

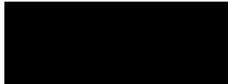
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved, in part, Dismissed, in part	Appeal Number:	2505761
Decision Date:	6/17/2025	Hearing Date:	5/15/2025
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN, Optum
Heather Adams, RN, Optum

Interpreter:

N/A



*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, Dismissed, in part	Issue:	Prior Approval, PCA Services,
Decision Date:	6/17/2025	Hearing Date:	5/15/2025
MassHealth's Reps:	Kelly Rayen, RN, Heather Adams, RN	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 18, 2025, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services indicated that some of the requested times for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(4), 130 CMR 422.410(A)(7), 130 CMR 450.204(A) and Exhibit 1) Also, MassHealth determined that some of the requested times for personal attendant services include times for services that are social services and not covered by the PCA program. (See 130 CMR 422.412(A) and Exhibit 1) Additionally, MassHealth determined that some of the requested times for Instrumental Activities of Daily Living include requested time for services provided by family members (See 130 CMR 422.410(C)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on April 10, 2025. (see Exhibit 2 and 130 CMR 610.015(B)). A decision modifying assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services indicated that some of the requested times for Activities of Daily Living (ADLs) are longer than ordinarily

required by someone with the Appellant's physical needs. (130 CMR 422.410(A)(3), 130 CMR 422.410(A)(4), 130 CMR 422.410(A)(7), 130 CMR 450.204(A) and Exhibit 1) Also, MassHealth determined that some of the requested times for personal attendant services include times for services that are social services and not covered by the PCA program. (See 130 CMR 422.412(A) and Exhibit 1) Additionally, MassHealth determined that some of the requested times for Instrumental Activities of Daily Living include requested time for services provided by family members (See 130 CMR 422.410(C)(1) and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(3), 130 CMR 422.410(A)(4), 130 CMR 422.410(A)(7), and 130 CMR 450.204(A) in determining that the Appellant's request for PCA services for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant's physical needs, whether MassHealth was correct, pursuant to 422.412(A), in determining that the Appellant's request for PCA includes requested time for services that are social services and not covered by the PCA program, and whether MassHealth was correct, pursuant to 130 CMR 422.410(C)(1), in determining that the Appellant's request for PCA services includes time for services provided by family members.

Summary of Evidence

The Appellant is a MassHealth member under the age of 18 who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 5). MassHealth received a prior authorization request for PCA services submitted by the [REDACTED] the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) The Appellant's primary diagnosis is autism. (Testimony, Exhibit 5, pg. 15) Secondary diagnoses include ADHD, developmental delay, as well as language impairment. (Exhibit 5, pg. 15). The Appellant is nonverbal except for food words. It is further noted that the Appellant displays self-injurious behaviors (biting), the Appellant is impulsive, and the Appellant shows no safety awareness. The submission notes that the Appellant has climbed and jumped out of a two-story window in the past. The Appellant does not sleep through the night. Regarding the family, it is noted that the Appellant lives with her, mother, father and twin brother, who has been diagnosed with autism, Level 2. The Appellant's father is a pilot who travels between 4 and 5 days each week. (Exhibit 5, pgs. 15-16)

Within Optum's submission, it is noted that "2/18/2025 MassHealth has modified your Prior Authorization request for PCA services using available documentation. Your PCM agency requested 47 hours PER WEEK. This Prior Authorization of PCA services is applicable for dates of service beginning 2/18/2025 and ending 2/17/2026. You are authorized for 27 hours per WEEK. Modifications: transfers 0, 1457, grooming (nail care) 0, 1457, grooming (hair) 3x1x7, grooming (other) 4x1x7, 1478, dressing 10x1x7, undressing 8x1x7, 1479, bladder 6x4x5, 6x6x2, bowel 10x1x7, 1482, overnight toileting denied, 1900, meal prep 0, laundry 0, housekeeping 0, 1452,

1455. Please contact your PCM agency with any questions. Note: All members must be in compliance with the MassHealth Overtime Policy. CID 8347.” (Exhibit 5, pg. 2)

Optum’s submission continues “4/30/2025 MassHealth has modified your prior authorization for PCA services due to a MassHealth error in the message text. Corrected message is as follows: MassHealth has modified your Prior Authorization request for PCA services using available documentation. Your PCM agency requested 24 hours and 45 minutes PER WEEK for 40.14 SCHOOL WEEKS and 22 hours and 15 minutes PER WEEK for 12 VACATION WEEKS. This Prior Authorization of PCA services is applicable for dates of service beginning 5/18/2025 and ending 2/17/2026. You are authorized for 13 hours PER WEEK for 40.14 SCHOOL WEEKS and 14 hours PER WEEK for 12 VACATION WEEKS. Modifications: transfers 0 school weeks, 1457, grooming (nail care) 0 both weeks, 1457, grooming (hair) 3x1x7 both weeks, grooming (other) 4x1x7 both weeks, 1478, dressing 10x1x7 both weeks, undressing 8x1x7 both weeks, 1479, bladder 6x4x5, 6x6x2 school weeks, 6x6x7 vacation weeks, bowel 10x1x7 both weeks, 1482, meal prep 0 school weeks, laundry 0 both weeks, housekeeping 0 both weeks, 1452, 1455. Please contact your PCM agency with any questions. Note: All members must be in compliance with the MassHealth Overtime Policy. CID 8347.” (Exhibit 5, pg. 2)

The Appellant, in a letter titled Fair Hearing Request in Response to Decision Notice and dated April 2, 2025 (Exhibit 2) questions the determination made decreasing the PCA hours for the Appellant. The Appellant’s letter notes the inconsistencies in MassHealth’s Notice, which is the subject of this appeal. For example, the Appellant’s letter notes that Optum denied the Appellant time for overnight toileting, however, no overnight toileting had been requested. (Exhibit 2, Exhibit 5, pg. 28-29). The letter concludes, noting that the requested time was 47 hours per week and the time approved in the Notice was 27 hours per week. The Appellant’s mother added up the reductions as listed in the Notice and could not account for 13 hours and 38 minutes of reductions¹. (Exhibit 2)

MassHealth, represented by a nurse from Optum, testified that MassHealth modified the Appellant’s prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant’s request for PCA services indicated that some of the requested times for Activities of Daily Living (ADLs) are longer than ordinarily required by someone with the Appellant’s physical needs. (130 CMR 422.410(A)(3), 130 CMR 422.410(A)(4), 130 CMR 422.410(A)(7), 130 CMR 450.204(A) and Exhibit 1) Also, MassHealth determined that some of the requested times for personal attendant services include times for services that are social services and not covered by the PCA program (See 130 CMR 422.412(A) and Exhibit 1). Additionally, MassHealth determined that some of the requested times for Instrumental Activities of Daily Living include requested time for services provided by family members (See 130 CMR 422.410(C)(1) and Exhibit 1). Specifically, MassHealth made multiple modifications discussed infra.

¹ The Appellant’s letter is dated April 2, 2025, the additional modification, dated April 30, 2025, indicated that MassHealth had made an error and corrected the amounts. (Exhibit 5, pg. 2)

Regarding the modification of 1) ADL – Mobility – Transfers, 10 minutes, 2 times a day, 5 days a week, to 0 minutes, 0 times a day, 0 days a week (school weeks) (Exhibit 5, pgs. 19-20), MassHealth testified that the requested times are longer than ordinarily required by someone with the Appellant's physical needs and the requested time is for services provided by family members.

Within Optum's submission it is noted that the Appellant requires maximum assistance to and from the school van for safety due to the Appellant's impulsive behavior and the Appellant's lack of safety awareness. (Exhibit 5, pg. 20) Within the Appellant's letter, it notes that the Appellant weighs [REDACTED] pounds and is very strong. The letter notes that the Appellant struggles when moved into the school and that the PCA application described why this transfer time was necessary for the Appellant's safety. (Exhibit 2) The Appellant, represented by the Appellant's mother at Hearing, confirmed the accuracy of this information through testimony. (Testimony) At Hearing, based upon the testimony of the Appellant's Mother, MassHealth agreed to 5 minutes, 1 time a day, 5 times a week (school weeks) for ADL – Mobility – Transfers, and this was accepted by the Appellant's Mother, resolving this appeal issue.

Regarding the modification of 2) ADL – Grooming – Nail Care, from 10 minutes, 1 time a day, 1 day a week, to 0 minutes, 0 times a day, 0 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 24-25).

Within the submission from Optum, it is noted that the Appellant is dependent for all grooming tasks due to the Appellant's inability to initiate or follow through with any tasks. The submission further notes that the Appellant is resistive to all care, displays self-injurious behavior, and is impulsive with no safety awareness. (Exhibit 5, pg. 24-25) Within the Appellant's letter, it notes that trimming the Appellant's nails is a two-person job that is very difficult due to the Appellant's struggling. (Exhibit 2) The Appellant, represented by the Appellant's mother at Hearing, confirmed the accuracy of this information through testimony. (Testimony) At Hearing, based upon the testimony of the Appellant's Mother, MassHealth agreed to 5 minutes, 1 time a day, 1 time a week (school and vacation weeks) for ADL – Grooming – Nail Care, and this was accepted by the Appellant's Mother, resolving this appeal issue.

Regarding the modification of 3) ADL – Grooming – Hair Care, from 5 minutes, 1 time a day, 7 days a week, to 3 minutes, 1 time a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 24-25).

Within the submission from Optum, it is noted that the Appellant is dependent for all grooming tasks due to the Appellant's inability to initiate or follow through with any tasks. The submission further notes that the Appellant is resistive to all care, displays self-injurious behavior, and is impulsive with no safety awareness. (Exhibit 5, pg. 24-25) Within the Appellant's letter, it notes that the Appellant has long, curly hair which requires multiple hair products (conditioner and detangler) along with brushing the Appellant's hair while she is struggling to get away. Five minutes per episode is conservative. (Exhibit 2) At Hearing, based upon the testimony of Optum explaining the time for task for hair care and hair brushing, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Grooming – Nail Care.

Regarding the modification of 4) ADL – Grooming – Other (Lotion), from 5 minutes, 1 time a day, 7 days a week, to 4 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 24-25).

Within the submission from Optum, it is noted that the Appellant is dependent for all grooming tasks due to the Appellant's inability to initiate or follow through with any tasks. The submission further notes that the Appellant is resistive to all care, displays self-injurious behavior, and is impulsive with no safety awareness. The submission also notes that the Grooming – Other is for lotion and skin checks due to the Appellant's biting. (Exhibit 5, pg. 24-25) Within the Appellant's letter, it notes that request was for time to check for injuries and apply lotion due to the Appellant's self-biting. The letter notes that the Appellant's school has records of the Appellant biting herself over 700 times per day. It takes time to find and treat the areas she bites herself. (Exhibit 2) At Hearing, based upon the testimony of Optum explaining the time for task for lotion application, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Grooming – Other (Lotion).

Regarding the modification of 5) ADL – Dressing, from 12 minutes, 1 time a day, 7 days a week, to 10 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 26-27) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 26-27).

Within the submission from Optum, it is noted that the Appellant is dependent for gathering all clothing and dressing and undressing. The Appellant is unable to initiate or follow through with all tasks. The Appellant becomes frustrated, is impulsive and displays self-injurious behavior. (Exhibit 5, pg. 26-27) Within the Appellant's letter, it notes that the Appellant is [REDACTED] but she weighs [REDACTED] pounds and is very strong. It is difficult to dress the Appellant. The Appellant occasionally undresses herself at inappropriate times which requires more time to get her dressed again. (Exhibit 2) At Hearing, based upon the testimony of Optum explaining

the time for task for dressing, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Dressing.

Regarding the modification of 6) ADL – Undressing, from 10 minutes, 1 time a day, 7 days a week, to 8 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 26-27) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 26-27).

Within the submission from Optum, it is noted that the Appellant is dependent for gathering all clothing and dressing and undressing. The Appellant is unable to initiate or follow through with all tasks. The Appellant becomes frustrated, is impulsive and displays self-injurious behavior. (Exhibit 5, pg. 26-27) Within the Appellant's letter, it notes that the Appellant is [REDACTED] years old, but she weighs [REDACTED] pounds and is very strong. It is difficult to undress the Appellant. (Exhibit 2) At Hearing, based upon the testimony of Optum explaining the time for task for undressing, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Undressing.

Regarding the modification of 7) ADL – Toileting – Bladder Care, from 10 minutes, 4 times a day, 5 days a week, and 10 minutes, 6 times a day, 2 days a week to 6 minutes, 4 times a day, 5 days a week and 6 minutes, 6 times a day, 2 days a week (school weeks) as well as from 10 minutes, 6 times a day, 7 days a week, to 6 minutes, 6 times a day, 7 days a week (vacation weeks) (Exhibit 5, pgs. 28-29) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 28-29).

Within the submission from Optum, it is noted that the Appellant is incontinent of bowel and bladder, wears briefs, and is dependent for all changing. The Appellant is unable to initiate or follow through with tasks, becomes resistant to tasks, and displays self-injurious behavior in the form of biting. (Exhibit 5, pg. 28-29) Within the Appellant's letter, it notes that the Appellant is not potty trained. The letter described the potty-training process, which requires the Appellant to sit on the toilet until she voids. This has resulted in toilet training sessions lasting more than 20 minutes. The letter noted that this reduction equated to a 292-minute reduction from the requested PCA hours. (Exhibit 2) At Hearing, based upon the testimony of Optum explaining that wait time while the Appellant is voiding her bladder, is not included within the PCA time for task allotment, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Toileting – Bladder Care.

Regarding the modification of 8) ADL – Toileting – Bowel Care, from 15 minutes, 2 times a day, 7 days a week, to 10 minutes, 1 time a day, 7 days a week (both weeks) (Exhibit 5, pgs. 28-29) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by

family members. (Testimony, Exhibit 5, pgs. 28-29).

Within the submission from Optum, it is noted that the Appellant is incontinent of bowel and bladder, wears briefs and is dependent for all changing. The Appellant unable to initiate or follow through with tasks, becomes resistant to tasks, and displays self-injurious behavior in the form of biting. (Exhibit 5, pg. 28-29) Within the Appellant's letter, it notes that the Appellant is not potty trained. The letter described the potty-training process, which requires the Appellant to sit on the toilet until she voids. This has resulted in toilet training sessions lasting more than 20 minutes. The letter noted that this reduction equated to a 292 minute reduction from the requested PCA hours. (Exhibit 2) At Hearing, based upon the testimony of Optum explaining that wait time while the Appellant is voiding her bowels, is not included within the PCA time for task allotment, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Toileting – Bladder Care.

Regarding the modification of 9) IADL – Meal Preparation from 10 minutes, 1 time a day, 5 days a week (breakfast), 10 minutes, 1 time a day, 5 days a week (lunch), and 10 minutes 1 time a day, 5 days a week (snack) to 0 minutes, 0 times a day, 0 days a week (school weeks) (Exhibit 5, pg., 36) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pg. 36).

Within the submission from Optum, it is noted the PCA prepares breakfast for the Appellant to eat prior to school and prepares the Appellant's lunch and snacks to bring to school while the Appellant's mother getting the Appellant's brother ready for school. (Exhibit 5, pg. 36) Within the Appellant's letter, it notes that the Appellant's brother, is also diagnosed with Autism Spectrum Disorder, Level 2, and needs substantial support. The Appellant's mother is often the only adult at home in the family. The letter stated that the Appellant's mother cannot provide very substantial support for the Appellant and substantial support for the Appellant's brother and conduct meal prep alone. The letter stated that the PCA application requested meal prep time specifically for the Appellant. The letter quotes 130 CMR 422.410(C)(3) and requests that the reduction of the PCA meal prep hours be reconsidered on the basis of individual circumstances. (Exhibit 2)

At Hearing, Optum explained that a parent is expected to provide meal preparation for a child, and that the record does not contain any documentation related to a specialized diet. (Testimony) The Appellant Mother explained that the Appellant will not eat certain foods and requires separate meals due to the Appellant's preference not to eat certain foods. (Testimony). The Appellant's Mother explained that the Appellant has no safety awareness and has placed her lips on a boiling pot on the stove when the Mother was not watching the Appellant. The Appellant's Mother explained that she cannot prepare the meals for the Appellant and turn her back on the Appellant or the Appellant may resort to unsafe behavior which she has exhibited in the past. The Appellant's Mother requested, citing the MassHealth

Regulations, that the individual circumstances of the Appellant be taken into consideration. (Testimony) No resolution was reached between the parties regarding this appeal issue, and it is discussed in the Analysis and conclusion of Law Section infra.

Regarding the modification of 10) IADL – Laundry from 90 minutes each week to 0 minutes each week (both school and vacation weeks (Exhibit 5, pg., 36) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pg. 36).

Within the submission from Optum, it is noted the PCA assists with excessive laundry due to the incontinence of the Appellant. The Appellant's laundry is done separate from the family laundry due to bodily fluids. (Exhibit 5, pg. 36) Within the Appellant's letter, it notes that the Appellant requires several changes of clothes daily due to her incontinence, which results in additional laundry. (Exhibit 2) At Hearing, Optum agreed to 60 minutes each week for laundry (both school and vacation weeks) and this was accepted by the Appellant's Mother, resolving this appeal issue for IADL – Laundry.

Regarding the modification of 11) IADL – Housekeeping from 30 minutes each week to 0 minutes each week (school and vacations weeks) (Exhibit 5, pg., 36) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pg. 37).

Within the submission from Optum, it is noted the PCA cleans and maintains the Appellant's immediate space and areas after tasks for safety purposes due to the Appellant's impulsivity. The PCA assures that all windows and doors in the home are locked at all times. The Appellant is a flight risk and has been found in neighbors' cars and garages. (Exhibit 5, pg. 37) Within the Appellant's letter, it notes that the PCA needs to take extra time to ensure all locks are locked on all windows and doors wherever the Appellant goes. The letter highlights that recently that Appellant defeated the child lock on the kitchen window, got outside and jumped in a pool. The housekeeping hours requested in the PCA application were for this purpose as well as continuously returning everything in the house to its proper location. The letter states that the Appellant removes and spreads various items all over the floor (toys, kitchen utensils, tools, among others). The letter stated that none of the requested services in the PCA application were for social services as defined in 130 CMR 422.412(A). (Exhibit 2) At Hearing, Optum agreed to 15 minutes each week for housekeeping (both school and vacation weeks) and this was accepted by the Appellant's Mother, resolving this appeal issue or IADL – Housekeeping².

² At Hearing, the Appellant's Mother had explained that additional time, beyond what was requested by the Appellant's PCA, was required. Optum explained the adjustment procedure to the Appellant. Nothing in this decision prohibits the Appellant from contacting the PCM for an adjustment.

Findings of Fact

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

1. The Appellant's primary diagnosis is autism (Testimony, Exhibit 5, pg. 15)
2. Secondary diagnoses include ADHD, developmental delay, as well as language impairment. The Appellant is nonverbal except for food words. The Appellant displays self-injurious behaviors (biting), the Appellant is impulsive, and the Appellant shows no safety awareness. The Appellant has climbed and jumped out of a two-story window in the past. The Appellant does not sleep through the night. Regarding the family, it is noted that the Appellant lives with her, mother, father and twin brother, who has been diagnosed with autism, Level 2. The Appellant's father is a pilot who travels between 4 and 5 days each week. (Exhibit 5, pgs. 15-16)
3. Optum's submission includes the following amendment: "4/30/2025 MassHealth has modified your prior authorization for PCA services due to a MassHealth error in the message text. Corrected message is as follows: MassHealth has modified your Prior Authorization request for PCA services using available documentation. Your PCM agency requested 24 hours and 45 minutes PER WEEK for 40.14 SCHOOL WEEKS and 22 hours and 15 minutes PER WEEK for 12 VACATION WEEKS. This Prior Authorization of PCA services is applicable for dates of service beginning 5/18/2025 and ending 2/17/2026. You are authorized for 13 hours PER WEEK for 40.14 SCHOOL WEEKS and 14 hours PER WEEK for 12 VACATION WEEKS. Modifications: transfers 0 school weeks, 1457, grooming (nail care) 0 both weeks, 1457, grooming (hair) 3x1x7 both weeks, grooming (other) 4x1x7 both weeks, 1478, dressing 10x1x7 both weeks, undressing 8x1x7 both weeks, 1479, bladder 6x4x5, 6x6x2 school weeks, 6x6x7 vacation weeks, bowel 10x1x7 both weeks, 1482, meal prep 0 school weeks, laundry 0 both weeks, housekeeping 0 both weeks, 1452, 1455. Please contact your PCM agency with any questions. Note: All members must be in compliance with the MassHealth Overtime Policy. CID 8347" (Exhibit 5, pg. 2).
4. Regarding the modification of 1) ADL – Mobility – Transfers, 10 minutes, 2 times a day, 5 days a week, to 0 minutes, 0 times a day, 0 days a week (school weeks) (Exhibit 5, pgs. 19-20), MassHealth testified that the requested times are longer than ordinarily required by someone with the Appellant's physical needs and the requested time is for services provided by family members. At Hearing, based upon the testimony of the Appellant's Mother, MassHealth agreed to 5 minutes, 1 time a day, 5 times a week (school weeks) for ADL – Mobility – Transfers, and this was accepted by the Appellant's Mother, resolving this appeal issue.
5. Regarding the modification of 2) ADL – Grooming – Nail Care, from 10 minutes, 1 time a

day, 1 day a week, to 0 minutes, 0 times a day, 0 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 24-25). At Hearing, based upon the testimony of the Appellant's Mother, MassHealth agreed to 5 minutes, 1 time a day, 1 time a week (school and vacation weeks) for ADL – Grooming – Nail Care, and this was accepted by the Appellant's Mother, resolving this appeal issue.

6. Regarding the modification of 3) ADL – Grooming – Hair Care, from 5 minutes, 1 time a day, 7 days a week, to 3 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 24-25). At Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Grooming – Nail Care.
7. Regarding the modification of 4) ADL – Grooming – Other (Lotion), from 5 minutes, 1 time a day, 7 days a week, to 4 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 24-25). At Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Grooming – Other (Lotion).
8. Regarding the modification of 5) ADL – Dressing, from 12 minutes, 1 time a day, 7 days a week, to 10 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 26-27) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 26-27). At Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Dressing.
9. Regarding the modification of 6) ADL – Undressing, from 10 minutes, 1 time a day, 7 days a week, to 8 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 26-27) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 26-27). At Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Undressing.
10. Regarding the modification of 7) ADL – Toileting – Bladder Care, from 10 minutes, 4 times a day, 5 days a week, and 10 minutes, 6 times a day, 2 days a week to 6 minutes, 4 times a

day, 5 days a week and 6 minutes, 6 times a day, 2 days a week(school weeks) as well as from 10 minutes, 6 times a day, 7 days a week, to 6 minutes, 6 times a day, 7 days a week (vacation weeks) (Exhibit 5, pgs. 28-29) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 28-29). At Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Toileting – Bladder Care.

11. Regarding the modification of 8) ADL – Toileting – Bowel Care, from 15 minutes, 2 times a day, 7 days a week, to 10 minutes, 1 time a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 28-29) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pgs. 28-29). At Hearing, Optum agreed to increase frequency to 10 minutes, 2 times a day, 7 days a week (both school and vacation weeks), and this was accepted by the Appellant's Mother, resolving this appeal issue or ADL – Toileting – Bowel Care.
12. Regarding the modification of 9) IADL – Meal Preparation from 10 minutes, 1 time a day, 5 days a week (breakfast), 10 minutes, 1 time a day, 5 days a week (lunch), and 10 minutes 1 time a day, 5 days a week (snack) to 0 minutes, 0 times a day, 0 days a week (school weeks) (Exhibit 5, pg., 36) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pg. 36).
13. At Hearing, Optum explained that a parent is expected to provide meal preparation for a child, and that the record does not contain any documentation related to a specialized diet. (Testimony) The Appellant has no safety awareness and has placed her lips on a boiling pot on the stove when the Mother was not watching the Appellant. The Appellant's mother cannot prepare the meals for the Appellant and turn her back on the Appellant or the Appellant may resort to unsafe behavior she has exhibited in the past. The Appellant's Mother requested, citing the MassHealth Regulations, that the individual circumstances of the Appellant be taken into consideration. (Testimony) No resolution was reached between the parties regarding this appeal issue, and it is discussed in the Analysis and conclusion of Law Section infra.
14. Regarding the modification of 10) IADL – Laundry from 90 minutes each week to 0 minutes each week (both school and vacation weeks (Exhibit 5, pg., 36) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pg. 36). At Hearing, Optum agreed to 60 minutes each week for laundry (both school and vacation weeks) and this was accepted by the Appellant's

Mother, resolving this appeal issue for IADL – Laundry.

15. Regarding the modification of 11) IADL – Housekeeping from 30 minutes each week to 0 minutes each week (school and vacations weeks) (Exhibit 5, pg. 36) MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs and the requested time is for services provided by family members. (Testimony, Exhibit 5, pg. 37). At Hearing, Optum agreed to 15 minutes each week for housekeeping (both school and vacation weeks) and this was accepted by the Appellant's Mother, resolving this appeal issue for IADL – Housekeeping.

Analysis and Conclusions of Law

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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, or 517.007.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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/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 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.

The Regulation regarding the requirement of needing assistance with two or more ADLs

cited by MassHealth at the Hearing and in the Notice is codified in 130 CMR 422.403(C):

422.403: Eligible Members

(C) MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

Additionally, the Regulations regarding non-covered services, such as social services, cited by MassHealth at the Hearing and in the Notice is codified in 130 CMR 422.412(A):

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.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (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).

Here, the Appellant has met the burden, by a preponderance of evidence, to show that MassHealth's administrative determination is invalid. Optum's review is based primarily upon analysis of the submissions. (Exhibit 5) Optum did not conduct an in-person review of the Appellant attempting to perform the actions for which the Appellant has requested help. Optum's analysis is limited to the submissions and review of the MassHealth Regulations.

Regarding the modification of 1) ADL – Mobility – Transfers, 10 minutes, 2 times a day, 5 days a week, to 0 minutes, 0 times a day, 0 days a week (school weeks) (Exhibit 5, pgs. 19-20), at Hearing, based upon the testimony of the Appellant's Mother, MassHealth agreed to 5 minutes, 1 time a day, 5 times a week (school weeks) for ADL – Mobility – Transfers, and this was accepted by the Appellant's Mother, resolving this appeal issue. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 2) ADL – Grooming – Nail Care, from 10 minutes, 1 time a day, 1 day a week, to 0 minutes, 0 times a day, 0 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) at Hearing, based upon the testimony of the Appellant's Mother, MassHealth agreed to 5 minutes, 1 time a day, 1 time a week (school and vacation weeks) for ADL – Grooming – Nail Care, and this was accepted by the Appellant's Mother, resolving this appeal issue. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 3) ADL – Grooming – Hair Care, from 5 minutes, 1 time a day, 7 days a week, to 3 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) at Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Grooming – Nail Care. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 4) ADL – Grooming – Other (Lotion), from 5 minutes, 1 time a day, 7 days a week, to 4 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 24-25) at Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Grooming – Other (Lotion). Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 5) ADL – Dressing, from 12 minutes, 1 time a day, 7 days a week, to 10 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 26-27) at Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant's Mother, resolving this appeal issue for ADL – Dressing. Accordingly, this portion

of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 6) ADL – Undressing, from 10 minutes, 1 time a day, 7 days a week, to 8 minutes, 1 times a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 26-27) at Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant’s Mother, resolving this appeal issue for ADL – Undressing. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 7) ADL – Toileting – Bladder Care, from 10 minutes, 4 times a day, 5 days a week, and 10 minutes, 6 times a day, 2 days a week to 6 minutes, 4 times a day, 5 days a week and 6 minutes, 6 times a day, 2 days a week(school weeks) as well as from 10 minutes, 6 times a day, 7 days a week, to 6 minutes, 6 times a day, 7 days a week (vacation weeks) (Exhibit 5, pgs. 28-29) at Hearing, based upon the testimony of Optum, this modification was accepted by the Appellant’s Mother, resolving this appeal issue for ADL – Toileting – Bladder Care. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 8) ADL – Toileting – Bowel Care, from 15 minutes, 2 times a day, 7 days a week, to 10 minutes, 1 time a day, 7 days a week (both school and vacation weeks) (Exhibit 5, pgs. 28-29) at Hearing, Optum agreed to increase frequency to 10 minutes, 2 times a day, 7 days a week (both school and vacation weeks), and this was accepted by the Appellant’s Mother, resolving this appeal issue or ADL – Toileting – Bowel Care. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 9) IADL – Meal Preparation from 10 minutes, 1 time a day, 5 days a week (breakfast), 10 minutes, 1 time a day, 5 days a week (lunch), and 10 minutes 1 time a day, 5 days a week (snack) to 0 minutes, 0 times a day, 0 days a week (school weeks) (Exhibit 5, pg., 36) I find the Appellant’s Mother’s testimony compelling. The lack of safety exhibited by the Appellant supports the Appellant’s request for meal preparation. The Appellant’s Mother requested, citing the MassHealth Regulations, that the individual circumstances of the Appellant be taken into consideration. I find that the Appellant has met the burden, by a preponderance of evidence, to show that Optum’s determination is invalid regarding this modification, taking into account the individual circumstances of this Appellant. Accordingly, this portion of the Appeal is APPROVED, as requested.

Regarding the modification of 10) IADL – Laundry from 90 minutes each week to 0 minutes each week (both school and vacation weeks (Exhibit 5, pg., 36) at Hearing, Optum agreed to 60 minutes each week for laundry (both school and vacation weeks) and this was accepted by the Appellant’s Mother, resolving this appeal issue for IADL – Laundry. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Regarding the modification of 11) IADL – Housekeeping from 30 minutes each week to 0

minutes each week (school and vacations weeks) (Exhibit 5, pg., 36) at Hearing, Optum agreed to 15 minutes each week for housekeeping (both school and vacation weeks) and this was accepted by the Appellant's Mother, resolving this appeal issue for IADL – Housekeeping. Accordingly, this portion of the appeal is DISMISSED by the agreement of the parties.

Order for MassHealth

Approve PCA services as follows:

- 1) ADL – Mobility – Transfers, 5 minutes, 1 time a day, 5 times a week (school weeks) as agreed by the parties
- 2) ADL – Grooming – Nail Care, 5 minutes, 1 time a day, 1 time a week (school and vacation weeks) as agreed by the parties.
- 3) ADL – Grooming – Hair Care, 3 minutes, 1 time a day, 7 days a week (both school and vacation weeks) as accepted by the Appellant.
- 4) ADL – Grooming – Other (Lotion), 4 minutes, 1 time a day, 7 days a week (both school and vacation weeks) as accepted by the Appellant.
- 5) ADL – Dressing, 10 minutes, 1 time a day, 7 days a week (both school and vacation weeks) as accepted by the Appellant.
- 6) ADL – Undressing, 8 minutes, 1 time a day, 7 days a week (both school and vacation weeks) as accepted by the Appellant.
- 7) ADL – Toileting –6 minutes, 4 times a day, 5 days a week and 6 minutes, 6 times a day, 2 days a week (school weeks) as well as 6 minutes, 6 times a day, 7 days a week (vacation weeks) as accepted by the Appellant.
- 8) ADL – Toileting – Bowel Care, 10 minutes, 2 times a day, 7 days a week (both school and vacation weeks) as agreed by the parties.
- 9) IADL – Meal Preparation, 10 minutes, 1 time a day, 5 days a week (breakfast), 10 minutes, 1 time a day, 5 days a week (lunch), and 10 minutes 1 time a day, 5 days a week (snack) as requested by the Appellant.
- 10) IADL – Laundry, 60 minutes each week for laundry (both school and vacation weeks) as agreed by the parties.
- 11) IADL – Housekeeping, 15 minutes each week for housekeeping (both school and vacation weeks) as agreed by the parties.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

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