

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Dismissed;  
Approved;  
Denied

**Appeal Number:** 2155741

**Decision Date:** 9/22/2021

**Hearing Date:** 09/09/2021

**Hearing Officer:** Patricia Mullen

**Appearance for Appellant:**




**Appearance for MassHealth:**

Cheryl Eastman, 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

<b>Appeal Decision:</b>	Dismissed; Approved; Denied	<b>Issue:</b>	PCA Service Hours Increase Request
<b>Decision Date:</b>	9/22/2021	<b>Hearing Date:</b>	09/09/2021
<b>MassHealth's Rep.:</b>	Cheryl Eastman, RN, Optum	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South Tower		

## 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 13, 2021, MassHealth modified the appellant's request for prior authorization for an increase of 22.75 hours per week in PCA day/evening services and approved an increase of 11.75 hours, because MassHealth determined the additional time requested for assistance with certain activities did not satisfy the PCA and medical necessity regulations. (see 130 CMR 450.204; 422.410 and exhibit 1). The appellant filed this appeal in a timely manner on July 23, 2021. (see 130 CMR 610.015(B) and exhibit 2). 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 an increase in 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 was represented telephonically by her daughter/authorized representative. 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, Independence Associates, submitted a request for an increase of 22.75 hours in day/evening PCA services on July 6, 2021. (Testimony). By notice dated July 14, 2021, MassHealth approved an increase of 11.75 hours per week in day/evening PCA services. (Testimony, exhibit 1). The MassHealth representative testified that the appellant's provider initially requested 42.5 hours a week in day/evening services and 14 hours a week for a nighttime attendant on April 9, 2021 and MassHealth approved the request in full by notice dated April 16, 2021. (Exhibits 1, 4, p. 3). The increase of 11.75 hours per week in day/evening services raises the appellant's total to 54.25 hours a week in day/evenings services, plus 14 hours a week for the nighttime attendant. (Testimony).

The MassHealth representative testified that MassHealth modified the time requested for an increase in PCA assistance with mobility, bathing, quick wash, eating, bladder care, and bowel care, and denied the time requested for an increase in PCA assistance with grooming and housekeeping. The appellant's representative stated that in the past, the appellant has had 64.5 hours a week in PCA services and she does not know why the provider only requested 42.5 hours in April, 2021.

The appellant is diagnosed with meningioma, has unsteady gait, dizziness, tremors, and is memory impaired. (Exhibit 4, p. 9). The appellant's representative testified that the appellant is also blind and has a history of falls. The appellant's representative stated that the appellant needs assistance with moving from one room to another

Mobility: The appellant's provider requested 5 minutes, 6 times a day for PCA assistance with mobility, noting that the appellant is moderate assist for transfers and ambulation due to progressive weakness, ataxia, tremors, and pain. (Exhibit 4, p. 10). MassHealth approved 2 minutes, 6 times a day for PCA assistance with this task. The MassHealth representative stated that the appellant is approved for 3 minutes, 6 times a day for PCA assistance with transfers, and such time coupled with the 2 minutes time for task for assistance with mobility, totals 5 minutes, 6 times a day for PCA assistance with getting from one room to another. The MassHealth representative noted that an additional 5 minutes time for task was approved for PCA assistance with climbing stairs 4 times a day. The MassHealth representative stated that the appellant was approved for 5 minutes, 6 times a day for PCA assistance with moving from room to room and an additional 5 minutes, 4 times a day for assistance with going up and down the stairs in her home.

After hearing testimony at the hearing, the appellant's representative agreed to withdraw the appeal of time approved for PCA assistance with mobility/transfers.

Bathing: The appellant's provider requested 40 minutes a day for PCA assistance with bathing and 15 minutes a day for PCA assistance with a quick wash. (Exhibit 4, p. 10). The appellant was originally approved for 20 minutes a day for PCA assistance with bathing and 5 minutes a day for PCA assistance with a quick wash. (Exhibit 4, p. 10). The MassHealth representative stated that MassHealth approved 30 minutes a day for PCA assistance with bathing and 10 minutes a day for PCA assistance with a quick wash. The MassHealth representative testified that such time includes assistance with transfers. After hearing testimony at the hearing, MassHealth agreed to approve the requested 15 minutes for PCA assistance with quick wash and the appellant's representative withdrew the appeal as to that issue.

The MassHealth representative stated that 40 minutes for assistance with showering is longer than ordinarily required for someone with the appellant's needs. The appellant's representative testified that the appellant showers after breakfast and the appellant's bathroom is on the second floor of her home. The appellant needs assistance with transfers up the stairs and into the shower and assistance with a full shower and hair wash. (Testimony). The appellant's representative stated that the appellant needs assistance with transferring into her shower chair, washing her body, using pumice stone on her feet, shampooing hair, assist out of shower chair, and drying off. The appellant's representative stated that it takes 40 minutes from the time the PCA assists the appellant into the shower to the time the PCA has dried the appellant off, and such time does not include the transfer time on the stairs.

Grooming: The appellant was originally approved for 15 minutes a day for PCA assistance with grooming and the appellant's provider requested an increase of 7 minutes a day for PCA assistance with grooming. (Exhibit 4, p. 10). MassHealth denied the requested increase. (Testimony). The MassHealth representative stated that 15 minutes a day is the maximum amount of time for PCA assistance with grooming for someone with the appellant's physical ability and the additional time requested is longer than ordinarily required for assistance with grooming. The MassHealth representative stated that 3 minutes a day was approved for PCA assistance with combing/brushing hair, 2 minutes, twice a day was approved for PCA assistance with brushing teeth, 10 minutes a week was approved for shaving, 10 minutes a week was approved for nail care, and 5 minutes a day was approved for lotion application. (Exhibit 4, p. 18).

The appellant's representative stated that the appellant has short hair but uses products and the PCA trims her hair once a week. The MassHealth representative stated that hair cutting and styling is not considered medically necessary and is not a covered PCA task. The appellant's representative withdrew the appeal with regard to PCA assistance with grooming.

Eating: The appellant was originally approved for 10 minutes, 3 times a day for PCA assistance with eating and the provider requested an additional 10 minutes, 3 times a day for PCA assistance with eating. (Exhibit 4, p. 11). MassHealth approved 15 minutes, 3 times a day for PCA assistance with eating. (Testimony). The MassHealth representative stated that time for task is for PCA hands on assistance only and not time spent waiting for the appellant to chew and swallow nor time spent waiting during a meal. The MassHealth representative stated that 15 minutes time for task for eating is the standard of care for moderate assist and the appellant is listed as being moderate assist for eating.

After hearing testimony, the appellant's representative did not dispute the time approved and withdrew the appeal of the modification of time for PCA assistance with eating.

Bladder/Bowel care: After hearing testimony at hearing, the appellant's representative did not dispute the time approved for bladder and bowel care and withdrew the appeal of the modification of time for PCA assistance with bladder/bowel care. (Exhibit 4, p. 11).

Housekeeping: The appellant was originally approved for one hour a week for PCA assistance with housekeeping and the provider requested an increase of 30 minutes a week. (Exhibit 4, p. 11). The MassHealth representative stated that 60 minutes is the standard for PCA assistance with housekeeping and the appellant has no unusual housekeeping needs. The appellant's provider requested 35 minutes a week for PCA assistance with durable medical equipment maintenance and cleaning and such time was approved. (Exhibit 4, p. 11).

The appellant's representative stated that the appellant needs help with all housekeeping including sweeping, mopping, washing dishes, dusting, laundry, cleaning the bathroom, and she does not think an hour is enough time for assistance with housekeeping. The appellant's representative stated that the bathroom is high traffic with PCAs and nurse's aides using it and it takes about an hour just to clean the bathroom. The appellant's representative stated that the appellant has a nurse's aide through Elder Services every night from 9 pm to 5-7 am. The appellant's representative stated that the appellant does not use the nighttime attendant hours and would like those hours to be available during the day.

The MassHealth representative stated that the appellant was approved for the requested 90 minutes a week for PCA assistance with laundry, and was approved for the requested time for PCA assistance with meal preparation and clean up, which includes washing dishes. The MassHealth representative stated that the nurse's aide is expected to assist with housekeeping.

## **Findings of Fact**

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

1. On April 9, 2021, the appellant's provider, Independence Associates, requested 42.5 hours a week in PCA day/evening services and 14 hours a week for a nighttime attendant and MassHealth approved the request in full by notice dated April 16, 2021.
2. On July 6, 2021, the appellant's provider submitted a request for an increase of 22.75 hours in day/evening PCA services; by notice dated July 14, 2021, MassHealth approved an increase of 11.75 hours per week in day/evening PCA services.
3. MassHealth modified the time requested for an increase in PCA assistance with mobility, bathing, quick wash, eating, bladder care, and bowel care, and denied the time requested for an increase in PCA assistance with grooming and housekeeping.

4. The appellant is diagnosed with meningioma, has unsteady gait, dizziness, tremors, and is memory impaired; the appellant is blind and has a history of falls.
5. After testimony at hearing, MassHealth approved the requested 15 minutes time for task for PCA assistance with a quick wash.
6. After testimony at hearing, the appellant's representative withdrew the appeal regarding mobility, quick wash, eating, bladder/bowel care, and grooming.
7. The appellant's provider requested 40 minutes a day for PCA assistance with bathing and MassHealth approved 30 minutes a day for PCA assistance with bathing.
8. Time for task for bathing includes time for assistance with transfers.
9. The appellant showers after breakfast and the appellant's bathroom is on the second floor of her home; the appellant needs assistance with transfers up the stairs and into the shower chair; the appellant needs assistance with washing her body, using pumice stone on her feet, shampooing hair, assist out of shower chair, and drying off.
10. The appellant was originally approved for one hour a week for PCA assistance with housekeeping and the appellant's provider requested an increase of 30 minutes a week.
11. The appellant is approved for 35 minutes a week for PCA assistance with durable medical equipment maintenance and cleaning.
12. The appellant has a nurse's aide through Elder Services every night from 9 pm to 5-7 am.
13. The appellant is approved for the requested 90 minutes a week for PCA assistance with laundry and for the requested time for PCA assistance with meal preparation and clean up.

## **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).

MassHealth modified the time requested for an increase in PCA assistance with mobility, bathing,



quick wash, eating, bladder care, and bowel care, and denied the time requested for an increase in PCA assistance with grooming and housekeeping. At the hearing, MassHealth approved the time requested for an increase in PCA assistance with quick wash, and the appellant's representative withdrew the appeal as to that issue. The appellant's representative did not dispute the adjustments made to the request for PCA assistance with mobility, grooming, eating, bladder and bowel care and withdrew the appeals of those issues. The appeal is dismissed as to those issues. (130 CMR 610.035(A)(2), (8)). The only remaining tasks modified/denied by MassHealth that remain in dispute, are PCA assistance with bathing and housekeeping.

The appellant's provider requested 40 minutes a day for PCA assistance with bathing, and such time includes assistance with transfers to the bathroom. MassHealth argued that 30 minutes time for task was sufficient for PCA assistance with this task. The appellant needs assistance with transferring up the stairs to the bathroom for her shower. MassHealth noted that transfer/mobility assistance takes a total of 10 minutes when using the stairs (5 minutes for assistance with transfer/ambulation from wherever the appellant is sitting and 5 minutes for transferring up the stairs). The PCA assists the appellant with all aspects of showering including assisting her onto the shower chair, washing her body, pumicing her feet, shampooing hair, assisting out of the shower chair, and drying her. I determine that 40 minutes is a reasonable amount of time for PCA assistance with showering transfers and showering. The appeal is approved as to this issue.

The appellant's provider requested 90 minutes a week for PCA assistance with housekeeping and MassHealth approved 60 minutes a week for this task. The appellant has no extraordinary housekeeping needs. Time requested for cleaning medical equipment, laundry, and meal prep clean up was approved in full. Although the appellant has PCAs and nurse's aides using her bathroom, the PCA is not meant to clean up after anyone other than the appellant. The nurse's aides should be sharing the housekeeping tasks as well. One hour is the standard for housekeeping for someone with the appellant's needs and is sufficient for PCA assistance with housekeeping tasks the appellant may need help with. MassHealth's modification is upheld and the appeal is denied as to this issue.

## **Order for MassHealth**

Rescind aid pending. Modify the notice dated July 13, 2021 and approve a total of 40 minutes, once a day for PCA assistance with bathing and 15 minutes, once a day, for PCA assistance with a quick wash; proceed with modifications set forth in the notice dated July 13, 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.

## 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.

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Patricia Mullen  
Hearing Officer  
Board of Hearings

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