

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2418009
Decision Date:	1/2/2025	Hearing Date:	12/24/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Robin Brown, OTR/L



*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; Denied in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	1/2/2025	Hearing Date:	12/24/2024
MassHealth's Rep.:	Robin Brown, OTR/L	Appellant's Rep.:	Mother
Hearing Location:	Quincy Harbor South 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 November 8, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on November 24, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

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

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered occupational therapist and clinical appeals reviewer. The appellant, a minor, was represented at hearing via telephone by her mother.

The MassHealth representative testified that the documentation submitted shows the appellant is a [REDACTED] child with primary diagnoses of autism, associated language disorder, and developmental delays. Relevant medical history shows she is minimally verbal and has impaired expressive/receptive language due to language disorder. Communication is a barrier for everything for her. She is unable to answer questions or express what she wants. She is not able to complete a task fully on her own due to decreased ability to follow directions to complete an activity of daily living (ADL) so she needs hands-on help to complete the task. She needs hands-on assistance with toileting, bathing, dressing, and grooming and is dependent for all instrumental activities of daily living (IADLs). She will not go to the toilet herself and will urinate or defecate on the floor. She wears diapers to help with incontinence. She goes to [REDACTED] program five days a week for 25 hours a week, 52 weeks a year.

The appellant lives at home with her parents and two siblings. Both her parents work outside of the home. Her mother often works night shifts at a hospital, which sometimes makes her inaccessible at home even if she is physically home.

On October 30, 2024, the appellant's personal care management (PCM) agency, Tri-Valley, Inc., submitted a prior authorization request for PCA services (initial evaluation) requesting 19 hours and 15 minutes per week for dates of service of November 7, 2024, through November 6, 2025. On November 8, 2024, MassHealth modified the request to 10 hours and 30 minutes per week. MassHealth made modifications to the following ADLs: bathing, grooming – nail care, dressing, undressing, bladder care, and bowel care.

Based on testimony at hearing, MassHealth fully restored the time as requested for PCA assistance with dressing (15 minutes, 1 time per day, 7 days per week) and undressing (12 minutes, 1 time per day, 7 days per week). MassHealth and the appellant agreed to the following modification for bathing: 25 minutes, 1 time per day, 7 days per week. Since parties resolved the disputes as to those ADLs, the appeal is dismissed as to bathing, dressing, and undressing.

Grooming – Nail Care

The appellant requested 3 minutes, 1 time per day, 7 days per week for PCA assistance with grooming – nail care. MassHealth modified the time to 5 minutes, 1 time per day, 1 day per week because the time requested is longer than ordinarily required for someone with the appellant's documented needs. The MassHealth representative testified that typically, MassHealth would not

approve PCA time for a child of the appellant's age because a typically developing child her age would be dependent for nail care and it would be the parent's responsibility. So, the initial reviewer was actually more generous than usual with the amount of time approved for nail care. She did not have additional information on why the initial reviewer approved some time for nail care.

The appellant's mother testified that nail care is particularly challenging and time consuming. They have to space it out at least three times a week because the appellant can only tolerate a few nails at a time. The appellant's mother tries to do her toenails when she is asleep but still can usually only get about three nails at a time. Clipping her fingernails can be a two-person job and, again, she will only tolerate about three nails at a time.

Bladder Care

The appellant requested 12 minutes, 3 times per day, 5 days per week on weekdays and 12 minutes, 5 times per day, 2 days per week on weekends for PCA assistance with bladder care. MassHealth approved 5 minutes per episode at the requested frequency because the time requested is longer than ordinarily required for someone with the appellant's documented needs. The MassHealth representative explained that bladder care involves assisting her on and off the toilet, clothing management, and hygiene. It does not include time for re-direction or waiting while the appellant is on the toilet. The PCA program only covers time requested for physical, hands-on assistance with care. It does not cover cueing, prompting, supervision, guiding, or coaching.

The appellant's mother explained that the appellant requires full assistance with toileting due to her autism, associated behaviors, and receptive language issues. Her receptive language is significantly impacted and there is a barrier to understanding. The PCA has to guide and lead her to the bathroom, lifts her on to the toilet seat, repeatedly put her back on the toilet seat when she gets up, and do all handwashing, clothing management, and hygiene. The appellant frequently takes off her clothes. To limit that, she is often dressed in one-piece pajamas that zip or snap in the back. The pajamas take time to get on and off for toileting. The appellant also will get off the toilet to go on the floor somewhere else. The PCA has to physically put her back on the toilet seat because she will not get on the toilet herself. This can happen multiple times at each toileting episode.

Bowel Care

The appellant requested 15 minutes, 3 times per day, 5 days per week on weekdays and 15 minutes, 4 times per day, 2 days per week on weekends for PCA assistance with bowel care. MassHealth approved 7 minutes per episode at the requested frequency because the time requested is longer than ordinarily required for someone with the appellant's documented needs.

The appellant's mother testified that the process for bowel care is similar to that of bladder care; however, the appellant prefers to defecate on the floor and will often sneak away to do so. It takes longer to wipe and clean the appellant after a bowel movement. Additionally, there is more clean-up and sanitization involved because she goes on the floor.

The MassHealth responded that clean-up and housekeeping are the responsibility of family members.

Findings of Fact

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

1. The appellant is a minor child with primary diagnoses of autism, associated language disorder, and developmental delays (Testimony and Exhibit 5).
2. On October 31, 2024, the appellant's PCM agency submitted a prior authorization request for PCA services (initial evaluation) requesting 19 hours and 15 minutes per week for dates of service of November 7, 2024 through November 6, 2025 (Testimony and Exhibit 5).
3. On November 8, 2024, MassHealth modified the request to 10 hours and 30 minutes per week (Testimony and Exhibit 5).
4. On November 24, 2024, the appellant timely appealed the November 8, 2024 notice (Testimony and Exhibit 2).
5. At hearing, parties were able to resolve the disputes related to dressing (fully restored 15 minutes, 1 time per day, 7 days per week); undressing (fully restored 12 minutes, 1 time per day, 7 days per week); and bathing (agreed to 25 minutes, 1 time per day, 7 days per week) (Testimony).
6. The appellant seeks PCA assistance with grooming – nail care as follows: 3 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 5).
7. MassHealth modified the request to 5 minutes, 1 time per day, 1 day per week (Testimony and Exhibit 5).
8. The appellant can only tolerate a few nails at a time, so the task is spaced out over at least three days per week (Testimony).
9. The appellant seeks PCA assistance with bladder care as follows: 12 minutes, 3 times per day, 5 days per week on weekdays and 12 minutes, 5 times per day, 2 days per week on weekends

(Testimony and Exhibit 5).

10. MassHealth modified the request to 5 minutes per episode at the requested frequency (Testimony and Exhibit 5).
11. The appellant requires full assistance with toileting due to her autism, associated behaviors, and receptive language issues. She needs to be placed on the toilet and frequently gets off the toilet and needs to be put back on. Additionally, clothing management is time consuming because she is often in one-piece pajamas that zip or snap in the back. (Testimony).
12. The appellant seeks PCA assistance with bowel care as follows: 15 minutes, 3 times per day, 5 days per week on weekdays and 15 minutes, 4 times per day, 2 days per week on weekends (Testimony and Exhibit 5).
13. MassHealth modified the request to 7 minutes per episode at the requested frequency (Testimony and Exhibit 5).
14. The appellant defecates on the floor which involves greater clean-up and sanitation (Testimony).

Analysis and Conclusions of Law

MassHealth covers personal care 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 personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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 personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.

(4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

A service is “medically necessary” if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.
See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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 or 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.

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;
- (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; or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

The appeal is dismissed as to PCA assistance with bathing, dressing, and undressing because at hearing the parties were able to resolve the disputes. Parties agreed to 25 minutes, 1 time per day, 7 days per week for bathing. MassHealth fully restored the time as requested for dressing (15 minutes, 1 time per day, 7 days per week) and undressing (12 minutes, 1 time per day, 7 days per week).

As to the appellant's request for 3 minutes, 1 time per day, 7 days per week of PCA assistance with grooming – nail care, the appeal is approved in part. MassHealth approved 5 minutes, 1 time per day, 1 day per week. The MassHealth representative testified that a typically developing child of

the appellant's age would be dependent for nail care and as such, normally MassHealth would not approve time for nail care because it would be the parent's responsibility. But for some reason, the initial reviewer was more generous than usual and approved some time. She could not explain why the reviewer approved the time; however, since time was approved, based on testimony at hearing, a more appropriate allotment of time would be 3 minutes, 1 time per day, 3 days per week. The appellant's mother explained that nail care is particularly challenging and it has to be spaced out at least three times per week because they can only clip a few nails at a time. Although the appellant's mother tries to do the toenails while the appellant is asleep, nail care is often a two-person job. For these reasons, the appellant is approved for 3 minutes, 1 time per day, 3 days per week for nail care.

As to the appellant's request for PCA assistance with bladder care, the appeal is approved in part. The appellant requested 12 minutes, 3 times per day, 5 days per week for weekdays and 12 minutes, 5 times per day, 2 days per week for weekends. MassHealth approved 5 minutes per episode at the requested frequency. The appellant's testimony demonstrated that she needs more than the time approved; however, she did not establish that the PCA's hands-on assistance took the full 12 minutes requested. The appellant requires full assistance with toileting due to her primary diagnosis. Her receptive language is significantly impacted and there is a barrier to understanding. The PCA guides her to the bathroom, lifts her on to the toilet seat, repeatedly puts her back on the toilet seat when she gets up, and does all handwashing, clothing management, and hygiene. It takes time to take her clothes on and off, especially when she is wearing her one-piece pajamas that zip up in the back, which she frequently wears when at home. The MassHealth representative explained that time for waiting, redirection, supervision, or guiding is not covered by the PCA program. While time prompting and guiding the appellant to the bathroom and time spent waiting while the appellant is on the toilet is not covered, the appellant has demonstrated that the hands-on, physical assistance provided by the PCA exceeds the 5 minutes that was approved. For these reasons, the appellant is approved for 8 minutes, 3 times per day, 5 days per week and 8 minutes, 5 times per day, 2 days per week for bladder care.

As to the appellant's request for PCA assistance with bowel care, the appeal is approved in part. The appellant requested 15 minutes, 3 times per day, 5 days per week for weekdays and 15 minutes, 4 times per day, 2 days per week for weekends. MassHealth approved 7 minutes per episode at the requested frequency. The appellant's testimony demonstrated that she needs more than the time approved; however, she did not establish that the PCA's hands-on assistance took the full 15 minutes requested. In addition to the process for bladder care, bowel care also includes a lot more clean-up and sanitation. Due to her behavioral issues related to her autism diagnosis, the appellant often defecates on floor. This creates a lot more cleaning up and sanitizing. MassHealth argued that housekeeping and clean-up are considered parental responsibility; however, this clean-up is part of the bowel care routine and goes beyond the routine housekeeping that is expected of family members. For these reasons, the appellant is approved for 12 minutes, 3 times per day, 5 days per week and 12 minutes, 4 times per day, 2 days per week for bowel care.

For these reasons, the appeal is approved in part, denied in part, and dismissed in part.

Order for MassHealth

Approved 3 minutes, 1 time per day, 3 days per week for nail care; approve 8 minutes, 3 times per day, 5 days per week and 8 minutes, 5 times per day, 2 days per week for bladder care; and approve 12 minutes, 3 times per day, 5 days per week and 12 minutes, 4 times per day, 2 days per week for bowel care. Implement agreements made at hearing for bathing (25 minutes, 1 time per day, 7 days per week); dressing (15 minutes, 1 time per day, 7 days per week); and undressing (12 minutes, 1 time per day, 7 days per week).

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.

Alexandra Shube
Hearing Officer
Board of Hearings

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