound care is a skilled nursing service, and that PCAs may only perform unskilled tasks. There is no distinction in the PCA regulations between skilled and unskilled tasks, and MassHealth's representative cited to the PCA Operating Standards as their support. The language in the Operating Standards regarding skilled versus unskilled tasks is as follows:

XX. Circumstances Under Which PAU Conducts Home Visits: As part of the PAU scope of work, PAU Clinical Reviewers may conduct home visits independently or with PCM Agencies.

...

B. PCM Agency Initiated Requests For PAU To Conduct Home Visits: The PCM Agency may initiate a request for the PAU to complete a home visit as a means to better understand the PAU rationale for decisions.

...

**4) Situations where there are questions related to the appropriateness of PCA services versus skilled nursing service.**

(PCA Operating Standards, p. 50 (bolding removed, emphasis in bold).)<sup>5</sup>

There are two other sections in which more detailed instruction differentiate skilled and non-skilled care. The bulk of the instruction is included in the section regarding "Pediatric PCA" evaluations.

XXVI. Pediatric PCA Evaluation and PAU Clinical Review: At the time of the initial evaluation, re-evaluation, or adjustment for Pediatric PCA services, a PCM Agency Nurse Evaluator is responsible for evaluating the disabling, functional ability of the child and the medical necessity for PCA services (see definition of disability of children per Office of Social Security, 130 CMR 450.204, 130 CMR 422.402, 130 CMR 422.412). The PCM Agency Nurse Evaluator **uses his/her assessment skills and clinical judgment** and educates the parent or legal guardian regarding what services are appropriate to include in the PCA evaluation request. ... The PCM Agency must include documentation to support medical necessity in the PCA evaluation. The PAU Clinical Reviewer will review all supporting documentation for medical

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<sup>5</sup> (Available at <https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf> (last visited November 26, 2024).)

necessity on an individual basis. If medical necessity is established based on the PCA evaluation documentation, an approval or modification will be considered. If medical necessity is not established, a denial will be considered.

A. When a PCM Agency initiates a pediatric PCA evaluation request, the PCM Agency must consider the following as part of the evaluation and documentation process:

1) Parent(s), legal guardian(s) or designee(s) are responsible for providing oversight and care for children and directing the PCA services (see MassHealth Regulations 130 CMR 422.412 (A) and 130 CMR 422.412 (F)).

...

2) The PCM Agency Nurse Evaluator **evaluates non-skilled care and assesses if the task can be safely performed for the child by the PCA.** The following tasks are examples that may be considered non-skilled services and can be requested if assessed to be safely performed for the child by the PCA:

- a) Gastrostomy tube (G-tube) feedings
- b) G-tube site care (as part of bathing)
- c) Oral suctioning

3) The PCM Agency Nurse Evaluator **identifies if skilled care services are required for the consumer. *Skilled care services are not appropriate services to be completed by a PCA and generally should not be requested.*** Skilled care services are considered to be high risk and unsafe tasks to be performed by a PCA and therefore, should be performed by a skilled clinician, parent, legal guardian or designee. These services require individuals with training in specialized skills, clinical assessment, and judgment to promote safe and effective care for consumers whose conditions may be complex. The following tasks are examples of skilled care services **that are generally performed by trained healthcare professionals:**

- a) Feeding a child with a high aspiration risk
- b) Medication administration
- c) Oxygen administration
- d) Tracheal care and suctioning
- e) Chest physical therapy (Chest PT)
- f) Cough assist therapy**
- g) Chest vest therapy**
- h) Nebulizer treatments**

**i) Complex Wound Care**

j) Catheterizations

k) Peripherally Inserted Central Catheter (PICC) line and central line dressing changes

l) Total Parenteral Nutrition (TPN)

m) Intravenous (IV) therapy and IV medication administration

n) Administration of peritoneal dialysis medication and fluids

o) Adjustment of ventilator settings and controls

p) Applied Behavior Analysis (ABA) Behavioral Therapy

q) Wilbarger Brushing Therapy

(PCA Operating Standards, pp. 62-64 (bolding removed, emphasis added in bold).)

The final distinction is made in a section specifically addressing the “medical necessity for Passive Range of Motion within the context of the MassHealth PCA program.” This section states, in part, that:

PROM is sometimes conducted by skilled PTs/OTs/nurses. If PROM is conducted by skilled OT/PT (specific days per week) in conjunction with a therapeutic treatment program for a specific condition (like spasticity), then frequency of the task should be documented and adjusted in the request.

PROM is not considered a skilled activity within the context of the MassHealth PCA Program. Consumers (or surrogates) may direct PCAs to perform PROM, when it is considered an unskilled ADL activity.

PROM, as an unskilled ADL activity, may be performed by PCAs. PCAs should be trained by the consumer or surrogate to perform PROM.

(PCA Operating Standards, pp. 67-68.)

To summarize this guidance, a PCM nurse uses their clinical judgment and assessment skills to determine what services are appropriate to include in the PCA evaluation request. (PCA Operating Standards, p. 62.) Sometimes there are questions related to the appropriateness of PCA services versus skilled nursing service, and MassHealth’s Prior Authorization Unit may perform their own in-person assessment to determine the appropriateness of having the PCA perform the task. (PCA Operating Standards, p. 50.) “Skilled care services are not appropriate services to be completed by a PCA and generally should not be requested.” (PCA Operating Standards, p. 63.) Examples “of skilled care services that are generally performed by trained healthcare professionals” include complex wound care, nebulizer treatments, and chest vest therapy. (PCA Operating Standards, p. 63.) MassHealth also requires that services be of “a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality.” (130 CMR 450.204(B).)

There is clearly a sliding scale of when a service should be considered “skilled.” The PCA Operating Standards includes detailed instructions regarding PROM, specifically, but all of the guidance regarding skilled and unskilled service includes modifiers to indicate that the guidance is not absolute; e.g. “generally should not be requested,” “generally performed by trained healthcare professionals,” the nurse evaluator “assesses if the task can be safely performed ... by the PCA.” Further, the Prior Authorization Unit can have a nurse perform their own in-person evaluation to resolve “[s]ituations where there are questions related to the appropriateness of PCA services versus skilled nursing service.” Finally, some of the examples of skilled care services inappropriate to be provided to a child are approved for the appellant’s PCA to perform: cough assistance, nebulizer treatments, and chest vest therapy.<sup>6</sup>

It is clear that MassHealth’s prohibition on PCAs performing medical services is primarily aimed at prohibiting medical services provided to children by a PCA. Children are not able to direct their own care, and where a family member is available to closely direct a medical service, they could provide that service themselves, making it a non-covered service. (See 130 CMR 422.412(F).) Adults are typically responsible for directing their own care, meaning that the knowledge and responsibility for performing a task resides principally in the member. (130 CMR 422.422(A).)

Whether or not the requested wound care is a skilled service is a factual determination based upon a nurse’s assessment of whether the task can be safely performed by a PCA. The nurse evaluator from the PCM agency believed that the task was appropriate for the appellant’s PCA to perform. The nurses from the appellant’s wound care clinic have trained the appellant’s PCAs to change his wound dressing, and regularly comment on what a good job the PCAs are doing. Further, the primary PCA assisting with the wound care is a licensed practical nurse. The testimony from MassHealth’s representative was that packing a wound is a skill that is taught in nursing schools, and if a wound requires packing, it is generally considered complex. I am persuaded by the appellant’s testimony, the testimony by his PCA, and the clinical assessment of the nurse evaluator from the PCM agency, that the appellant’s wound care can be appropriately and safely performed under the appellant’s direction. Therefore, the requested wound care is APPROVED. This restores an additional 140 minutes per week.

MassHealth is welcome to request documentation to substantiate that the care is “of a quality that meets professionally recognized standards of health care,” and MassHealth may also send out a nurse from the Prior Authorization Unit to conduct their own in person assessment if they believe the described care is too complex to be considered unskilled care or unsafe for the appellant’s PCA to perform, given the training and direction uniquely available in the appellant’s situation.

This appeal is also APPROVED with regard to nebulizer treatments. The appellant testified that his physician ordered his nebulizer to be cleaned and disinfected after every use. The appellant’s

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<sup>6</sup> Nebulizer treatments are so commonly approved that “Physical assist with Nebulizer treatment” is published category of assistance on the evaluation form, whether or not it is requested.

testimony was that the total combined time was 15 minutes, with this extra cleaning and disinfecting. MassHealth's representative did not specifically dispute the time, due to her unfamiliarity with nebulizer treatments and deferred to the original nurse reviewer who did not have the appellant's testimony regarding the unusual and additional care required for his nebulizer. Therefore, I find the appellant's testimony is more persuasive regarding how long it takes his PCA to assist him with his nebulizer.

Finally, this appeal is DENIED with regards to additional time for the chest vest assistance. MassHealth's representative is correct that the time requested for the "Other #1" category sought 20 minutes, 4 times per day, but in the additional details section, the chest vest was described as only being used 3 times per day. The appellant agrees that it is used 3 times per day, but he argues it takes an hour as each setting runs for 20 minutes. The appellant's PCA testified that she is able to perform other tasks while the chest vest is operating. The fact that the PCA is able to perform other tasks while the chest vest operates supports MassHealth's assertion that this is not "activity time," and is not covered time under 130 CMR 422.411(A). Further, the prior authorization request did not seek an hour of assistance, it sought 20 minutes of assistance, 4 times per day. MassHealth's action was to deny a single instance of chest vest assistance, not to reduce the time per activity. Only MassHealth's actions with regards to a prior authorization request are appealable actions, not the PCM agency's evaluation. (130 CMR 610.032.)

This brings the appellant's total approved time up to 9,698 minutes per week, including 840 nighttime minutes per week. This is equivalent to 161 hours and 45 minutes per week.<sup>7</sup> Because this is an hour more than the appellant's benefits in Aid Pending, this authorization will be effective back to the start of the prior authorization period, October 2, 2024.

## **Order for MassHealth**

Remove Aid Pending. Approve the appellant for 161 hours and 45 minutes per week, effective October 2, 2024.

## **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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<sup>7</sup> The total requested minutes were 8,998 minutes, plus 840 nighttime minutes per week equals 9,838 minutes per week. (Exhibit 5, p. 39.) The only remaining modification is a reduction of 140 minutes per week from chest vest assistance.  $9,838 - 140 = 9,698$ . Divided by 60, this equals 161.6. MassHealth rounds up to the next quarter hour. (PCA Operating Standards, p. 33.)

## 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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Christopher Jones  
Hearing Officer  
Board of Hearings

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