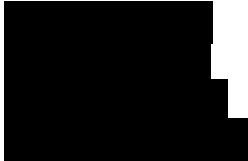


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2502036
Decision Date:	05/01/2025	Hearing Date:	03/07/2025
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN



*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:	05/01/2025	Hearing Date:	03/07/2025
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Telephonic	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 January 15, 2025, MassHealth modified the appellant's request for personal care attendant services, allowing less time than was requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on February 3, 2025. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth is correct, pursuant to 130 CMR 422.000, in determining that the appellant should be allowed less time for PCA assistance than requested.

Summary of Evidence

On or around January 13, 2025, the appellant's personal care management ("PCM") agency, [REDACTED] submitted a reevaluation for personal care attendant ("PCA") services. This request sought 45 hours and 45 minutes per week of PCA services (2,732 minutes per week). The

prior authorization period for this request runs from March 14, 2025, through March 13, 2026.¹ The appellant is a young child who weighs [REDACTED], and his primary [REDACTED]

[REDACTED] The documentation states that he cannot be left alone due to lack of safety awareness, and he requires physical assistance and supervision at all times.

MassHealth made modifications to five categories of assistance and approved 34 hours and 45 minutes (2,113 minutes) of PCA assistance per week. MassHealth made modifications to the time requested for the following activities: stair transfer assist/school transfers, bathing, laundry, other special needs/school transportation, and transportation to doctors' appointments.

The appellant requested 10 minutes, twice per day, 5 days per week for PCA assistance with carrying the appellant down the stairs in the morning and up the stairs in afternoon on school days. MassHealth modified the time to 5 minutes, twice per day, 5 days per week. Ultimately, the appellant accepted the modification based upon MassHealth's explanation that the PCA is not compensated for the time they need to rest while carrying a [REDACTED] down two flights of stairs, and MassHealth also only compensates the PCA's time not the appellant's mother.

Regarding bathing, the appellant requested 40 minutes per day for a bath, and MassHealth modified the time to 30 minutes. MassHealth's representative again argued that some of the bathing assistance could be performed by the appellant's mother instead of the PCA, and therefore should not be compensated. The appellant's mother testified that the PCA has to do most of the bath assistance because the mother has a hernia and cannot lift the appellant into the bathtub. She testified that the only part she participates in is washing his hair, while the PCA actually gets into the bath with the appellant. Ultimately, the parties agreed to a partial restoration of time up to 35 minutes per day.

The appellant requested 60 minutes per week for PCA assistance with laundry and MassHealth denied the request in full. The appellant accepted MassHealth's denial on the grounds that parents are generally responsible for providing assistance with Instrumental Activities of Daily Living, such as laundry and meal preparation.

¹ The prior authorization request only sought time for school-weeks. MassHealth's representative explained that the agency is now requesting that adjustment requests be submitted for vacation weeks if there is a significant change in time.

The final modifications were to the time requested for PCA assistance with driving the appellant places, either to school or to doctors' appointments. Regarding transport to school, the appellant attends a special needs school several towns away from where he lives. The appellant's mother explained that the appellant's lack of melatonin production causes insomnia, for which he takes heavy medication. The school will only provide transport at 6:30 am, and the appellant cannot get up in time to get the bus. The appellant's mother drives the appellant to school at around 10 am and it is a 45-minute drive each way. The appellant requested 450 minutes per week to cover 90 minutes of driving time per school day. The MassHealth notice on appeal states that 20 minutes per week was approved for PCA assistance with transportation to school, but MassHealth's representative testified that this was a keystroke error. MassHealth actually approved 10 minutes per day to transfer the appellant into/out of the car in the morning and 10 minutes per day to transfer him in the afternoon, for a total of 20 minutes per day for PCA assistance with transferring the appellant into and out of the car for school.

MassHealth's representative testified that no time was allowed for the PCA to drive with the appellant to or from school. MassHealth's representative argued that it is a parental responsibility to get a child to school, generally, and there is also a free bus service that would bring the appellant to school if he were able to get up to catch it. The appellant's mother does not believe that the school bus service is a reasonable option. When the appellant tried it, his behavior significantly deteriorated, and the appellant's mother found bruises on him when he came home.

The appellant's mother testified that the PCA needs to travel with the appellant to keep him calm and safe in the back seat. The appellant regularly has coughing and spitting fits. If the appellant starts to turn red, they need to pull over, and the PCA may have to provide suctioning, or even remove him from this car seat to be burped and calm him down. Each stop takes at least 5 minutes. MassHealth responded that most of that time described is non-active supervision or monitoring, which is not compensated time. MassHealth's representative also felt that the 10 minute transfer time allowed was generous, and there should be sufficient extra time to cover the appellant's active care during the car ride. MassHealth's representative noted that this time was already an increase over the time allowed last year. The appellant's mother argued that there should be at least an additional 5 to 10 minutes per car ride to cover the active assistance provided by the PCA.

Finally, the appellant requested 30 minutes per week for assistance with transportation to doctors' appointments. There is a formula used by MassHealth that averages the total amount of travel time to and from doctors' appointments across a year. MassHealth's representative testified that time to transfer the appellant into and out of the car was allowed under this formula, but the agency did not allow time to travel to and from doctors' appointments. As a result, MassHealth allowed 21 minutes per week. MassHealth's representative testified that this modification was made because the appellant's mother was driving. Normally, transportation for medical appointments is only allowed where the PCA is driving the member, and even then, it is not allowed for the time it takes the member to attend the appointment.

The appellant's mother testified that driving to doctor's appointments is the same as driving to school. The appellant requires intermittent assistance throughout a car ride to remain safe. Furthermore, the appellant's mother argued that the PCA is needed to help the appellant during doctor's appointments. The appellant needs to be transferred onto examination tables, and otherwise repositioned throughout. The PCA also provides general safety supervision. MassHealth responded that it is a parent's responsibility to bring a child to a doctor's appointment, and she otherwise did not believe that time in the doctor's appointment could be covered under the PCA program.

Findings of Fact

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

- 1) On or around January 13, 2025, [REDACTED] submitted a reevaluation for PCA services on the appellant's behalf. This request sought 45 hours and 45 minutes per week of PCA services (2,732 minutes per week). The prior authorization period for this request runs from March 14, 2025, through March 13, 2026. (Exhibit 5.)
- 2) The appellant is a young child who weighs around [REDACTED]
[REDACTED]
(Exhibit 5, pp. 7-8.)
- 3) MassHealth made modifications to five categories of assistance and approved 34 hours and 45 minutes (2,113 minutes) of PCA assistance per week. (Exhibit 5, pp. 4, 36.)
- 4) The appellant accepted MassHealth's modification for PCA assistance with stair transfers and the denial of PCA assistance with laundry. (Testimony by the appellant.)
- 5) The appellant requested 40 minutes per day for bathing, and MassHealth modified this request to 30 minutes per day. At the hearing, the parties agreed to 35 minutes per day. (Testimony by MassHealth and the appellant's mother.)
- 6) The appellant requested 450 minutes per week for the PCA to transport the appellant to school. MassHealth initially modified this time to 20 minutes per week but allowed 100 minutes per week at the hearing. (Exhibit 5, pp. 4, 32; testimony by MassHealth's representative.)
 - a. The time requested is for the PCA to supervise and monitor the appellant in the car every day on his drive to school. The PCA occasionally intercedes on the appellant's

behalf to keep him calm, and sometimes the car needs to stop so that the PCA can burp or suction the appellant. This active intervention is at least 5 to 10 minutes per drive. (Testimony by the appellant's mother.)

- b. The appellant has access to a school bus, but the bus will only pick him up at 6:30 in the morning. The appellant's mother drives the appellant to school because waking him up early is dysregulating given his medical conditions, including insomnia. (Testimony by the appellant's mother.)
- 7) The appellant requested 30 minutes per week for transportation assistance with doctors' appointments. MassHealth allowed 21 minutes per week by removing the travel time from the calculation. (Exhibit 5, pp. 4, 33; testimony by MassHealth's representative.)
- a. In addition to the assistance in the car needed for driving to school, the PCA also assists the appellant in the doctors' offices by transferring him to examination tables, repositioning him, and providing safety supervision. (Testimony by the appellant's mother.)
 - b. The appellant's mother is unable to transfer him due to a hernia. (Testimony by the appellant's mother.)

Analysis and Conclusions of Law

MassHealth generally covers personal care attendant ("PCA") services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self administered;
- (3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) dressing: physically assisting a member to dress or undress;

(5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;

(6) eating: physically assisting a member to eat. This can include assistance with tube feeding and special nutritional and dietary needs; and

(7) toileting: physically assisting a member with bowel or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

(1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;

(2) meal preparation and clean-up: physically assisting a member to prepare meals;

(3) **transportation: accompanying the member to medical providers;** and

(4) special needs: assisting the member with:

(a) the care and maintenance of wheelchairs and adaptive devices;

(b) completing the paperwork required for receiving PCA services; and

(c) **other special needs approved by the MassHealth agency as being instrumental to the health care of the member.**

(130 CMR 422.410(B) (emphasis added).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) There are also certain services that MassHealth will not cover:

(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 [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

As a preliminary matter, this appeal is DISMISSED with regard to stair transfers, bathing, and laundry. The appellant accepted the denial of PCA assistance with laundry and the modification of PCA assistance with stair transfers, and the parties agreed to a partial restoration of time in bathing assistance to 35 minutes per day. Because these issues were resolved between the parties, these aspects of the appeal are DISMISSED. (130 CMR 610.035; 610.051.) This restores a net of 35 minutes per week.

With regard to the transportation issues, the regulations provide thin guidance as to what and when PCA services are covered. The IADL of “transportation” includes “accompanying the member to medical providers.” This is why the appellant’s request for school transportation came under “other special needs ... instrumental to the health care of the member.” MassHealth has issued additional guidance in their PCA Operating Standards.²

The Pediatric PCA Evaluation Section of the PCA Operating Standards state

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.

² The PCA Operating Standards are sub-regulatory guidance that MassHealth uses in determining what PCA activities are compensable. MassHealth does not publish these guidelines on its website, but it has made them publicly available via a public information request. (Available at <https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf> (last visited April 25, 2025).)

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.

(PCA Operating Standards, § XXVI.A.1.b.-d.)

In general, MassHealth's representative is correct that time is not allowed for supervision, babysitting, and it is not allowed for non-activity time waiting in between times when physical hands-on assistance is required. Regarding the "other" assistance of driving the appellant to school, MassHealth is correct that the entire trip to and from school cannot be compensated for the PCA. However, MassHealth testified that it was allowing 10 minutes per transfer for PCA assistance into and out of the car. The appellant's mother credibly testified that there was an additional 5 to 10 minutes of hands-on assistance required by the appellant in every car ride. Given the appellant's size and medical conditions, I am persuaded that the transferring time was appropriate, and an additional 10 minutes per car ride is appropriate to ensure the appellant's safety. Therefore, this appeal is APPROVED in part with regard to "other" transportation. An additional 20 minutes per school day shall be allowed. This is in addition to the 100 minutes per week allowed by MassHealth for transferring. This restores 180 minutes to the time originally allowed by MassHealth. The appeal is DENIED in part for the remaining 250 minutes per week requested.

The issue is even clearer when it comes to medical transportation. The regulation itself does not limit assistance to **transporting** the member to a medical provider, it explicitly allows time for **"accompanying."** This broader language is clarified by the "[s]pecial consideration ... for MD transportation if a second person is required to assist with medical and/or behavioral needs," allowed in the Operating Standards. MassHealth clearly accepts that a second person is required in part for medical appointments, because some time was allowed. Nor is this transportation assistance duplicative of other MassHealth-funded assistance, as in the case where a member takes MassHealth paid medical transportation to an appointment. (See 130 CMR 422.412(B) (medical services available from other MassHealth providers are not covered).) Therefore, this appeal is APPROVED with regard to medical transportation. This restores an additional 9 minutes per week.

MassHealth originally modified the total number of minutes to 2,113. (Exhibit 5, p. 36.) This decision restores 224 additional minutes per week (35 minutes for bathing, 180 minutes for school transportation, and 9 minutes for medical transportation). The resulting 2,337 minutes equates to 39 hours when rounded up to the nearest quarter-hour.

Order for MassHealth

Restore 35 minutes per week for bathing, 180 minutes per week for physical assistance getting to school, and 9 minutes per week for medical transportation, effective March 14, 2025.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should 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.

Christopher Jones
Hearing Officer
Board of Hearings

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