

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2418390
Decision Date:	1/15/2025	Hearing Date:	01/08/2025
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown, OTR/L, 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; Denied in part; Dismissed in part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	1/15/2025	Hearing Date:	01/08/2025
MassHealth's Rep.:	Robin Brown, OTR/L	Appellant's Rep.:	mother
Hearing Location:	Quincy Harbor South 1 (Telephone)	Aid Pending:	Yes

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 13, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.410(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on December 2, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict or modify a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

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

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as an occupational therapist and clinical appeals reviewer. The appellant is a MassHealth member between the ages of [REDACTED] and was represented at hearing by his mother. The parties' testimony and record evidence are summarized as follows:

The appellant's medical history includes a primary diagnosis of autism with severe cognitive impairment, delayed speech, and developmental delays. Testimony and Exhibit 4. The appellant lives at home with his mother, and he attends school every day. Testimony and Exhibit 4. The appellant is categorized as "needs assist with all daily cares" by his PCA to accomplish the requested activities of daily living (ADLs). Exhibit 4 at 7.

The appellant was reevaluated for PCA services on October 30, 2024, and on November 12, 2024, his PCM agency, [REDACTED] requested 29 hours per week for the service period of 12/12/2024-12/11/2025. MassHealth modified this request on November 13, 2024, to 27 hours per week for the service period of 12/12/2024-12/11/2025. Testimony, Exhibit 4. MassHealth made five (5) modifications related to PCA assistance with mobility, grooming (nail care), grooming (hair care), grooming (other), and eating.

After testimony and additional information were disclosed at hearing, MassHealth and the appellant's mother came to an agreement on the following category: grooming (other). This activity involves the application of lotion to the appellant after bathing. The appellant's PCM agency requested four minutes per episode, one time per day, seven days per week (4x1x7). MassHealth modified this request to two minutes per episode, one time per day, seven days per week (2x1x7). After discussion between the MassHealth representative and the appellant's mother, it was agreed that this category would be approved at three minutes per episode, one time per day, seven days per week (3x1x7). Therefore, with both parties in agreement, the category of grooming (other) is no longer in dispute.

The remaining disputed categories are mobility, grooming (nail care), grooming (hair care), and eating.

Mobility

The MassHealth representative testified that the time requested under the mobility category was for time to walk the appellant to and from the bus stop. The time requested for this task was five minutes per day, two episodes per day, five days per week (5x2x5). The MassHealth representative explained that this category was modified to zero because the appellant is a [REDACTED] year-old child and he lives with a parent. Under the regulations, the walk to and from the bus stop is parental responsibility. The appellant's mother explained that her son will run away

and needs to have hands-on assistance to make the walk to the bus stop. The MassHealth representative emphasized that this task as requested is parental responsibility, and that his PCM agency did not request assistance with mobility inside the house.

Grooming (nail care)

The MassHealth representative explained that this task, the nail care section of the Grooming category, is for the time it takes to cut the appellant's finger and toe nails. The MassHealth representative testified that the appellant's PCM agency requested 10 minutes per episode of nail cutting, one time per week (10x1x1), and MassHealth modified this category to 5 minutes per episode of nail cutting, one time per week (5x1x1). She explained that this category was modified because the time requested is longer than is ordinarily required for someone with the appellant's needs¹. The appellant's mother explained that her son is very strong and that he resists having his nails cut. The appellant's mother must hold her son while the PCA physically cuts his nails. She testified that nail cutting occurs every week so that he does not scratch himself and others. In response, the MassHealth representative stated that unfortunately, the supervisory or cueing time to deal with crying and resistive behaviors is not covered by the PCA program. The time allotted is only to be used to cut the appellant's nails.

Grooming (hair care)

The MassHealth representative testified that this task, the hair care section of the Grooming category, is for the time it takes the PCA to brush the appellant's hair. The appellant's PCM agency requested three minutes per episode of hair care, one time per day, seven days per week (3x1x7). MassHealth modified this category to one minute per episode, one time per day, seven days per week (1x1x7). The MassHealth representative explained that this modification was made because the time requested is longer than ordinarily required by someone with the appellant's physical needs. When asked about the length of the appellant's hair, his mother testified that it was short, and it did not really take long to brush, but her son resists having his hair brushed and he will run from the PCA. The MassHealth representative emphasized that the PCA program is about the time it takes to physically perform each task and does not include the time it takes to persuade the appellant to allow his hair to be brushed.

Eating

This category is for the time allotted for the PCA to feed the appellant his daily meals. The MassHealth representative explained that the eating category was modified in two places because the appellant attends school and the requests are slightly different during the school week and on the weekends. The MassHealth representative testified that the appellant's PCM agency requested fifteen minutes per eating episode, two times per day, five days a week for school

¹ The appellant is categorized as being "totally dependent" on his PCA to perform all Grooming activities. Exhibit 4 at 16.

weeks (15x2x5), and fifteen minutes per eating episode, three times per day, two days a week for the weekends (15x3x2). This request was modified by MassHealth to ten minutes per eating episode, two times per day, five days a week for school weeks (10x2x5), and ten minutes per eating episode, three times per day, two days a week for the weekends (10x3x2). The rationale for this modification is that the time requested is longer than is ordinarily required for someone with the appellant's physical needs.

In response to the MassHealth representative's testimony, the appellant's mother stated that her son will not agree to eat meals or sit still. He must be held to accomplish any task. He runs from his PCA and his mother. The MassHealth representative testified that MassHealth must stick with the time approved on all categories today. She understands that we all want children with autism to be independent and improve, but the PCA program does not cover prompting or cueing, only hands on activity. The MassHealth representative emphasized that the regulations specifically say that supervision or coaching is not part of the PCA program.

Findings of Fact

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

1. Appellant is a MassHealth member between the ages of [REDACTED] and lives in the community with his mother.
2. Appellant has a primary diagnosis of autism with severe cognitive impairment, delayed speech, and developmental delays. Testimony and Exhibit 4.
3. On November 12, 2024, appellant's PCM agency sent MassHealth a PA request seeking 29 hours per week for the service period of 12/12/2024-12/11/2025. Testimony and Exhibit 4.
4. On November 13, 2024, MassHealth modified the request in five (5) categories and approved the appellant for 27 hours per week for the service period of 10/14/2024-10/13/2025; specifically, by modifying the time for "mobility, grooming (nail care), grooming (hair care), grooming (other), and eating." Exhibits 1 and 4.
5. At hearing, MassHealth the appellant's mother resolved their dispute as to the grooming (other) category, and agreed that this category would be approved at three minutes per episode, one time per day, seven days per week (3x1x7), resolving the dispute related to PCA assistance with this task. Testimony.
6. The appellant seeks time for PCA assistance with mobility as follows: five minutes per day, two episodes per day, five days per week (5x2x5). Testimony and Exhibit 4.

7. MassHealth approved zero minutes for PCA assistance with mobility. Testimony and Exhibit 4.
8. The appellant seeks time for PCA assistance with grooming (nail care) as follows: 10 minutes per episode of nail cutting, one time per week (10x1x1). Testimony and Exhibit 4.
9. MassHealth approved 5 minutes for PCA assistance with grooming (nail care) one time per week (5x1x1). Testimony and Exhibit 4.
10. The appellant seeks time for PCA assistance with grooming (hair care) as follows: three minutes per day, one episode per day, seven days per week (3x1x7). Testimony and Exhibit 4.
11. MassHealth approved three minutes per day, one episode per day, seven days per week (1x1x7) for PCA assistance with grooming (hair care). Testimony and Exhibit 4.
12. The appellant is resistant to care in both cutting his nails and brushing his hair. Testimony.
13. The appellant seeks time for PCA assistance with eating as follows: fifteen minutes per eating episode, two times per day, five days a week for school weeks (15x2x5), and fifteen minutes per eating episode, three times per day, two days a week for the weekends (15x3x2). Testimony and Exhibit 4.
14. MassHealth approved ten minutes per eating episode, two times per day, five days a week for school weeks (10x2x5), and ten minutes per eating episode, three times per day, two days a week for the weekends (10x3x2) for PCA assistance with eating. Testimony and Exhibit 4.
15. The appellant resides in a household with his mother. Testimony and Exhibit 4.

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).

Here, there is no dispute that appellant meets all the prerequisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for appellant to receive PCA assistance to meet his care needs. The requested services must also be medically necessary for the prior authorization request 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 (emphases added).

The appeal is dismissed as to PCA assistance with grooming (other) because at hearing, the parties were able to resolve the dispute in this category of PCA assistance. MassHealth and the appellant's representative agreed to three minutes per episode, one time per day, seven days per week (3x1x7) for PCA assistance with grooming (other), which resolved the dispute related to PCA assistance with this task.

This portion of the appeal is therefore DISMISSED.

As to the appellant's request for PCA assistance with grooming (nail care), this portion of the appeal is approved. The appellant requested 10 minutes per episode of nail cutting, one time per week (10x1x1). The appellant's mother's testimony was credible and demonstrated that without the extra time as requested by the appellant's PCM agency, the appellant's nails would never be cut. Since the appellant could injure himself and others around him, I find that the appellant has shown that additional assistance with grooming (nail care) is medically necessary. The appellant is approved for grooming (nail care) as requested: 10 minutes per episode of nail cutting, one time per week (10x1x1).

This portion of the appeal is therefore APPROVED.

As to the appellant's request for PCA assistance with grooming (hair care), this portion of the appeal is denied. The appellant requested three minutes per episode of hair care, one time per day, seven days per week (3x1x7). MassHealth modified this request to one minute per episode of hair care, one time per day, seven days per week (1x1x7). MassHealth correctly modified this request because the record shows that the appellant has short hair and the regulations do not allow for PCA time to include any activity that is supervisory or cueing in nature. The appellant did not demonstrate that more than one minute of time is medically necessary to brush the appellant's short hair.

This portion of the appeal is therefore DENIED.

As to the appellant's request for PCA assistance with mobility, this portion of the appeal is denied. The appellant requested five minutes per day, two episodes per day, five days per week (5x2x5) to walk the appellant to and from the bus stop. MassHealth modified this request to zero minutes

per week because the appellant is a [REDACTED] year-old child and he lives with a parent. MassHealth correctly modified this request because the record shows that appellant is a minor child and he resides with his parent. Although the appellant's mother credibly testified to the issues that she has walking the appellant to the bus stop, the regulations direct that MassHealth does not cover PCA assistance provided in the form of cueing, prompting, supervision, guiding, or coaching or any services provided by family members or surrogates.

This portion of the appeal is therefore DENIED.

As to the appellant's request for PCA assistance with eating, this portion of the appeal is denied. This category is for the time allotted for the PCA to feed the appellant his daily meals. The appellant's PCM requested fifteen minutes per eating episode, two times per day, five days a week for school weeks (15x2x5), and fifteen minutes per eating episode, three times per day, two days a week for the weekends (15x3x2). This request was modified by MassHealth to ten minutes per eating episode, two times per day, five days a week for school weeks (10x2x5), and ten minutes per eating episode, three times per day, two days a week for the weekends (10x3x2). The testimony of the MassHealth representative was very persuasive for this category. She described the process of feeding the appellant, as testified to by his mother, as supervisory and more prompting than the PCA physically performing the feeding task. The appellant's mother credibly described the difficulties she and the PCA have with feeding her son, an incredibly difficult task on a good day, but she did not describe a situation where an extra five minutes of time for the PCA to physically feed the appellant would be medically necessary under the regulations. The appellant's mother testified that it takes longer than requested to feed the appellant, but the feeding episodes that she described were mostly prompting, coaching, and supervisory in nature.

This portion of the appeal is therefore DENIED.

Order for MassHealth

Remove aid pending.

For the prior authorization period 12/12/2024-12/11/2025, approve the following amounts of PCA assistance for the appellant:

- Mobility: zero minutes per week;
- Grooming (other): 3x1x7 (21 minutes per week);
- Grooming (nail care): 10x1x1 (10 minutes per week);
- Grooming (hair care): 1x1x7(7 minutes per week);
- Eating: 10x2x5, school week, and 10x3x2, weekend (160 total minutes 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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

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