

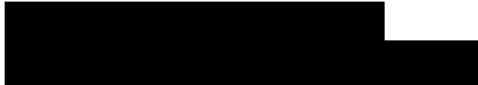
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2504111
Decision Date:	5/9/2025	Hearing Date:	04/15/2025
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:




Appearance for MassHealth:

Kelly Rayen, RN, 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:	Denied	Issue:	Prior Authorization, Personal Care Attendant (PCA) Services
Decision Date:	5/9/2025	Hearing Date:	04/15/2025
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
Hearing Location:	Remote	Aid Pending:	No

Authority

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

Jurisdiction

Through a notice dated February 12, 2025, MassHealth modified Appellant's prior authorization request for PCA services (130 CMR 422.000 *et seq.*, 450.204 and Exhibit 1). Appellant filed this appeal in a timely manner on March 13, 2025 (130 CMR 610.015(B) and Exhibit 2). Modification of a request for assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified Appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000 *et seq.*, 130 CMR 450.204, in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative testified, and the hearing record reflects, that Appellant is █ years old with a primary diagnosis of Rett Syndrome. Appellant is non-ambulatory/weight-bearing/verbal and has decreased trunk control. All transfers are total lift and carry. Appellant is dependent with feeding a diet of pureed foods and thickened liquids. On January 24, 2025, a PCA (personal care attendant) initial evaluation was submitted by Boston Center for Independent Living for 28.5 Day/Evening PCA hours. MassHealth modified the request and approved 18.5 Day/Evening PCA hours. The prior authorization period is from February 11, 2025 through February 10, 2026. Modifications were made in time requested for bathing and assistance with eating. MassHealth testified that PCA assistance with bathing was requested 20 minutes once per day 7 days per week. MassHealth modified the requested time to 10 minutes once per day 7 days per week. The MassHealth representative testified that the PCA request notes that Appellant is dependent for bathing which is a two-person task because Appellant is resistant to bathing and is at risk for aspiration from drinking bath water. The MassHealth representative testified that safety issues involving aspiration risks from inhaling bath water and bathing a █-year-old child are primarily parental responsibilities with the PCA available to assist with the bathing; however, the PCA cannot be responsible for aspiration safety. She added that an adaptive tub and tub chair would be appropriate accessories to help maintain safety while bathing. The MassHealth representative testified that 10 minutes per day is sufficient PCA time to assist with bathing Appellant.

MassHealth did not allow 532 minutes per week of PCA time requested for assistance with eating meals. The PCA request states that Appellant is dependent with all aspects of eating and her diet consists of thickened and pureed liquids. Appellant has a history of aspiration which is documented by Appellant's physicians who state in written narrative that Appellant is known to have feeding difficulties, "including aspiration of thin and mildly thick liquids," and when she is eating Appellant "requires full support as well as monitoring for signs of choking," and "needs to be closely monitored for any concerns of aspiration." See Exhibit 5, pp. 1-2 and Exhibit 4, p. 44. PCA time for assistance with eating was not allowed because it involves skilled care that includes monitoring for aspiration and choking which requires clinical judgment and assessment and cannot be safely performed by a PCA. The MassHealth representative submitted into evidence MassHealth PCA Operating Standards which state that skilled care services should be performed by a skilled clinician, parent, legal guardian or designee. Skilled services are not appropriate services to be completed by a PCA and generally should not be requested by the PCM agency (Exhibit 6, p. 63). In support of the modifications, MassHealth also cited PCA regulations at 130 CMR 422.410, and medical necessity criteria at 130 CMR 450.204.

Appellant was represented by her mother and a representative from the PCM agency. Appellant's mother testified that Appellant weighs approximately 28 pounds and is 37 inches tall. She testified that it takes about 40 minutes to bathe Appellant and requires two people to complete. While bathing, Appellant must be prevented from drinking and aspirating bath water. One person holds

Appellant for safety while in the bathtub and the other person completes washing and rinsing. She added that a tub chair and an adaptive tub have been ordered, and she is awaiting delivery. Appellant's mother testified that Appellant is at high risk for aspiration while feeding but she feels a PCA should be allowed to assist because she has trained the PCA to assist with feeding, and either she or her husband are present during feeding and assume responsibility for aspiration risks. Appellant's mother stated that Appellant is at risk during all activities performed by the PCA, which should not preclude assistance with feeding. The PCM representative pointed to 130 CMR 422.410(C)(3) which requires that MassHealth consider individual circumstances when determining the number of hours of physical assistance to be provided to a member.

Findings of Fact

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

1. Appellant is █ years old with a primary diagnosis of Rett Syndrome.
2. Appellant is non-ambulatory/weight-bearing/verbal and has decreased trunk control. All transfers are total lift and carry.
3. Appellant is dependent with feeding a diet of pureed foods and thickened liquids.
4. On January 24, 2025, a PCA (personal care attendant) initial evaluation was submitted by Boston Center for Independent Living for 28.5 Day/Evening PCA hours.
5. The prior authorization period is from February 11, 2025 through February 10, 2026.
6. MassHealth modified the request and approved 18.5 Day/Evening PCA hours.
7. The PCM agency requested 20 minutes once per day 7 days per week for PCA assistance with bathing and MassHealth approved 10 minutes once per day 7 days per week.
8. MassHealth did not allow 532 minutes per week of PCA time requested for assistance with eating meals.
9. Appellant is dependent with all aspects of eating and her diet consists of thickened and pureed liquids.
10. Appellant has a history of aspiration which is documented by Appellant's physicians who state that Appellant is known to have feeding difficulties, "including aspiration of thin and mildly thick liquids," and when she is eating Appellant "requires full support as well as monitoring for signs of choking," and "needs to be closely monitored for any concerns of

aspiration.” See Exhibit 5, pp. 1-2 and Exhibit 4, p. 44.

11. Appellant weighs approximately 28 pounds and is 37 inches tall.
12. While bathing, Appellant must be prevented from drinking and aspirating bath water.
13. One person holds Appellant for safety while in the bathtub the other completes washing, rinsing, and drying.
14. A tub chair and an adaptive tub have been ordered, and Appellant’s mother is awaiting delivery.

Analysis and Conclusions of Law

The PCA program provides assistance with the following:¹

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL

- (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.

(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

¹ See also PCA Consumer Handbook available at: <https://www.mass.gov/doc/pca-consumer-handbook-personal-care-attendant-program/download>.

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.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM 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 PCA 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. (Emphasis added)

422.411: Covered Services

(A) MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.

422.412: Noncovered 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.

Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care as described in 130 CMR 503.007: *Potential Sources of Health Care* and 517.008: *Potential Sources of Health Care*. See 130 CMR 422.416.

130 CMR 450.204: Medical Necessity

The MassHealth agency does not pay a provider for services that are not medically necessary.

(A) 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 the MassHealth agency. Services that are less costly to the MassHealth agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency pursuant to a prior-authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

Appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is

on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 Page 9 of Appeal No.: 2309752 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

First, the PCM representative argued that 130 CMR 422.410(C) requires that MassHealth take into consideration individual circumstances when considering time requested for ADLs such as bathing and eating. Regulation 130 CMR 422.410(C) directs that MassHealth will consider individual circumstances when determining the number of hours of physical assistance a member requires for Instrumental Activities of Daily Living (IADLs), and does not apply to the analysis of PCA time requested for ADLs. This regulatory provision notwithstanding, there is no evidence or testimony to support the assertion that MassHealth has not considered Appellant's individual circumstances in modifying the PCA time requested for ADLs.

The MassHealth PCA Operating Standards state (with emphasis added on bold):

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....**

(Exhibit 6, p. 63)

The hearing officer must give due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation (130 CMR 610.082(C)(3)). It is undisputed and clinically documented in the hearing record that Appellant is at high risk for aspiration while eating. See Exhibit 5, pp. 1-2 and Exhibit 4, p. 44. Therefore, with due consideration to the MassHealth PCA Operating Standards, I conclude that the PCA time requested for assistance with eating does not meet medical necessity criteria, and that MassHealth correctly denied PCA time requested for assistance with eating.

Regarding PCA time requested for assistance with bathing, the MassHealth representative testified that a tub chair and an adaptive tub are appropriate accessories to maintain safety while bathing, and Appellant's mother has ordered both and is awaiting delivery. While bathing, Appellant must be prevented from drinking and aspirating bath water, which is a skilled task outside the purview of the PCA program. There is no dispute that bathing Appellant is a 2-person activity with a parent

holding Appellant for safety and aspiration prevention during bathing, while the PCA completes washing, rinsing, and drying. I find credible the MassHealth testimony that the PCA task of bathing Appellant who weighs approximately 28 pounds and is 37 inches tall, can be completed in 10 minutes, especially with the appropriate accessories to assist with the bathing process.

For the foregoing reasons, the appeal is DENIED.

Order for MassHealth

None.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Appellant Representative: [REDACTED]
[REDACTED]

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