

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2155717
<b>Decision Date:</b>	10/04/2021	<b>Hearing Date:</b>	09/08/2021
<b>Hearing Officer:</b>	Christine Therrien		

Appearance for Appellant:



Appearance for MassHealth/Optum:

Cheryl Eastman, R.N.



*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>	Dismissed in part; Denied in part	<b>Issue:</b>	PCA
<b>Decision Date:</b>	10/04/2021	<b>Hearing Date:</b>	09/08/2021
<b>MassHealth's Rep.:</b>	Cheryl Eastman, R.N.	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South		

## 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 7/19/2021, MassHealth modified the appellant's Prior Approval for MassHealth Personal Care Attendant (PCA) benefits because MassHealth determined the services were not medically necessary (130 CMR 410.303, 130 CMR 410.204 and Exhibit 1). The appellant filed this appeal in a timely manner on 7/27/2021 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

## Issue

The issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, 422.412, and 450.204, in modifying appellant's prior authorization request for PCA services.

## Summary of Evidence

The Optum MassHealth representative testified a request for 66 hours and 30 minutes of day/evening hours per week and 2 night time hours per day of PCA services was received on behalf of the appellant dated 6/25/2021. The Optum MassHealth representative testified that the PA request was modified on 6/25/2021 to 62 hours and 15 minutes of day/evening hours per week and 2 night time hours per day.

The appellant was 49 years old at the time of the PA and is diagnosed with an anoxic brain injury, quadriplegia, seizure disorder. The appellant lives alone in his own apartment. The Optum MassHealth representative stated modifications were made to the appellant's request for Activities of Daily Living (ADLs) grooming, and medications (medicated cream) as well as Instrumental Activities of Daily Living (IADLs) meal prep. The Optum MassHealth representative testified the appellant requested 25 minutes a day, 7 days a week for grooming. MassHealth modified this request to 20 minutes for each day. At hearing MassHealth agreed to restore the requested time for grooming. The Optum MassHealth representative testified the appellant requested 10 minutes, twice a day, 7 days a week for applying medicated lotion. MassHealth modified this request to 5 minutes for each episode because the time requested is longer than ordinarily required for someone with your condition. The Optum MassHealth representative testified that 5 minutes for the application of cream is the maximum allowed for someone who needs total assistance. The Optum MassHealth representative testified the appellant requested 95 minutes a day, 7 days a week for meal prep. MassHealth modified this request to 90 minutes for each day. The Optum MassHealth representative testified that 90 minutes for the meal prep is the maximum allowed by MassHealth.

The appellant's mother testified that that appellant requires medicated cream on affected areas of his limbs and torso and this is applied when getting dressed in the morning and when getting undressed in the evening. The appellant's mother testified that the PCA cooks all the appellant's meals because he lives alone.

## **Findings of Fact**

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

1. A request for 66 hours and 30 minutes of day/evening hours per week and 2 night time hours per day of PCA services was received on behalf of the appellant dated 6/25/2021 (Exhibit 4).
2. The PA request was modified on 6/25/2021 to 62 hours and 15 minutes of day/evening hours per week and 2 night time hours per day (Exhibit 4).
3. The appellant was 49 years old at the time of the PA and is diagnosed with an anoxic brain injury, quadriplegia, seizure disorder (Exhibit 4).
4. The appellant lives alone in his own apartment (Testimony).
5. Modifications were made to the appellant's request for ADLs grooming, and medication (medicated cream) and IADLs meal prep (Exhibit 4).
6. The appellant requested 25 minutes a day, 7 days a week for grooming. MassHealth modified this request to 20 minutes for each day. At hearing MassHealth agreed to restore the requested time for grooming (Exhibit 4 and Testimony).
7. The appellant requested 10 minutes, twice a day, 7 days a week for applying medicated lotion. MassHealth modified this request to 5 minutes for each episode (Exhibit 4).

8. 5 minutes for the application of cream is the maximum allowed for someone who needs total assistance (Testimony).
9. The appellant requires medicated cream on affected parts of his body, and this is applied during dressing and undressing (Testimony).
10. The appellant requested 95 minutes a day, 7 days a week for meal prep. MassHealth modified this request to 90 minutes for each day (Exhibit 4).
11. 90 minutes for the meal prep is the maximum allowed by MassHealth (Testimony).

## Analysis and Conclusions of Law

MassHealth covers personal care 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 personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
  - (a) mobility, including transfers;
  - (b) medications,
  - (c) bathing or grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home (130 CMR 422.401 et seq.). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLs) (130 CMR 422.410(A)).

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

- (A) Activities of Daily Living. Activities of daily living include the following:
- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
  - (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
  - (3) bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
  - (4) dressing or undressing: physically assisting a member to dress or undress;
  - (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
  - (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
  - (7) toileting: physically assisting a member with bowel and bladder needs.
- (B) Instrumental Activities of Daily Living. Instrumental activities of daily living include the following:
- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
  - (2) meal preparation and clean up: physically assisting a member to prepare meals;
  - (3) transportation: accompanying the member to medical providers; and
  - (4) special needs: assisting the member with:
    - (a) the care and maintenance of wheelchairs and adaptive devices;
    - (b) completing the paperwork required for receiving personal care services; and
    - (c) other special needs approved by the MassHealth as being instrumental to the health care of the member.
- (C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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 will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

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 the MassHealth. Services that are less costly to the MassHealth include, but are not limited to, health care reasonably known by the provider or identified by the 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.

See 130 CMR 450.204

MassHealth approved the appellant's time request for assistance with all activities except for time requested for assistance with medicated lotion application and meal prep. MassHealth reinstated time for grooming therefore this issue is DISMISSED.

The appellant requested PCA assistance with the application for medicated lotion for 10 minutes, 2 times per day for 7 days a week. MassHealth modified this request to 5 minutes, 2 times per day for 7 days a week. The MassHealth Optum representative testified that 5 minutes per day is the maximum allowed for someone who needs full assistance. The appellant's mother testified that the lotion is applied to affected areas of the appellant's body while he is in bed and before he is dressed in the morning and after he is undressed in the evening. Since the appellant is already getting dressed and undressed during the time the lotion is applied the maximum time allowed is sufficient. For this reason, the appeal for lotion application is DENIED.

The appellant requested PCA assistance with meal prep for 95 minutes per day for 7 days a week. MassHealth modified this request to 90 minutes per day 7 days a week. The MassHealth Optum representative testified that 90 minutes per day is the maximum allowed for someone who needs full assistance. There is no evidence that the appellant is losing any weight or that he is currently not receiving the appropriate nutrition thus no special circumstances exist for the appellant to warrant extra time for meal prep beyond the maximum allowed. The appeal for meal prep time 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.

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Christine Therrien  
Hearing Officer  
Board of Hearings

cc: Optum MassHealth LTSS  
