

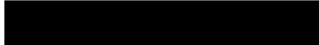
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part; Denied in part	Appeal Number:	2417121
Decision Date:	1/29/2025	Hearing Date:	12/11/2024
Hearing Officer:	Emily Sabo		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N., Optum

Interpreter:



*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; Denied in part	Issue:	Prior Authorization; Personal Care Attendant (PCA) Services
Decision Date:	1/29/2025	Hearing Date:	12/11/2024
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South (Telephone)	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

By notice dated October 24, 2024, MassHealth modified the Appellant's request for prior authorization for personal care attendant (PCA) services from 12 hours, 15 minutes per week to 10 hours per week. 130 CMR 422.410(C)(1), 130 CMR 422.412(F), and Exhibit 1. The Appellant filed this timely appeal on November 7, 2024. Exhibit 2 and 130 CMR 610.015(B). Denial or modification of prior authorization is a valid basis for appeal. 130 CMR 422.417(B)(2) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the Appellant's request for prior authorization of PCA services in the areas of grooming and meal preparation and cleanup.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(C)(1) and 130 CMR 422.412(F), in modifying the Appellant's prior authorization request for PCA services.

Summary of Evidence

The hearing was held by telephone. A registered nurse and clinical appeals reviewer represented MassHealth at hearing and submitted records in support. Exhibit 5. The Appellant is a minor child and was represented by his mother at the hearing, who verified the Appellant's identity. The Appellant's representative testified through an interpreter.

The MassHealth representative testified that the Appellant's primary diagnosis is autism. The MassHealth representative testified that the Appellant's personal care management (PCM) agency is the [REDACTED]. As part of an initial evaluation, they requested, on the Appellant's behalf, 12 hours and 15 minutes for PCA services weekly. The time period for the request for services is October 24, 2024 to October 23, 2025. Exhibits 1 and 5.

The MassHealth representative testified that MassHealth modified the category of time for grooming from 104 minutes weekly to 83 minutes. The MassHealth representative testified that the time requested for applying lotion and deodorant was denied because the submitted documentation did not indicate the services were medically necessary. Based on discussion and testimony at the hearing, that the Appellant is not able to perform those functions, the MassHealth representative agreed to restore the 21 minutes it did not authorize originally, for a total of 104 minutes per week for grooming, as requested.

The MassHealth representative explained that MassHealth approved 70 minutes weekly for assistance for the Appellant with eating. The MassHealth representative explained that MassHealth denied the request for 125 minutes weekly (25 minutes, 5 days a week) for meal preparation and cleanup, an instrumental activity of daily living. The MassHealth representative testified that MassHealth denied the time for meal preparation and cleanup, because the Appellant lives with a parent who is responsible for this instrumental activity of daily living. The MassHealth representative explained that the request specified that it was "for meal prep and clean up when the obligated family member is working outside of the home." Exhibit 5 at 32. The MassHealth representative testified that the PCA is not approved to cook meals, only to feed the Appellant the meal, and that the PCA cannot babysit the Appellant. The MassHealth representative explained that the PCA program is a consumer-driven program, but that the Appellant, as a minor, cannot direct the PCA. The MassHealth representative stated that the parent needs to be present with the child and the PCA. The MassHealth representative testified that meal preparation and cleanup is a parental responsibility, but time was approved for the PCA to provide feeding assistance for the Appellant.

The Appellant's representative testified that she prepares the Appellant's meals, but that he needs to be fed shortly after the food is prepared. The Appellant's representative testified that she disagreed with the regulation because she knows what her son needs. Her son needs total

supervision because he often has seizures. The Appellant's representative testified that the Appellant's preferred food has to be cooked fresh.

Findings of Fact

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

1. The [REDACTED] submitted an initial evaluation request for PCA services on behalf of the Appellant, for 12 hours and 15 minutes per week. The time period for the request for services is October 24, 2024 to October 23, 2025. Exhibits 1 & 5.
2. MassHealth modified the request on October 24, 2024 to 10 hours per week, and specifically, modified the areas of grooming and meal preparation and cleanup. Testimony, Exhibits 1 & 5.
3. At the hearing, the MassHealth representative approved the full requested time for grooming for 104 minutes weekly. Testimony.
4. At the hearing, the MassHealth representative testified that MassHealth denied the time for meal preparation and cleanup because the Appellant lives with an obligated family member and that it is a parental responsibility. Testimony.
5. MassHealth approved 70 minutes weekly for assistance with the Appellant's eating. Testimony and Exhibit 5.
6. At the hearing, the Appellant's representative testified that the Appellant needs supervision and that the Appellant prefers fresh food. Testimony.
7. The Appellant filed a timely appeal on November 7, 2024. Exhibit 2.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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.

Pursuant to 130 CMR 450.204(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.

MassHealth covers assistance with the following tasks under the PCA program:

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;

(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.

The MassHealth regulations at 130 CMR 422.412 provide:

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.

(Emphasis added)

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 Comm’n., 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).

At the hearing, for the area of grooming, MassHealth agreed to restore 21 minutes of time it did not originally authorize, for a total of 104 minutes per week of PCA assistance for grooming. Therefore, that category is no longer in dispute before the Board of Hearings, and the appeal is APPROVED and DISMISSED IN PART regarding grooming. 130 CMR 610.035(A)(8).

Regarding the time requested for meal preparation and cleanup, the Appellant is a minor and he lives with his mother, who is a responsible family member as defined in 130 CMR 422.402.¹ The MassHealth regulations at 130 CMR 422.412 explain that babysitting and services provided by family members are not covered by the PCA program. 130 CMR 422.412(A), (F). The MassHealth representative testified that when a member lives with family members, the family members are expected to provide assistance with the member’s instrumental activities of daily living. I find that the Appellant and his representative have not met their burden to show the invalidity of MassHealth’s denial regarding PCA assistance time requested for this instrumental activity of daily living. Therefore, the appeal is DENIED IN PART.

Order for MassHealth

If it has not already done so, approve the time requested for PCA services to include the updated 104 minutes for grooming weekly for the requested time period October 24, 2024 to October 23, 2025.

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

¹ “Family member” is defined at 130 CMR 422.402 as the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.

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.

Emily Sabo
Hearing Officer
Board of Hearings

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