

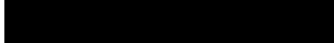
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part	Appeal Number:	2415924
Decision Date:	1/10/2025	Hearing Date:	11/19/2024
Hearing Officer:	Casey Groff		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, R.N., Clinical Reviewer, 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:	Approved in part; Dismissed in part	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	1/10/2025	Hearing Date:	11/19/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Mother
Hearing Location:	Board of Hearings Remote	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 9/24/2024, MassHealth informed Appellant, a minor, that it modified his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant's mother filed a timely appeal on behalf of Appellant on 10/17/24. See 130 CMR 610.015(B); Exhibit 2. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant, a minor, was represented by his mother. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a [REDACTED] boy and MassHealth member. *See* Exh. 4, p. 11. On 9/16/24, Appellant underwent a personal care attendant (PCA) initial evaluation to determine the level of need for services under MassHealth's PCA program. The evaluation was conducted by a registered nurse and occupational therapist (OT) from [REDACTED] Appellant's personal care management (PCM) agency. *Id.* at 6-12. At hearing, the MassHealth R.N. representative reviewed the PCM evaluation which indicated that Appellant has diagnoses of epilepsy, autism, global delays, cognitive deficits, and a history of left frontal lobe disconnection with corpus callosotomy brain surgery. *Id.* at 11. According to the OT functional status report, Appellant is non-verbal and has an AAC device; his medical condition manifests as decreased strength, impaired mobility and weight bearing, gross motor coordination deficits, cognition issues, and deficits with endurance and stamina. *Id.* at 6.

On 9/23/24, the PCM agency, pursuant to its evaluation, sent MassHealth an initial prior authorization (PA) request on behalf of Appellant, seeking approval for 10 hours and 45 minutes of PCA services per week for dates of service 9/24/24 and 9/23/25. *See* Exh. 1, p. 3 and Exh. 4 at 2-4.

Through a letter dated 9/24/24, MassHealth notified Appellant that it modified his PA request by partially approving 8 hours and 45 minutes of PCA services per week. *See* Exh. 1, p. 2. The decision was based on modifications to requested assistance for the following activities of daily living (ADLs): (1) mobility/stair assist; (2) grooming/nailcare; (3) dressing; and (4) bladder care. *Id.* The R.N. representative testified that MassHealth did not approve the full amount of time requested for these ADLs because the time requested: was longer than ordinarily required for someone with Appellant's physical needs; and/or was deemed a "parental responsibility" and thus not a reimbursable PCA service. In support of its determination, MassHealth cited regulations 130 CMR 450.204(A)(1) and 130 CMR 422.410.

(1) Mobility/Stair Assistance

At the hearing, the parties were able to resolve the first modification. MassHealth testified that Appellant's PCM agency requested 2 minutes, 4 times daily, 7 days per week (2x4x7) for assistance ambulating up and down stairs. *See* Exh. 4, p. 15. Although MassHealth initially denied this request, pursuant to discussion at hearing, MassHealth overturned the denial and approved the request in full at 2x4x7.

(2) Grooming/Nailcare

The parties next addressed MassHealth's modification to "nailcare" which fell within the ADL of grooming. Appellant's PCM agency requested 5 minutes per week (5x1) for assistance with nail care. See Exh. 4 at 20. According to the PCM agency's evaluation, Appellant is dependent for all grooming tasks, including nailcare, brushing teeth, and haircare. *Id.*

The MassHealth representative testified that MassHealth denied this request (0x0) because, a child at Appellant's age is not expected to trim nails independently, and therefore it is considered a parental responsibility.

At hearing, Appellant's mother testified that the process of nailcare takes significantly longer than one would reasonably expect for a child of Appellant's age. Appellant has sensory issues and "can't stand having his hands or toes" touched, especially when manipulated to trim his nails. He resists all efforts by the caregiver trying to complete the task. The mother testified that Appellant is becoming stronger, and, while she understands it is a parental responsibility, it has become a two-person job, i.e., one to manage the behaviors (keep him calm and steady) while the other trims the nails. In addition, keeping his nails short is important because he has "mouthing" behaviors and a tendency to cause self-harm to his face.

(3) Dressing

Next, MassHealth testified that Appellant's PCM agency requested 10 minutes daily for assistance with dressing (10x1x7). See Exh. 4, p. 22. According to the PCM agency's evaluation, Appellant is totally dependent for dressing assistance, including physical assistance with both upper and lower extremities, and donning footwear. *Id.*

MassHealth modified the time for dressing to 7 minutes daily (7x1x7). The MassHealth representative testified that MassHealth approved the time requested for undressing at 5x1x7. See Exh. 1. MassHealth further testified that it only considers the time it takes the PCA to perform hands-on tasks and does not account for waiting, cueing, or the portion of care provided by the non-PCA caregiver. MassHealth asserted that 7 minutes is reasonable when accounting solely for the hands-on tasks performed by the PCA.

Appellant's mother testified that, like most ADLs, it takes longer to dress Appellant than one would ordinarily expect. She explained that they have to dress Appellant multiple times per day. For example, the PCA will help him get dressed in the morning and again when he changes for his daytime nap. Appellant must change into lightweight clothes when he sleeps or naps because he can overheat and is prone to seizures when this occurs. Appellant's mother testified that it takes the PCA alone at least 10 minutes if not more to get Appellant dressed for each episode. Her son is medically complex, now weighing 50 lbs. and is becoming harder to handle. He is also a flight risk and will often try to run away before the task is completed. She is there with the PCA who is providing hand over hand assistance for at least 10 minutes for each dressing episode.

(4) Bladder Care

Next, MassHealth testified that Appellant requested assistance with bladder care at 5 minutes, 6 times daily 7 days per week (5x6x7). See Exh. 4, pp. 24-25. According to the PCM agency's evaluation, due to Appellant's cognitive deficits and poor gross/fine motor skills, Appellant requires maximum assistance with all toileting activities, including hygiene, hand washing, and clothing management. *Id.*

MassHealth testified that it approved the time requested for each bladder care episode but adjusted the frequency of episodes on the 4 days that Appellant attends school. Therefore, on the 3 non-school days, MassHealth approved assistance at 5 minutes 6 times daily (5x6x3). On school days, MassHealth approved at 5 minutes 4 times daily (5x4x4). This is because the PCA program does not account for bladder care assistance that is provided through the school. The MassHealth representative also noted that the PCM agency's request for 5 minutes twice per day (5x2x7) for bowel care was approved as requested. Therefore, the PCA is being paid for a total of 6 toileting episodes per day on school days, and 8 toileting episodes on non-school days.

Appellant's mother testified that she disagreed with the reduction because, even on school days, Appellant still requires assistance with at least 6 bladder care episodes, and each one involves takes a lot of time. Appellant's mother testified that her son has multiple bowel episodes per day due to a specialized diet, and a high level of care is required specifically on this issue. The time authorized for bowel care would not accommodate the additional tasks involved for bladder care. Appellant's mother testified that her son's school days are not as long as an average school day. He is only at school for two and a half hours on 3 of the 4 days. On Friday's he is there slightly longer but still not a full school day. It does not meaningfully reduce the episodes of toileting care he receives at home. The mother noted that on non-school days, 6 episodes is likely under the amount he requires, and it is not fair basis to further reduce his services. Given his medical complexity, challenging behaviors, and level of need for assistance, Appellant's mother did not feel the modification was appropriate.

Findings of Fact

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

1. Appellant is a minor and under the age of [REDACTED] with diagnoses of epilepsy, autism, global delays, cognitive deficits, and a history of left frontal lobe disconnection with corpus callosotomy brain surgery. (Testimony; Exh. 4).
2. Appellant is non-verbal and has an AAC device; his medical condition manifests as

decreased strength, impaired mobility and weight bearing, gross motor coordination deficits, cognition issues, and deficits with endurance and stamina. (Testimony; Exh. 4).

3. On 9/23/24, the PCM agency sent MassHealth an initial PA request on behalf of Appellant, seeking approval for 10 hours and 45 minutes of PCA services per week for dates of service 9/24/24 and 9/23/25. (Testimony; Exh. 1; Exh. 4).
4. Through a letter dated 9/24/24, MassHealth notified Appellant that it modified his PA request by partially approving 8 hours and 45 minutes of PCA services per week based on its modifications to the time requested for assistance with (1) mobility/stair assist; (2) grooming/nailcare; (3) dressing; and (4) bladder care. (Testimony; Exh. 4).

Mobility/Stair Assistance

5. Appellant's PCM agency requested assistance for 2 minutes, 4 times daily, 7 days per week (2x4x7) for assistance with ambulating up and down stairs. (Exh. 4, p. 15).
6. MassHealth initially denied the request for stair assistance; however, at hearing, MassHealth overturned the denial thereby approving 2x4x7. (Testimony; Exh. 1).

Nailcare Assistance

7. Appellant's PCM agency requested 5 minutes per week (5x1) for assistance with nailcare. (Testimony; Exh. 4, p. 20).
8. Appellant is dependent for assistance with nailcare due to cognitive deficits and poor fine motor skills. (Testimony; Exh. 4, p. 20).
9. MassHealth denied the request for nailcare (0x0). (Exh 1).
10. Due to tactile sensitivities, Appellant resists caregiver assistance for nailcare, resulting in the need for a two-person assist to complete this ADL task. (Testimony).

Dressing

11. Appellant's PCM agency requested 10 minutes daily for dressing (10x1x7). (Testimony; Exh. 4, p. 22).
12. Appellant is totally dependent for dressing assistance, including dressing the upper and lower extremities, and donning footwear. (Testimony; Exh. 4, p. 22).
13. MassHealth modified the time for dressing to 7 minutes daily (7x1x7). (Exh. 1).
14. Appellant is dressed/undressed multiple times per day, including once in the morning, and again for nap, which is partly to ensure that he does not overheat while sleeping, as

this can cause seizures. (Testimony).

15. In addition to his physical and cognitive impairments, Appellant's resistive behaviors increase the amount of hands-on assistance required to complete dressing activities. (Testimony).

Bladder Care

16. Appellant requested assistance with bladder care at 5 minutes, 6 times daily 7 days per week (5x6x7). (Exh. 4, pp. 24-25).
17. Appellant requires maximum assistance with all toileting activities, including hygiene, hand washing, and clothing management. (Exh. 5, p. 24).
18. MassHealth adjusted the frequency of episodes to account for school days, thereby modifying the request to 5x4x4 (school days) and 5x6x3 (non-school days). (Exh. 1).
19. Appellant's typical school day is 2.5 hours long and this does not significantly reduce the amount of assistance his PCA provides with respect to bladder care on school days. (Testimony).

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:¹ First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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

¹ PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

(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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive medically necessary assistance with the modified activities of daily living (ADLs). MassHealth cover's PCA assistance for the following ADLs:

(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;
- (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.

See 130 CMR 422.410.

MassHealth will reimburse for the "activity time performed by a PCA in providing assistance with the ADL." 130 CMR 422.411. MassHealth does not, however, pay for "assistance provided in the form of cueing, prompting, supervision, guiding, or coaching." 130 CMR 422.412(C).

Mobility/Stair Assistance

In its 9/16/24 coverage determination, MassHealth denied Appellant's request for assistance with stairs at 2x4x7. However, pursuant to discussion at hearing, MassHealth overturned the denial and agreed to authorize the full amount of time requested for this ADL at 2x4x7.

The appeal is DISMISSED as to mobility/stair assistance.

Grooming/Nail Care

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that 5 minutes per week, as requested, is necessary to physically assist Appellant with nailcare. Because Appellant is a minor, MassHealth denied any time for this task because it is considered a parental responsibility. At hearing, Appellant's mother credibly testified that she does assume parental responsibility with this task; however, due to Appellant's medical condition, including tactile sensitivities and resistance to care, she requires additional assistance from the PCA to complete the task. The mother credibly testified that the process takes at least 5 minutes of hands-on assistance from the PCA. Based on such factors, the requested time of 5 minutes per week (5x1) of nailcare assistance is appropriate based on program regulations. *See* 130 CMR 450.204(A); *see also* 130 CMR 422.410(A)(3).

The appeal is APPROVED as to nailcare.

Dressing

For the same reasons discussed above, Appellant demonstrated that MassHealth's decision to modify the request for dressing assistance at 10 minutes per day (10x1x7) to 7 minutes per day (7x1x7) does not give the PCA adequate time to assist Appellant in completing this task. The requested time and level of assistance is adequately supported by the PCM evaluation and testimony from Appellant's mother. The evidence indicates that Appellant has cognitive deficits, poor fine and gross motor coordination skills and is resistive to care. While Appellant is still young, the degree of assistance he requires for dressing is much greater than would be required for a child of his age without such impairment. At hearing, Appellant's mother testified that, focusing solely on the PCA assistance provided, it takes at least 10 minutes of direct assistance to get Appellant dressed. It is also noted that, while only one episode per day was requested, Appellant is dressed and undressed multiple times per day, in part, due to heat sensitivities that can trigger seizures.

For these reasons, the appeal is APPROVED with respect to dressing at 10x1x7.

Bladder Care

Appellant demonstrated that the reduction in frequency of bladder care episodes on school days is insufficient to meet his toileting needs. The PCM agency requested 5 minutes 6 times per day, 7 days per week (5x6x7). MassHealth modified the frequency of episodes on school days to 4 times per day, thereby authorizing 5x4x4 on school days and 5x6x3 on non-school days. The evidence indicates that while Appellant attends a school program four days per week, he only attends for two and a half hours per day. Appellant's mother testified that this does not significantly reduce the amount of bladder care assistance he requires from the PCA on school days. Appellant persuasively argued that she felt that the frequency of episodes requested was low even for a non-school day, and thus, should not be used as the sole benchmark for reducing episodes on school days. Additionally, the evidence indicates that the time approved for bowel care does not accommodate the additional bladder tasks that the PCA assists with and should not be used as justification to further lower the daily bladder care episodes as requested.

Accordingly, the appeal is APPROVED with respect to bladder care at 5x6x7.

Order for MassHealth

Approve Appellant's PA request for dates of service 9/24/24 and 9/23/25 in its entirety at: 10 hours and 45 minutes per week, based on the adjustments to the following ADLs:

1. Mobility/Stairs Assistance: 2x4x7;
2. Nail Care: 5x1x1;
3. Dressing 10x1x7;
4. Bladder Care: 5x6x7

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.

Casey Groff
Hearing Officer
Board of Hearings

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