

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	APPROVED IN PART; DENIED IN PART; DISMISSED IN PART	Appeal Number:	2176889
Decision Date:	1/10/2022	Hearing Date:	12/03/2021
Hearing Officer:	Christopher Taffe		

Appearances for Appellant:



Appearance for MassHealth:

Donna Burns, RN (Appeals Nurse and
Clinical Reviewer from OPTUM)
(by phone)



*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

Appeal Decision:	APPROVED IN PART; DENIED IN PART; DISMISSED IN PART	Issue:	Prior Authorization – Personal Care Attendant hours
Decision Date:	1/10/2022	Hearing Date:	12/03/2021
MassHealth's Rep.:	D. Burns, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	HarborSouth Tower, Quincy	Aid Pending:	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 August 13, 2021, MassHealth modified Appellant's Prior Authorization (PA) request for 46.00 day and evening hours/week of Personal Care Attendant (PCA) services for the period from 10/2/2021 through 10/1/2022 by approving 35.75 day and evening PCA hours/week.¹ See Exhibit 1; 130 CMR 422.410 and 130 CMR 450.204. Appellant filed a timely appeal with the Board of Hearings on September 8, 2021. See 130 CMR 610.015(B). Challenging a determination of the scope of MassHealth assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Because of the timing of Appellant's appeal filing and the effective dates of the PA period related to the request, Appellant received Aid Pending protected benefits for the pendency of this appeal; the amount of day and evening PCA hours protected is 44.75 hours/week.² See Exhibit 1; 130 CMR

¹ MassHealth approved in full the request for 2.0 "nighttime" hours per day (during the period from 12 midnight to 6:00 A.M.) of PCA assistance for the PA period. There is no appealable dispute about this decision; the remainder of the text of the decision will thus focus on the dispute involving "day and evening" hours, which run from 6:00 A.M. to 12 midnight.

² In the prior PA years from October 2020 to October 2021, Appellant had been previously approved for an amount of hours less than 44.75, but that PA had been increased to 44.75 hours/week due to an interim adjustment during the 12 months between October 2020 and October 2021. At hearing, the MassHealth Representative stated that she believed the Aid Pending protection should have technically been for less than 44.75 hours; the Hearing Officer does not believe that is correct but such issue is mooted by the fact that 44.75 hours has been protected while this

610.036.

On September 15, 2021, the Board of Hearings scheduled this matter for a Fair Hearing to be held on October 15, 2021. See Exhibit 2. On October 14, 2021, Appellant requested and received approval of a rescheduling request. See Exhibit 3; 130 CMR 610.048. Per this Appellant request, the hearing was subsequently scheduled for and heard on December 3, 2021. See Exhibit 4.

Action Taken by MassHealth

MassHealth approved only a portion of the PCA time requested by Appellant and approved 35.75 day and evening PCA hours/week.

Issue

Is Appellant entitled to any adjustment which can serve to increase the amount of PCA time previously approved by MassHealth?

Summary of Evidence

Appellant, her Appeal Representative, and her personal PCA appeared and testified at hearing by phone. Ms. Burns, a registered nurse, also appeared in person to provide testimony on behalf of the OPTUM, the MassHealth contractor who helps to administer some of the agency's prior approval services.

The MassHealth Personal Care Attendant program involves unskilled and unlicensed personnel who are hired to assist members with physical disabilities by providing paid time for hands-on assistance with a member's Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). The PA review process utilized by the MassHealth PCA program allows the agency to determine medical necessity for the minutes requested by the member and make "modifications" where appropriate; the PCA time approved by MassHealth must be based on the member's capabilities, bear a relationship to the member's diagnosis and request, and comply with the applicable MassHealth PCA regulations.

At the time of the PA request in question, Appellant is a ■-year old who lives by herself in the community with a primary chronic condition of fibromyalgia which she has had for over 20 years. Appellant also has notable other comorbidities which include but are not limited to severe osteoarthritis, osteoporosis, chronic headaches including migraines, anxiety disorder, ruptured lumbar disc, and sciatica. She has a medical history of both strokes and falls due in part to chronic dizziness and poor balance. She ambulates with a walker with an attached platform; Appellant also suffered a fall in February of 2021 resulting in a left hand injury and she also had a subsequent fall resulting in a hip fracture or injury that needed a four week stay at a center for physical

decision is pending.

rehabilitation.

For the PA request at issue, Appellant's PCA provider, Stavros Center for Independent Living (Stavros), submitted a request for 2,753 minutes/week, which is equivalent to and/or rounded up to the nearest 15-minute increment of 46.00 hours/week. The MassHealth denial notice indicated that the agency approved the PCA time requested in full for most of the tasks on the request, but the agency made modifications to 7 different activities, resulting in a reduction of 616 minutes or a grand total (after rounding) of 35.75 hours/week. A summary of the modifications to the 7 activities initially made by MassHealth, is found below:

Issue #	Activity	Request of Appellant is...	MassHealth Approved...	Decrease caused by MassHealth's Modifications
1	Mobility (ADL)	5 minutes of PCA time, 4 times a day, 7 days a week, totaling 140 minutes/week	3 minutes of PCA time, 4 times a day, 7 days a week, totaling 84 minutes/week	56 minutes/week
2	Transfers (ADL)	6 minutes of PCA time, 8 times a day, 7 days a week, totaling 336 minutes/week	2 minutes of PCA time, 8 times a day, 7 days a week, totaling 112 minutes/week	224 minutes/week
3	Bathing – Oral Care (ADL)	5 minutes of PCA time, 2 times per day, 7 days a week, totaling 70 minutes/week	2 minutes of PCA time, 2 times per day, 7 days a week, totaling 28 minutes/week	42 minutes/week
4	Bathing – Other Grooming (ADL)	5 minutes of PCA time, 1 time per day, 7 days a week, totaling 35 minutes/week	3 minutes of PCA time, 1 time per day, 7 days a week, totaling 21 minutes/week	14 minutes/week
5	Dressing (ADL)	25 minutes of PCA time, 1 time per day, 7 days a week, totaling 175 minutes/week	20 minutes of PCA time, 1 time per day, 7 days a week, totaling 140 minutes/week	35 minutes/week
6	Undressing (ADL)	20 minutes of PCA time, 1 time per day, 7 days a week, totaling 140 minutes/week	15 minutes of PCA time, 1 time per day, 7 days a week, totaling 105 minutes/week	35 minutes/week
7	Eating (ADL)	10 minutes of PCA time, 3 time per day, 7 days a week, totaling 210 minutes/week	No time	210 minutes/week
			Total Modifications from last column =	616 mins./week.

(Bolded emphasis added to highlight the specific differences between Columns 3 and 4.).

At hearing, after discussion and testimony from the Appellant, MassHealth restored and approved in full the requested time for the activities of (1) Undressing, (2) Bathing – Oral Care, and (3) Bathing – Other Grooming.

Transfers and Mobility

As to this activity, MassHealth's testimony explained that the activity of mobility was generally considered for moving from one place to another (i.e. bedroom to living room) while the transfer activity was more for assisting an individual in a different position (i.e. from lying in the bed to a standing position, or to a nearby chair). MassHealth indicated that it thought both three minutes was adequate amount of time to allow for assistance to go from one room to another, while two minutes would be sufficient to get a person in a standing position after a transfer. Appellant's PCA provided testimony as to the level of assistance; in response to follow-up questions about the act of transferring, Appellant's PCA admitted at one point that 4 minutes should be an adequate amount of time. MassHealth offered to give 4 minutes of assistance for the activity of transfers, but it was not accepted at hearing. With regard to mobility, testimony was provided that indicated that Appellant had an apartment with a long hallway or L-shape, and that Appellant needed to move slowly and needed constant care and attention during this process, which could result in a need for 5 minutes for a mobility activity. Appellant's PCA testified that with Appellant's health, every activity with her was much slower than last year, and she described how she would provide guidance walking behind Appellant so she did not fall.

Dressing

With regard to this activity, MassHealth testified that Appellant only had been approved for 15 minutes in the prior year and thought 20 minutes was a reasonable amount of time to assist someone with dressing, even if Appellant was totally dependent. Appellant and her PCA testified how the broken hand she had suffered earlier in the calendar year added to difficulties with this task. When asked whether there was a specific portion of the dressing activity that was more relatively difficult than other parts, no specifics were provided, other than that everything just took longer amounts of time.

At the end of this segment, MassHealth offered Appellant 23 minutes for the activity but Appellant did not accept that and indicated that Appellant wanted the full 25 minutes requested.

Eating

As to this activity, Appellant testified that she generally drinks coffee and eats foods such as muffins, sandwiches, fish, and asparagus. She is generally limited to the use of one good hand which makes using a fork and knife together difficult. Appellant did indicate that she is independent with the act of eating (i.e. she puts the food in her own mouth). Appellant's representatives also stated that a lot of time was needed for preparing the food (i.e. cutting food up into smaller bites or portions) and that a lot of time was needed for clean-up. MassHealth indicated that time for food prep and clean up was an IADL,³ separate from the ADL of Eating, which is generally limited and only allowed for those members with a direct and total dependence or need for

³ For the IADL of Meal Preparation and Clean-Up, Appellant separately requested and received approval on this PA for 525 minutes/week, or 75 minutes/day for her three meals (35 minutes for dinner, 25 minutes for lunch, and 15 minutes for breakfast).

feeding. Appellant's attorney representative indicated that while she knew the MassHealth regulation did not allow PCA time for cuing, guidance, or supervising, she believed that policy was inappropriate and unfair to a degree for this specific ADL and this situation where no assistance was provided for the member was an example of that.

Appellant's appeal representative submitted a letter dated October 28, 2021 from Appellant's physician in support of her patient. The letter reads in relevant part:

I have been taking care of [Appellant] for the last 12 years. Since then she has gradually deteriorated to the point where she needs a lot of assistance at home so she can stay at home as she is at increased risk of ending up in a skilled nursing facility. She has suffered multiple strokes (sic)⁴ she has had multiple compression fractures in her back (sic) this limits her ability to stand or sit for any significant amount of time (sic) she has fallen twice and she has broken multiple ribs and bones. As a result she needs at least 46 hours a week of care. She is able to feed herself but she needs supervision in transferring her food as she can only use one hand at a time...

(Exhibit 5)

Findings of Fact

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

1. Appellant's PCA provider, Stavros Center for Independent Living (Stavros), submitted a request for 2,753 minutes/week of day and evening PCA services, which is equivalent to and/or rounded up to the nearest 15-minute increment of 46.00 hours/week. (Testimony and Exhibits 1 and 6)
2. MassHealth approved all of the request except for seven activities where the amount requested was approved at a lower level, resulting in a total reduction of 616 minutes and a grand total (after rounding) of 35.75 approved day and evening PCA hours/week. (Testimony and Exhibits 1 and 6)
 - a. Nighttime PCA hours (2 hours/night) were requested and approved in full by the MassHealth agency. (Testimony and Exhibits 1 and 6)
3. MassHealth made the following seven modifications:

Issue #	Activity	Request of Appellant is...	MassHealth Approved...	Decrease caused by MassHealth's Modifications
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⁴ There are multiple punctuation errors (or omissions) in this letter from the doctor. This relevant section is reprinted in the most orderly way possible to avoid run on sentences. See Exhibit 6.

Issue #	Activity	Request of Appellant is...	MassHealth Approved...	Decrease caused by MassHealth's Modifications
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7	Eating (ADL)	10 minutes of PCA time, 3 time per day, 7 days a week, totaling 210 minutes/week	No time	210 minutes/week
			Total Modifications from last column =	616 mins./week.

(Testimony and Exhibit 6)

4. At hearing, MassHealth rescinded and approved in the requested time for the activities of
 - a. Undressing,
 - b. Bathing – Oral Care, and
 - c. Bathing – Other Grooming.
 (Testimony)
5. Appellant is a ■-year old who lives by herself in the community with a primary chronic condition of fibromyalgia which she has had for over 20 years. Appellant's medical comorbidities include severe osteoarthritis, osteoporosis, chronic headaches including migraines, anxiety disorder, ruptured lumbar disc, and sciatica.
 (Testimony and Exhibit 6)
6. Appellant has a medical history of both strokes and falls due in part to chronic dizziness and poor balance. She ambulates with a walker with an attached platform. Appellant also suffered a

fall in February of 2021 resulting in a left hand injury and she also had a subsequent fall later in 2021 resulting in a hip fracture or injury that needed a four week stay at a center for physical rehabilitation. (Testimony and Exhibit 6)

7. Appellant lives in an apartment with a long hallway and needs to be carefully guided by her PCA when walking to minimize the chance of falling. (Testimony and Exhibit 6)
8. Appellant needs 4 minutes to complete a transfer. (Testimony)
9. There is no specific evidence of what part of the dressing activity is the most difficult.
 - a. Appellant was approved for 15 minutes of PCA assistance for the ADL of dressing this year but MassHealth approved 20 minutes in the appealable action. At hearing, MassHealth offered 23 minutes of assistance for this activity based on Appellant's general testimony. (Testimony)
10. Appellant eats slow but is generally independent with her eating. She is generally able to use one hand and utensil when eating. Appellant is not physically fed by her PCA, as she is able to transfer foods and drinks independently from hand to mouth. (Testimony)

Analysis and Conclusions of Law

The regulations concerning PCA Services are found at 130 CMR 422.000 et seq. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when “(1) *they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.*” It is undisputed that this Appellant is a MassHealth member eligible for PCA services.

All requested PCA services must be medically necessary for prior authorization to be approved. A portion of the MassHealth regulation which applies to all providers, including the PCA program, and which describes what kind of services meet the definition of “*medical necessity*”, appears below:

130 CMR 450.204: Medical Necessity

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

(Emphasis added.)

The relevant portion of 130 CMR 422.410 which further defines the specific ADLs and IADLs covered by this program reads as follows:

422.410: 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 tubefeeding 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.*

(Bolded emphasis added.)

Another regulation relevant to this appeal is found in 130 CMR 420.412.

422.412: Non-covered 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.

(**Bolded** emphasis added.)

Although MassHealth made 7 modifications, there are three (Bathing – Oral Care, Bathing – Other Grooming, and Undressing,) which were rescinded and essentially approved in full for the member. As to that portion of the appeal, there is no remaining dispute to address so this appeal is DISMISSED IN PART per 130 CMR 610.051.

With the above regulations in mind, the analysis will turn to the disputed activities. As to the time for “Mobility” activities, the majority of the testimony from Appellant’s side throughout the hearing was most compelling and relevant when talking about this task and the guidance and time needed by Appellant from her PCA to safely move between locations within the home. It is here where the general slowness testified to by the PCA is most relevant. There is also a well-documented history of falls in the last 12 months, leading to injury and stressing the need for more time for this activity and for someone to provide hands-on assistance with this activity. Based on this Appellant’s testimony and current medical condition, I find the request for five minutes per mobility activity to be justified and medically appropriate, and I will APPROVE the requested time for this activity.

Regarding the related activity of transfers, in this case the hearing and questioning from MassHealth elicited direct testimony from the PCA that 4 minutes was an appropriate amount of time. In response, MassHealth in turn was willing to allow 4 minutes, but it was not formally accepted by Appellant’s side at hearing, who wanted to continue to seek 5 minutes for this activity. I find no evidence in the record suggesting it should be 5 minutes and thus the dispute over this activity will be APPROVED IN PART and DENIED IN PART; the amount of time for this activity will be increased to 4 minutes, and not to the full 5 minutes sought by Appellant.

As to the disputed activity of Dressing, neither Appellant nor her PCA provided specific testimony justifying what in this dressing activity required 25 minutes of activity. During this hearing,

MassHealth offered 23 minutes in response to the testimony and I find nothing in the record compelling to show why this once a day activity for this Appellant requires 25 minutes of hands-on assistance. Thus, I will deny the request for more than 23 minutes but allow the 23 minutes offered by the agency at hearing. This portion of the appeal is thus APPROVED IN PART and DENIED IN PART.

Finally, as to the disputed activity of eating, the regulation strongly suggests that time for assistance with this activity is generally limited to those who are very dependent on someone else for consuming their food or liquid. This Appellant is not someone who is fed through a g-tube, or who is paralyzed and needs food and drink brought to her mouth. The record reveals she can eat independently. Even her doctor's letter⁵ in Exhibit 6 does not raise a compelling case as to what assistance is needed per meal by the Appellant, and the record shows that Appellant does not need 10 minutes of hand-on assistance required per meal. Moreover, as correctly explained at hearing by MassHealth, additional time prepping and cutting food, or cleaning up post-meal is not covered by time allowed for this activity. That level of assistance is covered by the IADL time already approved elsewhere in full in her PA request. Appellant may also not have supervisory time approved. See 130 CMR 420.412(C). For these reasons I find the request to not be medically necessary and MassHealth's decision to award no time to be correct and supported by the record. This portion of the appeal is DENIED.

Based on the above, the appeal is APPROVED IN PART, DENIED IN PART, and DISMISSED IN PART. With these adjustments, I find the total time approved to be 40.50 hours/week.⁶

⁵ In general, the doctor's letter is of very limited value, in that, while it provides some specifics or greater detail on Appellant's health, capabilities, and medical limitations, the majority of that is already found in the record. Further, the physician's general statement of a need for 46 hours of PCA time is extremely conclusory, does not show how the doctor came to that specific number, and does not appear to be mindful of the rules, restrictions, or purpose of the PCA program; in short it is not as persuasive as the other evidence and testimony presented at hearing.

⁶ The total time approved is all time requested except for eating (0 time approved, for a decrease from the request of 210 minutes/week), dressing (161 minutes/week approved, for a decrease of 14 minutes/week), and transfers (224 minutes/week approved, for a decrease of 112 minutes/week). $210+14+112 = 336$ minutes/week not approved. As the original request sought 2,753 minutes, this means 2,417 minutes will be approved for this decision which is equal to 40.28 hours, which will be rounded up per MassHealth policy to the next 15-minute increment of 40.50 hours/week.

As always, MassHealth is encouraged to check the Hearing Officer's math. If MassHealth finds an error that should result in more time for Appellant, the agency may make that correction without notifying BOH. If MassHealth believe there was a math error that reduces Appellant's time improperly, the agency is encouraged to notify the Director or Deputy Director of the Board of Hearings for assistance or questions with appropriate implementation.

Order for MassHealth/OPTUM

Within 30 days of the date of this decision,

- Remove the Aid Pending protection of PCA benefits.
- Adjust the approved PCA time in accordance with this decision to allow for 40.50 day and evening hours/week of PCA time for the remainder of the current PA period.
- Send notice to Appellant and her PCA provider of the new amount of approved time in writing. As this implementation will result in a decrease in hours from the current/protected amount of PCA hours, Appellant and her PCA provider should be sent advance notice of the effective date of decrease of PCA hours at least one week prior to the effective date.

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 OPTUM through either the MassHealth Prior Authorization Unit (1-800-862-8341) or general MassHealth Customer Service (1-800-841-2900). 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: OPTUM MassHealth OLTSS

