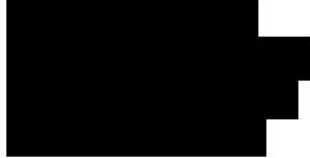


# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied in part; Dismissed in part	<b>Appeal Number:</b>	2501817
<b>Decision Date:</b>	3/10/2025	<b>Hearing Date:</b>	3/4/2025
<b>Hearing Officer:</b>	David Jacobs		

Appearances for Appellant:




Appearances for MassHealth:

Donna Burns, RN



*Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Office of Medicaid*  
*Board of Hearings*  
100 Hancock Street  
Quincy, MA 02171

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied in part; Dismissed in part	<b>Issue:</b>	Prior Authorization (PCA Services)
<b>Decision Date:</b>	3/10/2025	<b>Hearing Date:</b>	3/4/2025
<b>MassHealth Rep:</b>	Donna Burns, RN	<b>Appellant Rep:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	Yes

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through notice dated January 23, 2025, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410) (Exhibit 1). The appellant filed a timely appeal on January 29, 2025. (130 CMR 610.015(B)). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

### Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

## Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a male under the age of 21 whose provider, [REDACTED] submitted a request for PCA services on his behalf. The record reflects that the appellant has a primary diagnosis of cerebral palsy with severe spastic quadriplegia and choreoathetosis (Exhibit 4, pg. 7). On January 8, 2025, MassHealth received a re-evaluation request for PCA services (Exhibit 4). [REDACTED] requested 96 hours and 45 minutes of PCA time for school weeks, and 107 hours and 30 minutes of PCA time for vacation weeks (Exhibit 4). The dates of service are March 2, 2025 to March 1, 2026 (Exhibit 4). On January 29, 2025, MassHealth modified the request and authorized 73 hours and 45 minutes of PCA time for school weeks, and 82 hours of PCA time for vacation weeks (Exhibits 1 and 4).

The appellant was represented telephonically at the hearing by his mother who testified about her son's great need for PCA services and how she is generally confused about why MassHealth is reducing his hours when his condition is progressing as he gets older, and he is becoming harder to manage. Moreover, many of these services were already fought for and won by the appellant in past hearings.

11 modifications were made by MassHealth.

### **1. Bathing (Special Transfers) (Exhibit 4, pg. 14)**

For the task of special transfers during bathing, the appellant requested 10 minutes, 1 time a day, 7 days a week for both school and vacation weeks (Exhibit 4, pg. 14). MassHealth denied all time for special transfers for bathing (Exhibit 4, pg. 14). MassHealth explained that time for PCA assistance with all bathing tasks (including help with transfers) was approved under the task of bathing (Exhibit 4, p. 14).<sup>1</sup> This request is for a second PCA to help move the appellant in and out of the shower. MassHealth explained that according to the pediatric operating standards for PCA services, when two people are requested to complete a task for a child, one of those people must be a parent or legal guardian (PCA Operating Standards, section XXVI(A)(1)(b)).

The appellant's mother concedes that she assists in transferring her son but argues that she requires help to move him as he is getting older and heavier. Moreover, she argues that she had a hearing on this issue in the past and had this task approved. She does not understand why she must revisit this issue again but instead MassHealth is denying it. MassHealth responded and

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<sup>1</sup> Under the task of bathing, the nurse evaluator writes that the appellant requires "[p]hysical assist with showering activity, including routine transfers" (Exhibit 4, p. 14). MassHealth approved the time requested for PCA assistance with this task (280 minutes per week) (Exhibit 4, p. 14).

noted that PCA evaluations are reviewed anew every year. MassHealth further stated that MassHealth acknowledges that the appellant requires two people to assist with bathing transfers; it has therefore approved time for PCA assistance with this task, and, per guidelines, is requiring the parent to fill the role of the second person providing assistance. Here, the appellant's mother has already conceded that she is filling this role.

## **2. Grooming (Hair) (Exhibit 4, pg. 16)**

The parties were able to resolve the dispute regarding grooming (hair). The appeal is therefore dismissed as to this issue.

## **3. Eating (Exhibit 4, pg. 19)**

The parties were able to resolve the dispute regarding eating. The appeal is therefore dismissed as to this issue.

## **4. Bladder Care (Exhibit 4, pg. 20)**

The parties were able to resolve the dispute regarding bladder care. The appeal is therefore dismissed as to this issue.

## **5. Toileting (Special Transfer) (Exhibit 4, pg. 20)**

For the task of special transfers during toileting, the appellant requested 10 minutes, 10 times a day, 2 days a week and 10 minutes, 7 times a day, 5 days a week for both school and vacation weeks (Exhibit 4, pg. 20). MassHealth denied all time for special transfers for toileting (Exhibit 4, pg. 20). MassHealth explained that time for PCA assistance with all toileting tasks (including help with transfers from wheelchair to flat surface) was approved under the task of toileting.<sup>2</sup> This request is for a second PCA to help move the appellant from his wheelchair to a flat surface. For the same reasons as PCA assistance special transfers for bathing was denied, MassHealth explained that according to the pediatric operating standards for PCA services, when two people are requested to complete a task for a child, one of those people must be a parent or legal guardian (PCA Operating Standards, section XXVI(A)(1)(b)).

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<sup>2</sup> Under the task of toileting, the nurse evaluator writes as follows: "Consumer is incontinent of bowel and bladder. He is a two person lift from w/c to flat surface. Extra care and time take d/t increased size as he gets older and increased spasticity. Consumer is a two person brief change rolling side to side, clothing adjustment, hygiene, and changing brief" (Exhibit 4, p. 20). MassHealth approved the time requested for PCA assistance with this task (708 minutes per week) (Exhibit 4, p. 20).

As she argued for bathing transfers, the appellant's mother concedes that she assists in transferring her son but argues that she requires help to move him as he is getting older and heavier. Moreover, she argues that she had a hearing on this issue in the past and had this task approved. She does not understand why she must revisit this issue again but instead MassHealth is denying it. MassHealth responded and noted that PCA evaluations are reviewed anew every year. MassHealth further stated that MassHealth acknowledges that the appellant requires two people to assist with toileting transfers; it has therefore approved time for PCA assistance with this task, and, per guidelines, is requiring the parent to fill the role of the second person providing assistance. Here, the appellant's mother has already conceded that she is filling this role.

#### **6. Other Healthcare Needs (Suctioning) (Exhibit 4, pgs. 24-25)**

The parties were able to resolve the dispute regarding suctioning. The appeal is therefore dismissed as to this issue.

#### **7. Other Healthcare Needs (Oxygen) (Exhibit 4, pgs. 24-25)**

The parties were able to resolve the dispute regarding oxygen. The appeal is therefore dismissed as to this issue.

#### **8. Other Healthcare Needs (CPAP) (Exhibit 4, pgs. 24-25)**

The parties were able to resolve the dispute regarding the use of a CPAP machine. The appeal is therefore dismissed as to this issue.

#### **9. Other Healthcare Needs (CPAP Overnight) (Exhibit 4, pgs. 24-25)**

All night-time hours were approved. Therefore, this matter is dismissed as moot.

#### **10. Other Healthcare Needs (Blood Pressure/Blood Sugar) (Exhibit 4, pgs. 24-25)**

For the task of checking the appellant's blood pressure and blood sugar, the appellant requested 10 minutes, 1 time a day, 7 days a week for both school and vacation weeks (Exhibit 4, pgs. 24-25). MassHealth denied all time for checking the appellant's blood pressure and blood sugar (Exhibit 4, pgs. 24-25). MassHealth explained that according to the pediatric operating standards for PCA services, PCA services are for non-skilled care, and checking the appellant's blood pressure and blood sugar is a medical procedure that is the parent's responsibility to provide the oversight and monitoring necessary to know when it is required (PCA Operating Standards, section XXVI(A)). As such it falls under the general rules of non-covered services performed by family members per 130 CMR 422.412(F). The appellant's mother concedes that the PCA often decides when the

appellant's blood pressure/blood sugar is checked but argues that it is under a protocol she created when such checks are to take place. Moreover, she argues that this is a service that was approved in the past.

#### **11. Other Healthcare Needs (Pulse) (Exhibit 4, pgs. 24-25)**

For the task of checking the appellant's pulse, the appellant requested 2 minutes, 2 times a day, 7 days a week for both school and vacation weeks (Exhibit 4, pgs. 24-25). MassHealth denied all time for checking the appellant's pulse (Exhibit 4, pgs. 24-25). As with blood pressure and blood sugar checking, MassHealth explained that according to the pediatric operating standards for PCA services, PCA services are for non-skilled care, and the appellant's pulse is a medical procedure that is the parent's responsibility to provide the oversight and monitoring necessary to know when it is required (PCA Operating Standards, section XXVI(A)). As such it falls under the general rules of non-covered services performed by family members per 130 CMR 422.412(F). Like the above, the appellant's mother concedes that the PCA often decides when the appellant's pulse is checked but argues that it is under a protocol she created when such checks are to take place. Moreover, she argues that this is a service that was approved in the past.

## **Findings of Fact**

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

1. The appellant is a male under 21 years of age with primary diagnosis of cerebral palsy with severe spastic quadriplegia and choreoathetosis.
2. On January 8, 2025, the appellant submitted a re-evaluation request for 96 hours and 45 minutes of PCA time for school weeks, and 107 hours and 30 minutes of PCA time for vacation weeks.
3. The dates of services are March 2, 2025, to March 1, 2026.
4. On January 29, 2025, MassHealth modified the request and authorized 73 hours and 45 minutes of PCA time for school weeks, and 82 hours of PCA time for vacation weeks.
5. At hearing, the parties were able to resolve disputes regarding time for PCA assistance for hair grooming, eating, bladder care, suctioning, oxygen, and the use of a CPAP machine.
6. The parties were unable to resolve disputes regarding special transfers for bathing and toileting, and taking the appellant's blood pressure, blood sugar, and pulse.

7. Under the task of bathing, MassHealth approved the time requested for PCA assistance with this task (280 minutes per week); the nurse evaluator writes that the appellant requires “[p]hysical assist with showering activity, including routine transfers.”
8. For the task of special transfers during bathing, the appellant requested 10 minutes, once a day, 7 days a week for both school and vacation weeks.
9. The request was for two people to transfer the appellant for bathing. The appellant’s mother is one of the two people who transfers the appellant.
10. Under the task of toileting, MassHealth approved the time requested for PCA assistance with this (bladder and bowel care) (708 minutes per week); the nurse evaluator writes as follows: “Consumer is incontinent of bowel and bladder. He is a two person lift from w/c to flat surface. Extra care and time take d/t increased size as he gets older and increased spasticity.”
11. For the task of special transfers during toileting, the appellant requested 10 minutes, 10 times a day, 2 days a week and 10 minutes, 7 times a day, 5 days a week for both school and vacation weeks.
12. The request was for two people who transfers the appellant for toileting. The appellant’s mother is one of the two people who transfers the appellant.
13. For the task of checking the appellant’s blood pressure and blood sugar, the appellant requested 10 minutes, 1 time a day, 7 days a week for both school and vacation weeks.
14. The appellant usually has his blood pressure and blood sugar checked by the PCA under a protocol created by the appellant’s mother.
15. For the task of checking the appellant’s pulse, the appellant requested 2 minutes, 2 times a day, 7 days a week for both school and vacation weeks.
16. The appellant usually has his pulse checked by the PCA under a protocol created by the appellant’s mother.

## Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and 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 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 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.

(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 personal care services; and
  - (c) other special needs approved by MassHealth as being instrumental to the health care of the member.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services 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]. . . .

Per 130 CMR 422.412, 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 PCA Operating Standards offer sub-regulatory guidance for PCA services offered to children under the age of 21:

XXVI. Pediatric PCA Evaluation and PAU Clinical Review: At the time of the initial evaluation, re-evaluation, or adjustment for Pediatric PCA services, a PCM Agency Nurse Evaluator is responsible for evaluating the disabling, functional ability of the child and the medical necessity for PCA services (see definition of disability of children per Office of Social Security, 130 CMR 450.204, 130 CMR 422.402, 130 CMR 422.412). The PCM Agency Nurse Evaluator uses his/her assessment skills and clinical judgment and educates the parent or legal guardian regarding what services are appropriate to include in the PCA evaluation request. It is appropriate to request time for PCA services when a child has a chronic, permanent disabling condition resulting in hands-on ADL care needs and services due to functional limitations. The Schematics of Age Ranges at which Non-Disabled Children Master Functional Items (50% percentile) is the adopted pediatric developmental tool to assist the PCM Agency Nurse Evaluator and PAU Clinical Reviewer in determining if the child's functional ability is within the age range for the mastery of functional skills for non-disabled children. The PCM Agency must include documentation to support medical necessity in the PCA evaluation. The PAU Clinical Reviewer will review all supporting documentation for medical necessity on an individual basis. If medical necessity is established based on the PCA evaluation documentation, an approval or modification will be considered. If medical necessity is not established, a denial will be considered.

A. When a PCM Agency initiates a pediatric PCA evaluation request, the PCM Agency must consider the following as part of the evaluation and documentation process:

1) Parent(s), legal guardian(s) or designee(s) are responsible for providing oversight and care for children and directing the PCA services (see MassHealth Regulations 130 CMR 422.412 (A) and 130 CMR 422.412 (F)).

a. The MassHealth Regulations address non-covered services (130 CMR 422.412 (C)) which include assistance provided in the form of cueing, prompting, supervision, guiding, and/or coaching.

**b. A parent or "designee" (i.e. sibling, aunt, uncle, etc.) is required to be the second person when two people are required to perform a task (i.e. if a child has spastic tone due to cerebral palsy, a second person may be required for transfers).**

i. Special consideration may be given for MD transportation if a second person is required to assist with medical and/or behavioral needs. Documentation must be consistent and clear to support this request.

c. Special consideration may be given to behavioral needs that demonstrate a safety risk for the child or others (i.e. removing a child from a dangerous situation), but documentation must support the request. Please Note: PCA time is not allowed when

requested for purposes of restraint.

d. Special consideration may be given for IADL's if the documentation supports the reason(s) the parent(s) or legal guardian(s) cannot perform the task(s) or if the task(s) is/are above and beyond what would be expected of a non-disabled child of the same age.

2) The PCM Agency Nurse Evaluator evaluates non-skilled care and assesses if the task can be safely performed for the child by the PCA. The following tasks are examples that may be considered non-skilled services and can be requested if assessed to be safely performed for the child by the PCA:

- a) Gastrostomy tube (G-tube) feedings
- b) G-tube site care (as part of bathing)
- c) Oral suctioning

**3) The PCM Agency Nurse Evaluator identifies if skilled care services are required for the consumer. Skilled care services are not appropriate services to be completed by a PCA and generally should not be requested.** Skilled care services are considered to be high risk and unsafe tasks to be performed by a PCA and therefore, should be performed by a skilled clinician, parent, legal guardian or designee. These services require individuals with training in specialized skills, clinical assessment, and judgment to promote safe and effective care for consumers whose conditions may be complex. The following tasks are examples of skilled care services that are generally performed by trained healthcare professionals:

- a) Feeding a child with a high aspiration risk
- b) Medication administration
- c) Oxygen administration
- d) Tracheal care and suctioning
- e) Chest physical therapy (Chest PT)
- f) Cough assist therapy
- g) Chest vest therapy
- h) Nebulizer treatments
- i) Complex Wound Care
- j) Catheterizations
- k) Peripherally Inserted Central Catheter (PICC) line and central line dressing changes
- l) Total Parenteral Nutrition (TPN)
- m) Intravenous (IV) therapy and IV medication administration
- n) Administration of peritoneal dialysis medication and fluids
- o) Adjustment of ventilator settings and controls
- p) Applied Behavior Analysis (ABA) Behavioral Therapy
- q) Wilbarger Brushing Therapy

4) The PCM Agency may include separate evaluations. If requesting different hours for weeks when the consumer attends school and weeks when the consumer is out of school,

the PCM Agency must include separate evaluations as part of the pediatric PCA PA submission request.

5) The documentation for ADL service requests must include documentation to support the medical necessity of the request in accordance with 130 CMR 422.416 and the List of Standard Documentation to Include with a Prior Authorization for PCA Services. If more PCA hours are requested the following year for a PCA re-evaluation, documentation must be provided]to support the need for the additional time requested.

(PCA Operating Standards; emphasis added).

There are four modifications in dispute. Bathing (special transfers), Toileting (special transfers), Other Healthcare Needs (blood pressure/blood sugar), and Other Healthcare Needs (pulse). MassHealth's reasoning for its denial of assistance is substantially similar for the two special transfer tasks and the two tasks for the taking of vitals. Therefore, I will take each in turn.

### **Special Transfers**

MassHealth denied the appellant's request for PCA time for special transfers for the appellant's showers and toileting. This time was requested for two people to transfer the appellant during these tasks. MassHealth explained that according to the pediatric operating standards for PCA services, when two people are requested to complete a task that one of those people must be a parent (PCA Operating Standards, section XXVI(A)(1)(b)). As such it falls under the general rules of non-covered services performed by family members per 130 CMR 422.412(F). MassHealth has authorized time for one PCA to assist with these transfer tasks under the general categories of bathing and toileting; these special transfer denials relate solely to the requests for assistance from a second person. Based on the directive set forth in the operating standards, and the fact that the appellant's mother is providing the second person assist, I concur with MassHealth's argument and find that it did not err in denying PCA time for the special transfers for bathing and toileting.

As such, the appeal for the modifications on special transfers for toileting and bathing are DENIED.

### **Blood Pressure/Blood Sugar and Pulse**

MassHealth denied the appellant's request for PCA time for taking the appellant's blood pressure, blood sugar, and his pulse. MassHealth explained that according to the pediatric operating standards for PCA services, PCA services are for non-skilled care, and checking the appellant's blood pressure and blood sugar is a medical procedure that is the parent's responsibility to provide the oversight and monitoring necessary to know when it is required (PCA Operating Standards,

section XXVI(A)). As such it falls under the general rules of non-covered services performed by family members per 130 CMR 422.412(F). I concur with MassHealth's argument and find that it did not err in denying PCA time for blood pressure/blood sugar and pulse.

First, the appellant argues that these services provided by the PCA are under her oversight and monitoring because she created the protocol under which these tasks are to be performed by the PCA. However, according to PCA Operating Standards, section XXVI(A)(3), skilled services are not to be performed by the PCA. Here, the MassHealth representative, a registered nurse, considered the oversight and monitoring necessary to know when to perform blood pressure, blood sugar, and pulse checks to be a skilled service only to be performed by a medical professional or legal guardian. Although the appellant's mother argues it is under her plan when the appellant has his blood pressure, blood sugar, and pulse checked by the PCA, the intent of the standards' language is for the PCA to not be responsible for doing such tasks. Therefore, MassHealth did not err in denying services that it deems that a PCA should not be performing.

Finally, like the above, the appellant's mother did not submit into the record any proof that these services were approved prior, nor did she make any legal arguments for why the hearing officer must take such prior approvals as controlling.

As such, the appeal for the modifications on blood pressure/blood sugar and pulse are DENIED.

## **Order for MassHealth**

Remove aid pending. Rescind the notice on appeal and approve time that was agreed to at hearing.

## **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 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.

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David Jacobs  
Hearing Officer  
Board of Hearings

cc: Optum