

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	<b>Denied</b>	<b>Appeal Number:</b>	<b>2415383</b>
<b>Decision Date:</b>	<b>12/18/2024</b>	<b>Hearing Date:</b>	<b>12/05/2024</b>
<b>Hearing Officer:</b>	<b>Thomas J. Goode</b>		



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

**Appearances for Appellant:**



**Appearance for MassHealth:**

**Donna Burns, RN, 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>	<b>Denied</b>	<b>Issue:</b>	<b>PCA Services</b>
<b>Decision Date:</b>	<b>12/18/2024</b>	<b>Hearing Date:</b>	<b>12/05/2024</b>
<b>MassHealth's Rep.:</b>	<b>Donna Burns, RN</b>	<b>Appellant's Reps.:</b>	<b>Guardian et. al.</b>
<b>Hearing Location:</b>	<b>Tewksbury MassHealth Enrollment Center</b>	<b>Aid Pending:</b>	<b>No</b>

## 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 26, 2024, MassHealth modified Appellant's prior authorization request for PCA services (130 CMR 422.000 *et seq.*, 450.204, 503.007, 517.008 and Exhibit 1). Appellant filed this appeal in a timely manner

on September 26, 2024 (130 CMR 610.015(B) and Exhibit 2). Modification of a request for assistance is valid grounds for appeal (130 CMR 610.032). A telephonic hearing was scheduled for November 13, 2024, and was rescheduled to December 5, 2024 to accommodate Appellant's request to appear in-person (Exhibit 3).

## **Action Taken by MassHealth**

MassHealth modified Appellant's prior authorization request for PCA services.

## **Issue**

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000 *et seq.*, 450.204, 503.007, 517.008, in modifying Appellant's prior authorization request for PCA services.

## **Summary of Evidence**

The MassHealth representative testified that Appellant is [REDACTED] and sustained a traumatic brain injury in 2014. Appellant is fed by G-tube and has no functional movement. On September 10, 2024, a PCA (personal care attendant) reevaluation was submitted by [REDACTED] for 95.75 PCA hours per week including 2 nighttime attendant hours. The

prior authorization request was modified to 81.75 PCA hours. MassHealth denied nighttime PCA assistance between the hours of midnight and 6:00 a.m. for repositioning and toileting because Appellant has other services during that timeframe. MassHealth records show that a PCA provider, [REDACTED] provides PCA services between 8:00 p.m. and 8:00 a.m. including repositioning, and diaper changes. Therefore, additional PCA time for nighttime attendant services was denied as a duplication of services that did not meet medical necessity criteria pursuant to 130 CMR 450.204(A)(1), 517.008, and 503.007(A). MassHealth also testified that suctioning is not a covered service under the PCA program.

Appellant's representatives testified that Appellant has been authorized for both [REDACTED] and overnight PCA hours for several years paid for by MassHealth and questioned why the additional services were being reduced. Appellant's representatives testified that Appellant's father acts as a PCA and often provides care until 9:00 p.m. and assists overnight as needed. Appellant's representatives testified that Appellant recently contracted pneumonia which requires increased suctioning overnight via open stoma. Appellant's representatives testified that 2-person transfers are not required between 12:00 p.m. and 6:00 a.m., however, having additional PCA services overnight would benefit Appellant in the event of emergency, or if other providers are late.

## **Findings of Fact**

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

- 1. Appellant is [REDACTED] and sustained a traumatic brain injury in 2014. Appellant is fed by G-tube and has no functional movement.**
- 2. On September 10, 2024, a PCA prior authorization reevaluation was submitted to MassHealth by [REDACTED] for 95.75 PCA hours including 2 nighttime attendant hours per night for repositioning and toileting.**
- 3. The prior authorization request was modified to 81.75 PCA hours because MassHealth denied 14 hours per week for nighttime attendant services between the hours of midnight and 6:00 a.m. for repositioning and toileting based on the other personal care services the Appellant receives during that timeframe.**
- 4. A PCA provider, [REDACTED] provides PCA services between 8:00 p.m. and 8:00 a.m. including repositioning, and diaper changes.**
- 5. Appellant recently contracted pneumonia which requires increased suctioning overnight via open stoma.**
- 6. Two-person transfers are not required between 12:00 a.m. and 6:00 a.m.**

## **Analysis and Conclusions of Law**

The PCA program provides assistance with the following:<sup>1</sup>

### **422.410: Activities of Daily Living and Instrumental Activities of Daily Living**

**(A) Activities of Daily Living (ADLs).** Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL

**(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;

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<sup>1</sup> **See also** PCA Consumer Handbook available at: <https://www.mass.gov/doc/pca-consumer-handbook-personal-care-attendantprogram>

- (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.**

**(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 PCA services; and**
  - (c) other special needs approved by the****



**MassHealth agency as being instrumental to the health care of the member.**

**422.411: Covered Services**

**(A) MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.**

**422.412: Noncovered 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, 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 EVV as required by the MassHealth agency.

Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care as described in 130 CMR 503.007: *Potential Sources of Health Care* and 517.008: *Potential Sources of Health Care*. See 130 CMR 422.416.

### **130 CMR 450.204: Medical Necessity**

The MassHealth agency does not pay a provider for services

that are 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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.<sup>2,3</sup>

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<sup>2</sup> See also 517.008: Potential Sources of Health Care

The MassHealth agency is payer of last resort and pays for health care and related services only when no other source of

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

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payment is available, except as otherwise required by federal law.

(A) Health Insurance. Every applicant and member must obtain and maintain health insurance available at no cost to the member including, but not limited to, Medicare and insurance purchased by the MassHealth agency in accordance with 130 CMR 506.012: *Premium Assistance Payments*. Failure to do so may result in loss of eligibility.

(B) Use of Benefits. The MassHealth agency does not pay for any health-care and related services that are available

- (1) through the member's health insurance, if any; or
- (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.

<sup>3</sup> See also 130 CMR 503.007(B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available

- (1) through the member's health insurance, if any; or
- (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.

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 Page 9 of Appeal No.: 2309752 (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).

On September 10, 2024, a PCA prior authorization reevaluation was submitted to MassHealth by [REDACTED] for 95.75 PCA hours including 2 nighttime attendant hours for repositioning and toileting. The prior authorization request was modified to 81.75 PCA hours because MassHealth denied authorization for nighttime attendant hours requested for repositioning and toileting. Appellant has other PCA/Home Health services through [REDACTED] which provides PCA/Home Health services between 8:00 p.m. and 8:00 a.m., and completes repositioning, and diaper changes in addition to suctioning. Two-person transfers are not required between 12:00 a.m. and 6:00 a.m. Appellant's representatives testified credibly that Appellant requires increased suctioning overnight; however, MassHealth correctly determined that suctioning is not a covered service under the PCA program. Further, PCA hours are approved for hands-on assistance with ADLs and IADLs and are not approved in anticipation of emergency situations. MassHealth correctly determined that there is another source of care available to Appellant for repositioning and toileting between the hours of midnight and 6:00 a.m., and correctly

determined that the nighttime hours requested are not medically necessary as defined above. The 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.**

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**Thomas J. Goode  
Hearing Officer  
Board of Hearings**

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