

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed, in part, Approved, in part, Denied, in part	Appeal Number:	2416650
Decision Date:	1/13/2025	Hearing Date:	12/04/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearances for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN


Interpreter:

N/A



*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:	Dismissed, in part, Approved, in part, Denied, in part	Issue:	Prior Approval, PCA Hours, Modifications
Decision Date:	1/13/2025	Hearing Date:	12/04/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 September 30 2024, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services indicated that some of the requested times for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(6), 130 CMR 450.204(A) and Exhibit 1) Additionally, MassHealth determined that some of the requested times for Activities of Daily Living include requested time for services provided by family members (See 130 CMR 422.412(F) and Exhibit 1). The Appellant filed this appeal in a timely manner on October 30, 2024. (see 130 CMR 610.015(B)). A decision modifying assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services indicated that some of the requested times for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(6), 130 CMR 450.204(A) and Exhibit 1) Additionally, MassHealth determined that some

of the requested times for Activities of Daily Living include requested time for services provided by family members (See 130 CMR 422.412(F) and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(6), and 130 CMR 450.204(A)(1) in determining that the Appellant's request for PCA services for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant's physical needs and whether MassHealth was correct, pursuant to 130 CMR 422.412(F), in determining that the Appellant's request for PCA include requested time for services provided by family members (See 130 CMR 422.412(F) and Exhibit 1)

Summary of Evidence

The Appellant is a MassHealth member under the age of [REDACTED] who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 5). The Appellant was represented by the Appellant's Father as well as a nurse at the Appellant's school (School Nurse). MassHealth was represented by a Nurse from Optum. MassHealth received a prior authorization request for PCA services submitted by [REDACTED] the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) The Appellant's primary diagnoses are Wolf-Hirschhorn syndrome and vision impairment. (Testimony, Exhibit 5, pg. 7) It is also noted that the Appellant is nonverbal and wheelchair dependent. (Exhibit 5, pg. 7)

MassHealth testified that MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined some of the requested times for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(6), 130 CMR 450.204(A) and Exhibit 1). Additionally, MassHealth determined that some of the requested times for Activities of Daily Living include requested time for services provided by family members (See 130 CMR 422.412(F) and Exhibit 1). Specifically, MassHealth made multiple modifications discussed infra. (Testimony)

Regarding the modification of 1) ADL – Bathing, quick wash from 10 minutes, 1 time a day, 7 days a week, to 0 minutes, 0 times a day, 0 days a week, MassHealth testified that the requested times are longer than ordinarily required by someone with the Appellant's physical needs for a quick wash and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 14-15). MassHealth explained that a morning quick wash is a service generally provided by family members, and the request was based upon incontinence issues, which was incorporated within the allotment of time for toileting. (Testimony) Based upon the information provided at Hearing, through the testimony of MassHealth, the Appellant agreed to the modification to 0 minutes, 0 times a day, 0 days a week for Bathing, quick wash. This

resolved the appeal issue related to this modification.

Regarding the modification of 2) ADL – Grooming, hair, from 5 minutes, 1 time a day, 7 days a week, to 4 minutes, 1 time a day, 7 days a week, MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with Grooming, hair care. (Testimony, Exhibit 5, pgs. 16-17). MassHealth explained that the time requested exceeded the amount of time for an individual with the Appellant's physical needs. (Testimony) Based upon the information provided at Hearing, through the testimony of MassHealth, the Appellant agreed to the modification to 4 minutes, 1 time a day, 7 days a week for Grooming, hair. This resolved the appeal issue related to this modification.

Regarding the modification of 3) ADL – Eating, from 30 minutes, 4 times a day, 5 days a week (41.14 school weekdays) and 30 minutes, 6 times a day, 2 days a week (41.14 school weekends), and 30 minutes, 6 times a day, 7 days a week (11 school vacation weeks) to 30 minutes, 2 times a day, 5 days a week (school days for 41.14 school weeks), 30 minutes 3 times a day, 2 days a week (school weekends for 41.14 school weeks), and 30 minutes 3 times a day, 7 days a week (11 vacation weeks), MassHealth testified that the requested times are longer than ordinarily required by someone with the Appellant's physical needs for eating and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 19). The Appellant, through her representative, Father, explained the difficulties in aiding the Appellant during feeding. The Appellant's father and the School Nurse testified that the Appellant's nutritionist recommended multiple feedings due to the Appellant's difficulty with eating. The Appellant eats pureed food prepared at home as well as two 24oz liquid pouch mixes throughout the day. (Testimony). The Appellant vomits if she eats too much too quickly. (Testimony) The Appellant's Father stated that although he appreciates the aid already provided by MassHealth, the Appellant requires any additional help that MassHealth is able to provide. (Testimony)

MassHealth explained that the time allotted for eating is for hands-on help, and not for cueing. (Testimony, 130 CMR 422.412(C)) The School Nurse explained that the Appellant requires at least 45 minutes of hands-on aid while eating. (Testimony) The Appellant's Father stated that he accepted the modification during the school year but required time during the school vacations. (Testimony) The Appellant's Father explained that he and his wife work during the school vacations, and they require additional help during those weeks. No resolution was reached between the parties regarding this modification as it relates to the 11 school vacation weeks.

Findings of Fact

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

1. The Appellant is a MassHealth member under the age of ■ who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 5). The Appellant's primary diagnoses are Wolf-Hirschhorn syndrome and vision impairment. (Testimony, Exhibit 5, pg. 7) It is also noted that the Appellant is nonverbal and wheelchair dependent. (Exhibit 5, pg. 7)
2. MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined some of the requested times for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(6), 130 CMR 450.204(A) and Exhibit 1). Additionally, MassHealth determined that some of the requested times for Activities of Daily Living include requested time for services provided by family members (See 130 CMR 422.412(F) and Exhibit 1).
3. Regarding the modification of 1) ADL – Bathing, quick wash from 10 minutes, 1 time a day, 7 days a week, to 0 minutes, 0 times a day, 0 days a week, MassHealth determined that the requested times are longer than ordinarily required by someone with the Appellant's physical needs for a quick wash and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 14-15). Based upon the information provided at Hearing, through the testimony of MassHealth, the Appellant agreed to the modification to 0 minutes, 0 times a day, 0 days a week for Bathing, quick wash. This resolved the appeal issue related to this modification.
4. Regarding the modification of 2) ADL – Grooming, hair, from 5 minutes, 1 time a day, 7 days a week, to 4 minutes, 1 time a day, 7 days a week, MassHealth determined that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with Grooming, hair care. (Testimony, Exhibit 5, pgs. 16-17). Based upon the information provided at Hearing, through the testimony of MassHealth, the Appellant agreed to the modification to 4 minutes, 1 time a day, 7 days a week for Grooming, hair. This resolved the appeal issue related to this modification.
5. Regarding the modification of 3) ADL – Eating, from 30 minutes, 4 times a day, 5 days a week (41.14 school weekdays) and 30 minutes, 6 times a day, 2 days a week (41.14 school weekends), and 30 minutes, 6 times a day, 7 days a week (11 school vacation weeks) to 30 minutes, 2 times a day, 5 days a week (school days for 41.14 school weeks), 30 minutes 3 times a day, 2 days a week (school weekends for 41.14 school weeks), and 30 minutes 3 times a day, 7 days a week (11 vacation weeks), MassHealth determined that the requested times are longer than ordinarily required by someone with the Appellant's physical needs for eating and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 19).
6. The Appellant exhibits difficulties during feeding the Appellant. The Appellant's nutritionist recommended multiple feedings due to the Appellant's difficulty with eating. The Appellant

eats pureed food prepared at home as well as two 24oz liquid pouch mixes throughout the day. (Testimony). The Appellant vomits if she eats too much too quickly. (Testimony)

7. The Appellant requires at least 45 minutes of hands-on aid while eating. (Testimony) The Appellant's Father accepted the modifications during the school year but requested additional time during the school vacations. (Testimony) The Appellant's Father and his wife work during the school vacations, and they require additional help during those weeks. No resolution was reached between the parties regarding this modification as it relates to the 11 school vacation weeks.

Analysis and Conclusions of Law

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

(B) 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. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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 PCA 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 PCM 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 PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

The Regulation regarding the requirement of needing assistance with two or more ADLs

cited by MassHealth at the Hearing and in the Notice is codified in 130 CMR 422.403(C):

422.403: Eligible Members

(C) MassHealth covers PCA 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 PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

Additionally, the Regulation regarding non-covered services, such as social services, cited by MassHealth at the Hearing and in the Notice is codified in 130 CMR 422.412(A):

422.412: Non-covered 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.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also 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 made three modifications to ADLs: ADL – Bathing – quick wash, ADL – Grooming – hair care, and ADL – Eating. (Exhibit 1, Exhibit 5) The Appellant, through her Appeal Representative/Father, based upon the information provided at Hearing, through the testimony of MassHealth, agreed to the modification to 0 minutes, 0 times a day, 0 days a week for Bathing, quick wash. This resolved the appeal issue related to the modification of the ADL for Bathing – quick wash. Additionally, the Appellant, through her Appeal Representative/Father, based upon the information provided at Hearing, through the testimony of MassHealth, agreed to the modification to 4 minutes, 1 time a day, 7 days a week for the ADL for Grooming – hair care. This resolved the appeal issue related to the modification of the ADL for Grooming – hair care.

Regarding the third modification, ADL – Eating, from 30 minutes, 4 times a day, 5 days a week (weekdays) and 30 minutes, 6 times a day, 2 days a week (weekends), to 30 minutes, 2 times a day, 5 days a week (school days for 41.14 school weeks), 30 minutes 3 times a day, 2 days a week (school weekends for 41.14 school weeks), and 30 minutes 3 times a day, 7 days a week (11 vacation weeks), the Appellant's Father agreed to the modifications during the 41.14 school weeks: 30 minutes, 2 times a day, 5 days a week (school days for 41.14 school weeks), 30 minutes 3 times a day, 2 days a week (school weekends for 41.14 school weeks)/ However no resolution was reached regarding the school vacation weeks.

Based upon the agreement of the Appellant's Father at Hearing, the Appellant agreed to the first modification to 0 minutes, 0 times a day, 0 days a week for ADL – Bathing, quick wash. This resolved the appeal issue related to the modification of the ADL for Bathing – quick wash. Accordingly, this portion of the instant appeal is DISMISSED.

Based upon the agreement of the Appellant's Father at Hearing, the Appellant agreed to the second modification to 4 minutes, 1 time a day, 7 days a week for the ADL for Grooming – hair care. This resolved the appeal issue related to the modification of the ADL for Grooming – hair care. Accordingly, this portion of the instant appeal is DISMISSED.

Based upon the agreement of the Appellant's Father at Hearing, the Appellant agreed to a portion of the third modification of the ADL – Eating, from 30 minutes, 4 times a day, 5 days a week (41.14 school weekdays) and 30 minutes, 6 times a day, 2 days a week (41.14 school weekends), to 30 minutes, 2 times a day, 5 days a week (school days for 41.14 school weeks), 30 minutes 3 times a day, 2 days a week (school weekends for 41.14 school weeks) This resolved the appeal issue related to the modification of the ADL for Eating. Accordingly, this portion of the instant appeal is DISMISSED.

Based upon the Record in the instant appeal, including the testimony of the Appellant's

Father and School Nurse as well as the submissions, I find that the Appellant has met her burden, in part, by a preponderance of evidence relating to the modification of the ADL of Eating during 11 school vacation weeks. The Appellant's PCM requested 30 minutes, 6 times a day, 7 days a week (11 school vacation weeks). However, the PCM requested 30 minutes, 4 times a day, 7 days a week for 41.14 school weeks during the school week. Based upon the testimony of the Appellant's Father as well as the School Nurse, I find that the Appellant has shown that MassHealth's administrative determination is invalid, in part. I find that MassHealth's allotment of 30 minutes, 3 times a day, 7 days a week for the school vacations does not adequately provide for the nutrition the Appellant requires while the parents work full time during the school vacation weeks. According, this appeal is APPROVED, in part. Based upon the PCM's submission and request during the school weeks of 30 minutes, 4 times a day, 7 days a week this requested time is appropriate for the school vacation weeks as well, where the Appellant's parents continue to work full time during the vacation weeks. The request for 30 minutes, 6 times a day, 7 days a week (11 school vacation weeks) is DENIED. However, the Appellant is APPROVED for 30 minutes, 4 times a day, 7 days a week for 11 school vacation weeks.

Order for MassHealth

APPROVE PCA services as follows:

- 1) ADL – Eating, 30 minutes, 4 times a day, 7 days a week, for 11 school vacation weeks.

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.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

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