

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2155746
<b>Decision Date:</b>	10/04/2021	<b>Hearing Date:</b>	09/10/2021
<b>Hearing Officer:</b>	Christine Therrien		

Appearance for Appellant:




Appearance for MassHealth:

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>	Denied	<b>Issue:</b>	PCA
<b>Decision Date:</b>	10/04/2021	<b>Hearing Date:</b>	09/10/2021
<b>MassHealth's Rep.:</b>	Cheryl Eastman, R.N.	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Chelsea MassHealth Enrollment Center		

## Authority

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

## Jurisdiction

The appellant received a notice dated 7/20/2021 stating: "Your request for prior authorization for personal care attendant (PCA) services has been modified" (Exhibit 1). The appellant filed this appeal timely on 7/23/2021 (130 CMR 610.015(B); Exhibit 2). Denial of prior approval 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 47 hours day/evening hours per week and 2 nighttime hours per day of PCA services was received on behalf of the appellant dated 4/28/2021. The Optum MassHealth representative testified that the PA request was modified on 6/24/2021 to 39 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per day. The appellant was 46 years old at the time of the PA and is diagnosed with memory loss. The appellant lives with his

family. The Optum MassHealth representative stated modifications were made to the appellant's request for Activities of Daily Living (ADLs) transfers, bathing, grooming (hair, shaving, lotion), and undressing as well as Instrumental Activities of Daily Living (IADLs) laundry, housekeeping, and shopping. The Optum MassHealth representative testified the appellant requested 5 minutes, 6 times a day, 7 days a week for transfers. MassHealth modified this request to 2 minutes for each episode. The Optum MassHealth representative testified the appellant requested 4 minutes, 4 times a day, 7 days a week for assistance with stairs. MassHealth modified this request to 2 minutes for each episode. The Optum MassHealth representative testified the appellant requested 60 minutes, 1 time a day, 7 days, for bathing. MassHealth modified this request to 40 minutes for each episode. The Optum MassHealth representative testified the appellant requested 5 minutes, 1 time a day, 7 days for brushing hair. MassHealth modified this request to 1 minute for each episode. The Optum MassHealth representative testified the appellant requested 5 minutes, 1 time a day, 7 days a week for applying lotion. MassHealth modified this request to 3 minutes for each episode. The Optum MassHealth representative testified the appellant requested 10 minutes, 1 time a day, 4 days a week for shaving. MassHealth modified the request to 3 days a week. The Optum MassHealth representative testified the appellant requested 18 minutes, 1 time per day, 7 days per week for undressing. MassHealth modified the request to 15 minutes per episode. MassHealth modified each of these requests because they are longer than ordinarily required for someone with your level of assistance. The Optum MassHealth representative testified that the appellant is listed as needing maximum assistance with all ADLs. The Optum MassHealth representative testified that the time allowed is the maximum time in the time for task took for each ADL. The Optum MassHealth representative testified the appellant requested 60 minutes, 1 time a week each for laundry. MassHealth modified this request to 30 minutes. The Optum MassHealth representative testified the appellant requested 45 minutes, 1 time per week for shopping and housekeeping. MassHealth modified these requests to 30 minutes each. The Optum MassHealth representative testified all the IADLs were modified because the appellant lives with two other household members who receive PCA services and IADLs are shared. The Optum MassHealth representative testified that the maximum time allowed for laundry, shopping, and housekeeping is 90 minutes and each household member receiving PCA services is allotted 30 minutes.

The appellant was representative by his spouse and an aunt and uncle. The appellant's spouse testified that the appellant needs extra time with transfers because he does not respond right away and the PCA must wait for him. Additionally, the appellant's spouse testified that the appellant insists on being shaved four times a week. The appellant's spouse testified that each person in the house has a different PCA so it is hard to share the time.

## **Findings of Fact**

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

1. A request for 47 hours day/evening hours per week and 2 nighttime hours per day of PCA services was received on behalf of the appellant dated 4/28/2021 (Exhibit 4).
2. The PA request was modified on 6/24/2021 to 39 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per day (Exhibit 4).

3. The appellant was 46 years old at the time of the PA and is diagnosed with memory loss (Exhibit 4).
4. The appellant lives with his family (Exhibit 4).
5. Modifications were made to the appellant's request for ADLs transfers, bathing, grooming (hair, shaving, lotion), and undressing as well as IADLs laundry, housekeeping, and shopping (Exhibit 4).
6. The appellant requested 5 minutes, 6 times a day, 7 days a week for transfers. MassHealth modified this request to 2 minutes for each episode (Exhibit 4).
7. The appellant requested 4 minutes, 4 times a day, 7 days a week for assistance with stairs. MassHealth modified this request to 2 minutes for each episode (Exhibit 4).
8. The appellant requested 60 minutes, 1 time a day, 7 days, for bathing. MassHealth modified this request to 40 minutes for each episode (Exhibit 4).
9. The appellant requested 5 minutes, 1 time a day, 7 days for brushing hair. MassHealth modified this request to 1 minute for each episode (Exhibit 4).
10. The appellant requested 5 minutes, 1 time a day, 7 days a week for applying lotion. MassHealth modified this request to 3 minutes for each episode (Exhibit 4).
11. The appellant requested 10 minutes, 1 time a day, 4 days a week for shaving. MassHealth modified the request to 3 days a week (Exhibit 4).
12. The appellant requested 18 minutes, 1 time per day, 7 days per week for undressing. MassHealth modified the request to 15 minutes per episode (Exhibit 4).
13. MassHealth modified each of these requests because they are longer than ordinarily required for someone with your level of assistance (Exhibit 4).
14. The appellant requested 60 minutes, 1 time a week each for laundry. MassHealth modified this request to 30 minutes (Exhibit 4).
15. The appellant requested 45 minutes, 1 time per week for shopping and housekeeping. MassHealth modified these requests to 30 minutes each (Exhibit 4).
16. The IADLs were modified because the appellant lives with two other household members who receive PCA services and IADLs are shared. The maximum time allowed for laundry, shopping, and housekeeping is 90 minutes and each household member receiving PCA services is allotted 30 minutes (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 (ADL'S) (130 CMR 422.410(A)).

130 CMR 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.

(emphasis added)

Since the appellant is living with his spouse and two other PCA recipients the appellant will split the maximum of 90 minutes for laundry, housekeeping, and shopping.

Pursuant to 130 CMR 422.412, “Noncovered Services:”

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;**
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (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.

(emphasis added)

The appellant suffers from memory loss and does not move when directed thus requiring the PCA to wait for him. MassHealth does not pay for the time the PCA has to wait or cue the appellant to get up or transfer from place to place. Due to the appellant's memory loss he requires maximum assistance with all ADLs. MassHealth took into consideration the time it ordinarily takes to perform each ADL and allotted time for each task accordingly. The appellant's spouse did not identify anything unique to the appellant that caused the ADLs to take longer than ordinary for maximum hands on assistance. For these reasons this appeal is denied.

## **Order for MassHealth**

None.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Christine Therrien  
Hearing Officer  
Board of Hearings

cc: Optum MassHealth LTSS