

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2155605
<b>Decision Date:</b>	9/15/2021	<b>Hearing Date:</b>	09/09/2021
<b>Hearing Officer:</b>	Patricia Mullen		

**Appearance for Appellant:**

Pro se

**Appearance for MassHealth:**

Cheryl Eastman, RN, Optum

**Interpreter:**



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	PCA
<b>Decision Date:</b>	9/15/2021	<b>Hearing Date:</b>	09/09/2021
<b>MassHealth's Rep.:</b>	Cheryl Eastman, RN, Optum	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South Tower	<b>Aid Pending:</b>	Yes

## Authority

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

## Jurisdiction

Through a notice dated July 14, 2021, MassHealth modified the appellant's request for prior authorization for 19.25 hours per week of day/evening personal care attendant (PCA) services and approved 17.75 hours per week for day/evening PCA services, because MassHealth determined that time requested for assistance with certain activities did not satisfy the criteria set forth in the MassHealth medical necessity and PCA regulations. (130 CMR 422.403; 450.204 and Exhibit 1). The appellant filed this appeal in a timely manner on July 22, 2021 and received aid pending appeal for 18 hours per week in PCA services. (see 130 CMR 610.015(B) and Exhibit 2; testimony). Modification of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization for PCA services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410 in determining that time requested for PCA assistance with certain activities did not satisfy the criteria set forth in the PCA and medical necessity regulations.

## Summary of Evidence

The appellant appeared telephonically and testified through an interpreter. MassHealth was represented telephonically by a registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for personal care attendant (PCA) services.

The appellant's provider, the Northeast ILP, submitted a re-evaluation request for 19.25 hours per week in day/evening PCA services on July 7, 2021. (Exhibit 5, p. 3). By notice dated July 14, 2021, MassHealth approved 17.75 hours per week in day/evening PCA services. (Testimony, exhibit 1). The MassHealth representative testified that MassHealth modified the time requested for PCA assistance with grooming, housekeeping, and shopping. The appellant continues to receive 18 hours a week for day/evening PCA services under aid pending. (Testimony).

The appellant is diagnosed with fibromyalgia and has pain. (Exhibit 5, p. 8).

The appellant's provider requested 10 minutes, once a day, for PCA assistance with applying lotion to the appellant's extremities and MassHealth approved 3 minutes for this task. (Exhibit 5, p. 14, testimony). The MassHealth representative testified that the requested time for task of 10 minutes is longer than ordinarily required for this task. The MassHealth representative testified that it should take no longer than 3 minutes for the PCA to apply lotion to the appellant's arms and legs.

The appellant stated that the PCA puts lotion on her dry skin. The appellant testified that she is not sure how long it takes.

The appellant's provider requested 75 minutes a week for PCA assistance with housekeeping. (Exhibit 5, p. 25). The MassHealth representative testified that MassHealth approved 60 minutes a week for PCA assistance with housekeeping, because 75 minutes is longer than ordinarily required for this task for one person. The MassHealth representative stated that the appellant does not have medical equipment or other extraordinary housekeeping needs.

The appellant stated that she lives in a one bedroom, one bathroom apartment and needs help to vacuum the carpet.

The appellant's provider requested 75 minutes a week for PCA assistance with shopping. (Exhibit 5, p. 25). The MassHealth representative testified that MassHealth approved 60 minutes a week for PCA assistance with shopping, because 75 minutes is longer than ordinarily required for a person with the appellant's needs. The MassHealth representative stated that no special shopping needs were reported.

The appellant stated that she walks very slowly and needs more time for shopping.

## Findings of Fact

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

1. The appellant's provider, the Northeast ILP, submitted a re-evaluation request for 19.25 hours per week in day/evening PCA services on July 7, 2021.
2. By notice dated July 14, 2021, MassHealth approved 17.75 hours per week in day/evening PCA services; the appellant continues to receive 18 hours a week for day/evening PCA services under aid pending.
3. The appellant is diagnosed with fibromyalgia and has pain.
4. The appellant's provider requested 10 minutes, once a day, for PCA assistance with applying lotion to the appellant's extremities and MassHealth approved 3 minutes for this task.
5. The appellant's provider requested 75 minutes a week for PCA assistance with housekeeping; MassHealth approved 60 minutes a week for PCA assistance with housekeeping.
6. The appellant does not have medical equipment that requires cleaning.
7. The appellant lives in a one bedroom, one bathroom apartment.
8. The appellant's provider requested 75 minutes a week for PCA assistance with shopping; MassHealth approved 60 minutes a week for PCA assistance with shopping.
9. The appellant does not have any special shopping needs.

## **Analysis and Conclusions of Law**

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.

(130 CMR 422.403(C)).

The requested services must also be medically necessary for prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) A service is “medically necessary” if:

- 1) it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
- 2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider or identified by MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

(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 MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A), (B), (C)).

#### 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 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.

(130 CMR 422.410).

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;
- (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; or
- (G) surrogates, as defined in 130 CMR 422.402.

(130 CMR 422.412).

The appellant's provider requested 10 minutes a day for PCA assistance with applying lotion to the appellant's extremities and MassHealth approved 3 minutes a day for this task. The appellant testified that she did not know how long it took for the PCA to apply lotion to her arms and legs. 3 minutes is a reasonable amount of time for the PCA to apply lotion to the appellant's extremities and there is no evidence in the record to support 10 minutes time for task for this

activity. MassHealth's modification is upheld and the appeal is denied as to this issue.

The appellant's provider requested 75 minutes a week for PCA assistance with housekeeping and MassHealth approved 60 minutes a week for this task. The appellant lives in a one bedroom, one bathroom apartment and has no medical equipment that would require extra time for cleaning. The appellant stated that she needs help vacuuming the carpet. In light of the size of the appellant's apartment, an hour a week is sufficient for PCA assistance with vacuuming the carpet and other housekeeping tasks the appellant may need help with. MassHealth's modification is upheld and the appeal is denied as to this issue.

The appellant's provider requested 75 minutes a week for PCA assistance with shopping and MassHealth approved 60 minutes a week for this task. The appellant has no extraordinary shopping needs. The appellant stated that she needs time for shopping because she walks slowly. MassHealth covers time for hands on PCA assistance with shopping, not for time spent waiting for the appellant due to slow ambulation. MassHealth's modification is upheld and the appeal is denied as to this issue.

## **Order for MassHealth**

Remove aid pending and proceed with modifications set forth in the notice dated July 14, 2021.

## **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.

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Patricia Mullen  
Hearing Officer  
Board of Hearings

cc: Optum MassHealth LTSS