

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Dismissed in Part; Denied in Part	<b>Appeal Number:</b>	2176752
<b>Decision Date:</b>	11/24/2021	<b>Hearing Date:</b>	10/14/2021
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**  
*Pro se via telephone*

**Appearance for MassHealth:**  
Mary-Jo Elliott, RN *via telephone*



*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>	11/24/2021	<b>Hearing Date:</b>	10/14/2021
<b>MassHealth's Rep.:</b>	Mary-Jo Elliott, RN	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<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 July 2, 2021, MassHealth modified the appellant's prior authorization (PA) request for MassHealth personal care attendant (PCA) services. (See 130 CMR 422.000 *et seq*, EOM 20-09, and Exhibit 1). The appellant filed this appeal in a timely manner on August 31, 2021. (See 130 CMR 610.015(B) and Ex. 2). Contesting the modification of a PA request is valid grounds for appeal. (See 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000 *et seq*, in determining that the PA request should be modified.

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The appellant is an individual under the age of 65 with diagnoses of systemic sclerosis, post-traumatic stress disorder (PTSD), gastroesophageal reflux disease (GERD), irritable bowel syndrome (IBS), dysmenorrhea, small intestine bacterial overgrowth (SIBO), and chronic obstructive pulmonary disease (COPD). (Ex. 4, p. 9). The Personal Care Management agency (PCM) submitted a

PCA PA reevaluation request on June 21, 2021. (Ex. 4, pp. 8-37). The PCM requested 41 hours, 0 minutes of day and evening PCA services and 2 hours of nighttime PCA services per night for one year. (Ex. 1; Ex. 4, p. 6). In the notice dated August 8, 2021, MassHealth approved 37 hours, 0 minutes of day and evening PCA services and 2 hours of PCA services per night from August 9, 2021 through August 8, 2022. (Ex. 1; Ex. 4, pp. 3, 6). The reductions in the requested times were the result of modifications to the time requested for four activities of daily living (ADLs) and instrumental ADLs (IADLs). (Id.). During the course of the hearing, MassHealth determined that the time for mobility, other grooming tasks, and shopping should be approved as requested.

This left the modification MassHealth made to the IADL concerning the PCA's assistance with the appellant's service dog. The provider requested 140 minutes of day and evening hours per week to allow the PCA to care for the dog, which meant feeding and taking the dog out twice daily. (Ex. 4, p. 27). The provider was therefore request 10 minutes, 2 times per day, 7 days per week. (Id.). MassHealth modified this to 5 minutes, 2 times per day, 7 days per week (or 70 minutes per week total). (Ex. 1; Ex. 4, p. 6). The MassHealth representative stated that requesting time for the care of a service dog was unusual in that it was not really an IADL. The MassHealth representative stated that generally PCA clients are responsible for the care of their service animals. The MassHealth representative stated that for that reason she would not increase the time for this IADL beyond what was modified. For her part, the appellant stated that it is unclear how long it took the PCA to take the dog out of the building and on a walk. The appellant stated that she lives on the fifth floor, so there must be some time spent waiting for the elevator. The appellant did not provide any specifics, however.

## Findings of Fact

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

1. The appellant is an individual under the age of 65 with diagnoses of systemic scleroderma, PTSD, GERD, IBS, dysmenorrhea, SIBO, and COPD. (Ex. 4, p. 9).
2. The PCM submitted a PCA PA reevaluation request on June 21, 2021 requesting 41 hours, 0 minutes of day and evening PCA services and 2 hours of nighttime PCA services per night for one year. (Ex. 1; Ex. 4, pp. 7, 8-37).
3. In a notice dated August 8, 2021, MassHealth approved 37 hours, 0 minutes of day and evening PCA services and 2 hours of PCA services per night from August 9, 2021 through August 8, 2022. (Ex. 1; Ex. 4, pp. 3, 6).
4. The reductions in the requested times were the result of modifications to the time requested for four ADLs and IADLs. (Id.).
5. During the course of the hearing, MassHealth determined that the time for mobility, other grooming tasks, and shopping should be approved as requested.
6. MassHealth modified the requested time for an IADL concerning the PCA's assistance with the appellant's service dog.

7. The provider requested 140 minutes of day and evening hours per week to allow the PCA to care for the dog, which meant feeding and taking the dog out twice daily. (Ex. 4, p. 27).
8. The provider was therefore requesting 10 minutes, 2 times per day, 7 days per week. (Ex. 4, p. 27).
9. MassHealth modified this to 5 minutes, 2 times per day, 7 days per week (or 70 minutes per week total). (Ex. 1; Ex. 4, p. 6).

## Analysis and Conclusions of Law

MassHealth or the acting entity may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*). During the hearing, MassHealth determined that the time for mobility, other grooming tasks, and shopping should be approved as requested. The appellant obviously did not object to this. For that reason, regarding mobility, other grooming tasks, and shopping, the appeal is DISMISSED.

Reevaluations must be conducted annually, or more frequently when a significant change in the member's physical condition or living situation has occurred. The reevaluation must accurately represent the member's need for physical assistance with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs), and must consider the member's physical and cognitive condition and resulting functional limitations to determine ability to benefit from PCA services. (130 CMR 422.422(D)).

MassHealth may deny requests for prior authorization for PCA services where, amongst other reasons, the services being requested in the reevaluation are not covered under the MassHealth PCA program. (130 CMR 422.422(C)(4)(f)).

MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs specified in the re-evaluation, and as authorized by the MassHealth agency. (130 CMR 422.411(A)).

IADLs are those specific activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services. (130 CMR 422.402). The regulations state that IADLs 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. (130 CMR 422.410(B)).

The appellant has not shown by a preponderance of the evidence that MassHealth incorrectly determined the time for PCA assistance with the appellant's service dog. MassHealth decided, based on the evidence in the written record, that the time requested by the PCM was excessive. They then modified the time requested, reducing it by half. In her testimony, the appellant could not with any specificity describe how much time it took the PCA to take the service dog on a walk. Without more information, it is easy to determine that MassHealth made the correct decision.

For that reason, with regards to this IADL the 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.

## **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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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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