

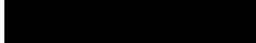
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part	Appeal Number:	2500918
Decision Date:	4/9/2025	Hearing Date:	02/19/2025
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N.

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:	Dismissed in part; Approved in part	Issue:	Prior Authorization- PCA Services
Decision Date:	4/9/2025	Hearing Date:	02/19/2025
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	Father
Hearing Location:	Quincy Harbor South 1 (Remote)	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 January 2, 2025, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services from the requested 43 hours and 45 minutes of PCA assistance per week for 40.14 school weeks, and 47 hours and 45 minutes of PCA assistance per week for 12 vacation weeks, to 37 hours and 0 minutes per week for 40.14 school weeks and 39 hours and 30 minutes per week for 12 vacation weeks. (Exhibit 1). The appellant filed this appeal in a timely manner on or about January 13, 2025. (130 CMR 610.015; Exhibit 2). Modification of a PA request is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

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

Summary of Evidence

The MassHealth representative, who is a registered nurse and clinical appeals reviewer, testified that the appellant is under the age of [REDACTED]. Her primary medical diagnoses include autism and leukemia. (Exhibit 6, p. 7). The MassHealth representative testified that [REDACTED] a Personal Care Management (“PCM”) services agency, submitted a PA re-evaluation request to MassHealth on the appellant’s behalf on December 30, 2024, seeking the following:

1. 43 hours and 45 minutes of day/evening PCA assistance per week, for 40.14 school weeks and,
2. 47 hours and 45 minutes of day/evening PCA assistance per week, for 12 vacation weeks.

The MassHealth representative testified that by notice dated January 2, 2025, MassHealth modified the requested time to the following:

1. 37 hours, 0 minutes of day/evening PCA assistance per week, for 40.14 school weeks, and,
2. 39 hours and 30 minutes of day/evening PCA assistance per week, for 12 vacation weeks.

The time period for this PA request is February 28, 2025 through February 27, 2026. (Testimony, Exhibit 1, p. 3).

The MassHealth representative stated that there were 5 modifications made. First, MassHealth modified the category of “Mobility,” from the requested time of 2 minutes, 6 times per day, 2 days per week (Saturday-Sunday) and 2 minutes, 4 times per day, 5 days per week (Monday-Friday) to 1 minute, 6 times per day, 2 days per week (Saturday-Sunday) and 1 minute, 4 times per day, 5 days per week (Monday-Friday). MassHealth’s rationale for the modification is that the time requested for assistance for assistance with mobility is longer than ordinarily required for someone with her physical needs (Testimony; Exhibit 1, p. 12). The MassHealth representative explained that this category is for hands-on PCA assistance to assist the appellant with walking from one room to another within the home. She asked if the appellant requires hands-on PCA assistance while doing so.

The appellant was represented at the hearing telephonically by her father.¹ He testified that the appellant’s medical condition is not changing and therefore he does not understand why the appellant’s requested time for PCA assistance was modified. The MassHealth representative explained that the documentation submitted on behalf of the appellant did not support the requests. She asked if the appellant was currently receiving therapy for leukemia or whether she is

¹ An interpreter from ITI, [REDACTED] also appeared at the hearing telephonically. She assisted the appellant’s father with translation, upon his request.

in remission. The appellant's father stated that the appellant has received bone marrow transplants, and she is autistic. Additionally, the appellant suffers from bronchiolitis obliterans syndrome (BOS), fatigues easily, and loses her breath with minimal activity. (See, Exhibit 6, p. 13). The MassHealth representative asked if the appellant resides in a 1-level home. The appellant's father explained that there is a basement floor where the appellant's room is located. The appellant frequents the room each day. The MassHealth representative asked if the appellant requires hands-on assistance when she walks or whether she can walk by herself. The appellant's father stated that she always requires hands-on assistance with mobility. The MassHealth representative agreed to restore the requested 2 minutes, 6 times per day, 2 days per week (Saturday-Sunday) and 2 minutes, 4 times per day, 5 days per week (Monday-Friday), thereby resolving this modification.

The second modification made was in the "Stairs" category. MassHealth denied the requested time of 5 minutes, 2 times per day, each day because the time requested for assistance with stairs is longer than ordinarily required for someone with the appellant's physical needs. *Id.* The MassHealth representative asked how many stairs are located inside the home for the appellant to access her room located in the basement. Additionally, she asked how often the appellant goes to the basement floor. The appellant's father stated that there are approximately 12-13 steps that the appellant must go up and down each time. She does so 3 times per day, each day. The MassHealth representative agreed to restore the requested 5 minutes, 2 times per day, each day, thereby resolving this modification.

The third modification made was in the "Eating" category. MassHealth modified the requested time of 15 minutes, 6 times per day, 2 days per week (Saturday-Sunday), and 15 minutes, 4 times per day, 5 days per week (Monday-Friday) for 40.14 school weeks to: 15 minutes, 3 times per day, 2 days per week (Saturday-Sunday) and 5 minutes, twice per day (snack), twice per week (Saturday-Sunday) and 15 minutes, twice per day, 5 days per week (Monday-Friday) and 5 minutes, once per day (snack), 5 days per week (Monday-Friday) because the time requested for PCA assistance with eating is longer than ordinarily required for someone with her physical needs. Additionally, MassHealth modified the requested amount of 15 minutes, 3 times per day, 7 days per week to 5 minutes, twice per day, 7 days per week for 12 vacation weeks. (Testimony; Exhibit 6 p. 21). The MassHealth representative asked if the appellant was able to feed herself.

The appellant's father testified that the appellant is a very picky eater. The MassHealth representative explained that MassHealth PCA assistance in this category is for time it takes the PCA to assist the appellant with eating/feeding her. She explained that wait time, or encouraging the appellant to eat, are not covered services in the PCA program. The appellant's father stated that the PCA must wait for the appellant to finish chewing each bite of her meals. He added that 15 minutes is not sufficient for the appellant to eat each meal and does not understand how MassHealth arrived at this calculation. The MassHealth representative explained that the appellant's PCM agency requested 15 minutes-not MassHealth. Additionally, MassHealth did not modify the 15 minutes requested, rather, MassHealth modified the frequency of PCA assistance to

assist the appellant with eating each day. The appellant's father stated that he understood this explanation, however, he disagreed with the 15 minutes requested by the agency and wanted to advocate for the appellant to this extent. He stated that the appellant is unable to gain weight because if she eats too much upon being encouraged to do so, she vomits.

The MassHealth representative asked the appellant's father if he knew why the PCM agency requested 15 minutes, 6 times per day, 2 days per week (Saturday-Sunday), given his testimony about the appellant's eating. The appellant's father explained that each meal must be broken down to smaller portions for the appellant for the reasoning set forth above. The MassHealth representative asked if the appellant is eating 6 (smaller) meals on Saturdays and Sundays. The appellant's father answered affirmatively. On occasion the appellant will eat a few slices of an apple which must be cut up for her. The MassHealth representative stated that 15 minutes for PCA assistance to assist the appellant with eating a few apples slices appears excessive. She further explained that the time it takes for meal preparation is a separate category and therefore is not included in the time it takes the PCA to assist the appellant with eating (i.e. putting food into her mouth).

The fourth modification made was in the "Toileting-bladder" category. MassHealth modified the requested time of 10 minutes, 7 times per day, 2 days per week (Saturday-Sunday) and 10 minutes, 5 times per day, 5 days per week (Monday-Friday) to 7 minutes, 7 times per day, 2 days per week (Saturday-Sunday) and 7 minutes, 5 times per day, 5 days per week (Monday-Friday) because the time requested for PCA assistance in this category is longer than ordinarily required for someone with her physical needs. (Testimony; Exhibit 6, p. 22). The MassHealth representative explained that the time requested for PCA assistance in this category includes the time it takes the PCA to assist the appellant with going to the bathroom toilet to urinate and assisting her with hygiene and clothing management thereafter. The MassHealth representative asked if the appellant wears diapers or pads on days that she is not menstruating. The appellant's father explained that the appellant has not menstruated since her bone marrow transplant surgery. The MassHealth representative asked if the appellant requires PCA assistance to get to the toilet and urinate. The appellant's father responded affirmatively. He added that the appellant wears several layers of clothing, which takes additional time for the PCA to assist her with sitting on the toilet to empty her bladder. The MassHealth representative asked if the appellant can clean herself after she uses the bathroom. The appellant's father explained that the PCA must assist her in peri care because the appellant wipes herself incorrectly (from back to front). The MassHealth representative agreed to restore the requested 10 minutes, 7 times per day, 2 days per week (Saturday-Sunday) and 10 minutes, 5 times per day, 5 days per week (Monday-Friday) in this category, thereby resolving this modification.

The fifth modification made was in the "Toileting-bowel" category. MassHealth modified the requested time of 15 minutes, once per day, 7 days per week, to 10 minutes, once per day, 7 days per week because the time requested in this category is longer than ordinarily required for someone with the appellant's physical needs. *Id.* The MassHealth representative asked the

appellant's father how long it took the PCA to assist with cleaning her after a bowel movement. The appellant's father stated that it takes at least 15 minutes, adding that the appellant has bowel movements more than once per day. The MassHealth representative agreed to restore the requested 15 minutes per day, each day, 7 days per week, thereby resolving this modification.

Findings of Fact

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

1. The appellant is under the age of [REDACTED] and a MassHealth member.
2. The appellant's medical diagnoses include autism and leukemia.
3. [REDACTED] a PCM agency, submitted a re-evaluation request to MassHealth on the appellant's behalf on December 30, 2024, seeking the following:
 - a. 43 hours and 45 minutes of day/evening PCA assistance per week, for 40.14 school weeks and,
 - b. 47 hours and 45 minutes of day/evening PCA assistance per week, for 12 vacation weeks.
4. By notice dated January 2, 2025, MassHealth modified the requested time to the following:
 - a. 37 hours, 0 minutes of day/evening PCA assistance per week, for 40.14 school weeks, and,
 - b. 39 hours and 30 minutes of day/evening PCA assistance per week, for 12 vacation weeks.
5. The PA request at issue covers the time period of February 28, 2025 through February 27, 2026.
6. The appellant requested time for assistance with mobility, as follows: 2 minutes, 6 times per day, 2 days per week; and 2 minutes, 4 times per day, 5 days per week.
7. MassHealth modified the requested PCA assistance time for mobility to 1 minute, 6 times per day, 2 days per week; and 1 minute, 4 times per day, 5 days per week.
8. At the hearing, MassHealth agreed to restore the requested time of 2 minutes, 6 times per day, 2 days per week; and 2 minutes, 4 times per day, 5 days per week for PCA assistance with mobility; this adjustment was accepted by the appellant's representative.
9. The appellant requested time for assistance with stairs, as follows: 5 minutes, 2 times per day, each day.

10. MassHealth denied the requested PCA assistance time for this task because the time requested for assistance with stairs is longer than ordinarily required for someone with the appellant's physical needs.
11. At the hearing, MassHealth agreed to restore the requested time of 5 minutes, 2 times per day, each day for PCA assistance with stairs; this adjustment was accepted by the appellant's representative.
12. The appellant requested time for assistance with eating, as follows: 15 minutes, 6 times per day, 2 days per week; and 15 minutes, 4 times per day, 5 days per week for 40.14 school weeks; and 15 minutes, 3 times per day, 7 days per week for 12 vacation weeks.
13. MassHealth modified the requested PCA assistance time for eating as follows: 15 minutes, 3 times per day, 2 days per week and 5 minutes, twice per day (snack), 2 days per week, and 15 minutes, twice per day, 5 days per week and 5 minutes, once per day (snack), 5 days per week for 40.14 school weeks; and 5 minutes, twice per day, 7 days per week for 12 vacation weeks.
14. The appellant is a fussy eater, she lost weight since her last evaluation, and she is fed 6 small meals a day as a result.
15. The appellant requested time for assistance with toileting (bladder), as follows: 10 minutes, 7 times per day, 2 days per week and 10 minutes, 5 times per day, 5 days per week.
16. MassHealth modified the requested time in this category to 7 minutes, 7 times per day, 2 days per week and 7 minutes, 5 times per day, 5 days per week.
17. At the hearing, MassHealth agreed to restore the requested time of 10 minutes, 7 times per day, 2 days per week, and 10 minutes, 5 times per day, 5 days per week for PCA assistance in this category; this adjustment was accepted by the appellant's representative.
18. The appellant requested time for assistance with toileting (bowel), as follows: 15 minutes, once per day, 7 days per week.
19. MassHealth modified the requested time in this category to 10 minutes, once per day, 7 days per week
20. At the hearing, MassHealth agreed to restore the requested time of 15 minutes, once per day, 7 days per week for PCA assistance in this category; this adjustment was accepted by the appellant's representative.

Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (IADLs) as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member 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; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the instrumental activities of daily living (130 CMR 422.402).

Pursuant to 130 CMR 422.410(C), in determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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.

Further, pursuant to 130 CMR 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.

Pursuant to 130 CMR 450.204(A), 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

At issue in this appeal were modifications of time requested for PCA assistance for the appellant with the following ADLs: mobility, stairs, eating, toileting (bladder care), and toileting (bowel care).

At the hearing, MassHealth agreed to authorize the following amounts of PCA assistance:

Mobility: 2 minutes, 6 times per day, 2 days per week and 2 minutes, 4 times per day, 5 days per week.

Mobility (stairs): 5 minutes, twice per day, each day.

Toileting (bladder care): 10 minutes, 7 times per day, 2 days per week and 10 minutes, 5 times per day, 5 days per week.

Toileting (bowel care): 15 minutes per day, each day.

The appellant's representative agreed to these amounts of PCA assistance. Therefore, these portions of the appeal are DISMISSED.

Eating

The appellant requested PCA assistance with eating, as follows:

1. 15 minutes, 6 times per day, 2 days per week, 15 minutes, 4 times per day, 5 days per week for 40.14 school weeks, and
2. 15 minutes, 3 times per day, 7 days per week for 12 vacation weeks.

MassHealth modified the request to:

1. 15 minutes, twice per day, 5 days per week and 5 minutes, once per day (for a snack), 5 days per week, and
2. 15 minutes, 3 times per day, 2 days per week and 5 minutes, twice per day (for a snack), 2 times per week for 40.14 school weeks, and
3. 5 minutes, twice per day, 7 days per week for 12 vacation weeks.

MassHealth modified this request on the basis that the time the appellant requested is longer than ordinarily required for someone with her physical needs. MassHealth did not modify the time requested for each eating event but instead modified the frequency of eating each day.

However, the documentation submitted on behalf of the appellant states that she requires moderate assistance with eating, because she is a fussy eater and has the inability to initiate, sequence, and complete tasks. (See, Exhibit 6, p. 21). Additionally, the documentation submitted

on behalf of the appellant states that she has lost weight since the last nursing evaluation was performed and the PCA feeds her 6 small meals a day to achieve adequate nutrition and hydration. *Id.* The appellant's father testified credibly that the appellant requires physical assistance with this task, at the frequency requested, given her medical diagnoses. I conclude that in this circumstance, the time requested is appropriate for the appellant because of her physical needs. MassHealth's PCA program specifically includes eating as a covered task, and in this instance, the appellant has demonstrated that the requested amount of 15 minutes, 6 times per day, 2 days per week (Saturday-Sunday), and 15 minutes, 4 times per day, 5 days per week (Monday-Friday) for 40.14 school weeks; and 15 minutes, 3 times per day, 7 days per week for 12 vacation weeks is warranted. This portion of the appeal is approved.

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

Order for MassHealth

For the PA period for dates of service February 28, 2024 through February 27, 2026: (1) approve the appellant's request in full for the following: mobility at 2 minutes, 6 times per day, 2 days per week and 2 minutes, 4 times per day, 5 days per week; mobility (stairs) at 5 minutes, twice per day, 7 days per week; toileting (bladder care) at 10 minutes, 7 times per day, 2 days per week and 10 minutes, 5 times per day, 5 days per week; toileting (bowel care) at 15 minutes per day, each day, as agreed to at the hearing; (2) approve the appellant's request in full for eating at 15 minutes, 6 times per day, 2 days per week and 15 minutes, 4 times per day, 5 days per week for 40.14 school weeks, and 15 minutes, 3 times per day, 7 days per week for 12 vacation weeks; (3) notify appellant of updated authorized PCA hours accordingly; and (4) remove aid pending.

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 Optum. 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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc.

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