

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Numbers:</b>	2178561
<b>Decision Date:</b>	3/03/2022	<b>Hearing Date:</b>	12/13/2021
<b>Hearing Officer:</b>	Samantha Kurkijy		

**Appearance for Appellant:**  
Pro se

**Appearances for MassHealth:**  
Cheryl Eastman, RN



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Prior Authorization for PCA Services
<b>Decision Date:</b>	3/03/2022	<b>Hearing Date:</b>	12/13/2021
<b>MassHealth Rep:</b>	Cheryl Eastman, RN	<b>Appellant's Rep:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

## Authority

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

## Jurisdiction

Through a notice dated September 29, 2021, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410; Exhibit 1). The appellant filed a timely appeal on November 7, 2021 (130 CMR 610.015(B)). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)). The hearing officer was on periods of medical leave due to a serious illness, which extends the deadline for rendering a hearing decision pursuant to 130 CMR 610.015(D)(4)(b).

## Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

## Issue

Whether the appellant has demonstrated the medical necessity of the services that were modified.

## Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified by phone. She testified that the appellant is a female in her [REDACTED] whose provider, [REDACTED] submitted a request for PCA services on her behalf. The appellant, who lives alone in accessible housing, has diagnoses that include Barbish microplastic bartonella, Lyme neuroborreliosis disease in the brain, peripheral neuropathy, severe neuromuscular joint disease, chronic Lyme disease with co-infections, CNS demyelination, Bell's Palsy, brain foci calcifications, and lumbar sacral radiculopathy (Exhibit 5, p. 9). On September 15, 2021, MassHealth received a prior authorization re-evaluation request for the appellant. The appellant seeks PCA services in the amount of 75.50 day/evening hours per week and 14 night hours per week. On September 29, 2021, MassHealth modified the request and authorized 66.50 day/evening hours per week and 14 night hours per week. The appellant seeks time for assistance with various activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

The appellant requested time for assistance with repositioning as follows: 15 minutes, 4 times per day, 7 days per week (Exhibit 5, p. 12). The nurse evaluator writes that the appellant is non-ambulatory and is primarily in bed with the exception of transfers out of her bed and in to her wheelchair. The appellant is dependent for repositioning in chair and bed and she needs frequent repositioning to alleviate pain/spasms and pressure. She notes that the appellant has had a decrease in functional movement to her upper and lower extremities due to neuromuscular joint disease, chronic pain, spasms, the residual effects of Lyme disease, and weakness (Exhibit 5, p. 12). MassHealth modified the request to 5 minutes, 6 times per day, 7 days per week on the basis that the time requested is longer than ordinarily required for someone with the appellant's physical needs.<sup>1</sup> The MassHealth nurse noted that 5 minutes is generally the maximum amount of time allowed to reposition someone in bed. She added that the time needed for repositioning the appellant during other tasks (such as before and after bedpan use) has been separately included with the time authorized for assistance with those tasks.

The appellant responded and stated that there is a lot involved in repositioning her in bed. She cannot roll onto her left side by herself, and needs help each time. Each time she is turned, her caregiver must remove the body bar above her bed, remove all pillows and sheets, and carefully turn her while supporting her hips and shoulders. The caregiver must then replace all the pillows (under her head, left shoulder, back, and feet), adjust the sheets, reposition her foot cradle, and replace the body bar. She stated that all of this takes more than a few minutes, and occurs multiple times per day.

The appellant requested time for assistance with bladder care as follows: 15 minutes, 10 times per day, 7 days per week (Exhibit 5, p. 19). The nurse evaluator writes that the appellant is dependent for this task. She needs maximum assistance to get on and get off the bedpan. She writes that the

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<sup>1</sup> The MassHealth nurse also noted that MassHealth modified the time for assistance with repositioning at night. Because the modification did not affect the appellant's total authorization of night hours (2 hours per night), this modification was not substantively addressed.

appellant requires frequent toileting (every two hours), and is dependent for cleaning and emptying the bedpan after each use, as well as for clothing management and hygiene care. Further, the appellant does experience urine leakage due to spillage and requires the changing of clothes and bed underpads. The appellant is unable to use absorbent briefs due to skin irritation and allergic reactions (Exhibit 5, p. 19). MassHealth modified the request to 15 minutes, 8 times per day, 7 days per week on the basis that the time requested is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth nurse indicated that MassHealth did not modify the time per task because it acknowledges that the appellant has issues with urine spillage. Rather, MassHealth modified the frequency only. The modification to 8 times per day is sufficient to meet the appellant's need for daytime toileting every 2 hours. Additionally, separate time has been authorized for bowel care, which also includes bladder care.

The appellant responded that due to an increase in some of her medications, she needs to use the bedpan more often. She also has diarrhea more now.

The appellant requested time for assistance with medications as follows: 10 minutes, 1 time per day, 7 days per week, as well as 5 minutes, 4 times per day, 7 days per week (Exhibit 5, p. 20). The nurse evaluator writes that the appellant is dependent for medication assistance due to impairments in her hands. She is unable to hold or open medication bottles or measure liquid medications. The PCA is directed by the appellant on medication preparation, mixing tinctures in liquids, and measuring doses. The PCA gives the appellant her medications and provides beverages so she can take the medications. The nurse evaluator notes that the appellant has numerous medications, which include prescribed supplements such as liquids, tinctures, tablets, and capsules, and that extra time is needed due to the number of medications the appellant takes and measuring the dosage of liquids (Exhibit 5, pp. 20-21). MassHealth approved the requested 5 minutes, 4 times per day, 7 days per week. However, MassHealth denied the requested 10 minutes, 1 time per day, 7 days per week because it could not identify which medication the appellant would need 10 minutes of assistance to administer. The MassHealth nurse noted that no time was requested for the PCA to pre-fill the appellant's medications. MassHealth would consider a request of this nature in the future.

The appellant responded and stated that she thinks the 10 minutes was requested for assistance with a medication she no longer takes and thus she does not need this time. Aside from that, the appellant stated that she takes medication 15 times between 7:00 a.m. and 3:00 p.m., 9 times between 4:00 p.m. and 6:30 p.m., and 5 times between 8:00 p.m. and 11:00 p.m. She stated that she takes medications in many forms, including liquids, powders, tablets, and ointments, and needs to wait in between some doses due to drug interactions. Also, she needs to take some of her medications with food.

The appellant's medication list is as follows:

Vitamin D 6000 IU po qd  
Probiotics 4 tabs po BID  
Famotidine 20 mg po BID

Senna 2 tabs po qhs  
Colace 200 mg po qhs  
Gabapentin 100 mg po qam  
MVI Complete 1 tab po QD  
Valium 5 mg po prn  
Tylenol 650 mg / tab takes 2 tabs po q8 hrs prn  
Benadryl 50 mg po prn  
Vitamin C 250 powder 1 tsp in liquid po BID  
Lactulose 10g / 15 ml po BID  
NP Thyroid 60 mg po QD  
Magnesium 1 tab qam and 2 tabs po qpm  
Creon DR 12000 units/cap 1 cap po TID  
Valacyclovir 500 mg/tab 2 tabs po BID  
DioVasc 500 mg po BID  
Dysbiox 2 tabs po BID  
Adrenal Caps 2 caps po BID  
Lugol's Solution 5% Iodine 1ml in 2 oz of liq po QD  
Naltrexone 4.5 mg / ml takes 1 ml po qhs  
Cod liver oil 1 tsp po qd  
Homocysteine 1 cap po TID  
pregneolone 50 mg po qd  
CoQMax 300 mg po QD  
Essential GSH liquid 5oz takes 1/2 tsp po BID  
Garlic pills 500 mg takes 2 tab po BID  
Saccharomyces boulardii 500 mg 1tab po BID  
Apple Cider Vinegar liquid added to water po QD  
N-acetyl-cysteine 1000 mg po qd  
Cimicifuga racemosa 5 pellets po BID  
phosphatidylcholine (PPC) 1 tsp po BID

(Exhibit 5, p. 9).

The appellant requested 105 minutes per week for assistance with housekeeping (Exhibit 5, p. 26). The nurse evaluator writes that the appellant is dependent for all housekeeping tasks. The appellant is primarily in her bed secondary to pain. The appellant is high-risk and has a history of susceptibility to infections. The PCA provides extra and special cleaning to the appellant's apartment and disinfects all commonly-touched surfaces daily (Exhibit 5, p. 26). MassHealth modified the request to 90 minutes per week on the basis that the time requested is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth nurse stated that 60 minutes per week is typically authorized for a single person. Here, MassHealth authorized 90 minutes because of the appellant's sensitivities and increased housekeeping needs.

The appellant responded that because of her diagnoses and sensitivities, the PCA does a lot of cleaning, including vacuuming more than once a day. The appellant noted that she lives in a

one-bedroom apartment.

The appellant requested 120 minutes per week for assistance with shopping (Exhibit 5, p. 26). The nurse evaluator writes that the appellant is dependent for all of her shopping needs, including personal care items, pharmacy pickups, and groceries. The appellant has special dietary needs and eats gluten free and organic food (Exhibit 5, p. 26). MassHealth modified the request to 90 minutes per week on the basis that the time requested is longer than ordinarily required for someone with the appellant's physical needs.

The appellant responded that she is on a Paleo and gluten-free diet. She needs to eat specific foods that are not available at her local store, such as organic foods. The PCA needs to travel to four different stores to get the foods she needs. She must also eat different foods every day for 4 days, without repeating. She therefore needs a lot of different foods available to cook and eat. The appellant also must have fresh produce, so the PCA has to shop more than once per week.

## Findings of Fact

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

1. The appellant is a female in her [REDACTED] who lives alone in accessible housing.
2. The appellant has diagnoses that include Barbish microplastic bartonella, Lyme neuroborreliosis disease in the brain, peripheral neuropathy, severe neuromuscular joint disease, chronic Lyme disease with co-infections, CNS demyelination, Bell's Palsy, brain foci calcifications, and lumbar sacral radiculopathy.
3. On September 15, 2021, MassHealth received a prior authorization re-evaluation request for the appellant.
4. The appellant seeks PCA services in the amount of 75.50 day/evening hours per week and 14 night hours per week.
5. On September 29, 2021, MassHealth modified the request and authorized 66.50 day/evening hours per week and 14 night hours per week.
6. The appellant requested time for assistance with repositioning as follows: 15 minutes, 4 times per day, 7 days per week; MassHealth modified the request and authorized 5 minutes, 6 times per day, 7 days per week.
7. The appellant is dependent for repositioning in bed.
8. The process for repositioning in bed is as follows: The caregiver removes the body bar above the bed, removes all pillows and sheets, and carefully turns the appellant while supporting her hips and shoulders. The caregiver then replaces all the pillows (under her

head, left shoulder, back, and feet), adjusts the sheets, repositions the foot cradle, and replaces the body bar.

9. The appellant requested time for assistance with bladder care as follows: 15 minutes, 10 times per day, 7 days per week; MassHealth modified the request to 15 minutes, 8 times per day, 7 days per week.
10. The appellant is dependent for bladder care and needs maximum assistance to get on and get off the bedpan.
11. The appellant requires frequent toileting every two hours.
12. The appellant requested time for assistance with medications as follows: 10 minutes, 1 time per day, 7 days per week, as well as 5 minutes, 4 times per day, 7 days per week; MassHealth modified the request to 5 minutes, 4 times per day, 7 days per week.
13. The appellant takes many different medications, some as frequently as 4 times per day.
14. The appellant had been taking a medication that she stated takes 10 minutes to administer, but she is no longer taking this medication.
15. The appellant requested 105 minutes per week for assistance with housekeeping; MassHealth modified this request to 90 minutes per week.
16. The appellant lives in a one-bedroom apartment.
17. The appellant is susceptible to infections and the PCA provides extra and special cleaning to the appellant's apartment and disinfects all commonly-touched surfaces daily.
18. The appellant requested 120 minutes per week for assistance with shopping; MassHealth modified this request to 90 minutes per week.
19. The appellant eats a special Paleo, gluten-free diet and eats a variety of fresh foods.

## **Analysis and Conclusions of Law**

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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.

There is no dispute between the parties that the above conditions have been met. The requested services must also be medically necessary for prior authorization to be approved. (See 130 CMR 422.216.) Pursuant to 130 CMR 450.204(A), a service is considered 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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

Regulation 130 CMR 422.410 describes 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.

The following services are covered by the MassHealth PCA program:

- (A) MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency.
- (B) MassHealth covers transitional living program services provided by an organization in accordance with 130 CMR 422.431 through 422.441 and the MassHealth agency's proposal requirements.

(130 CMR 422.411.)

The following services are not covered by the MassHealth PCA program:

- 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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

(130 CMR 422.412.)

(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(C).)

As set forth above, MassHealth modified the time requested for assistance with repositioning, bladder care, medication, housekeeping, and shopping. The evidence in the record indicates that the

appellant has not demonstrated the necessity for additional PCA assistance with these activities.

MassHealth modified the time requested for assistance with repositioning the appellant in bed on the basis that time requested is longer than ordinarily required for someone with the appellant's physical needs. MassHealth conceded that the appellant is dependent for this task, but argued that 5 minutes is generally the maximum amount of time it will authorize for assistance with this task. MassHealth also emphasized that it increased the frequency, which was requested at 4 times per day, to 6 times per day. The appellant credibly testified to the process involved with repositioning her in bed, which involves removing a body bar, pillows, and sheets, then turning the appellant while supporting her, and then replacing the pillows, sheets, and body bar. The appellant stated that this process occurs multiple times per day and takes more than a few minutes. Notably, MassHealth increased the frequency that was initially requested and *has* authorized time for the appellant to receive assistance multiple times per day. Further, other than noting that this process takes more than a few minutes, the appellant was not specific as to the time required each time she is repositioned.<sup>2</sup> Without more, she has failed to demonstrate that the 5 minutes per time authorized by MassHealth falls short of meeting her needs. This part of the appeal is denied.

MassHealth modified the time requested for assistance with bladder care on the basis that the time requested is longer than ordinarily required for someone with the appellant's physical needs. MassHealth conceded that the appellant is dependent for this task. MassHealth modified only the frequency for this task (from 10 to 8 times per day) on the basis that 8 times will accommodate the appellant's need to toilet every 2 hours in a 16 hour day. The appellant argues that recent medication changes have increased her toileting needs. The appellant's testimony, while credible, was not specific as to the number of times she needs assistance with bladder care during the day. MassHealth has authorized a total of 9 occasions for assistance with bladder care (8 specifically for bladder care, and 1 to be included with bowel care). Without more, the appellant has failed to demonstrate that the bladder care frequency authorized by MassHealth falls short of meeting her needs. This part of the appeal is denied.

MassHealth modified the time requested for assistance with medications on the basis that time requested is longer than ordinarily required for someone with the appellant's physical needs. MassHealth authorized 5 minutes, 4 times per day for assistance with the appellant's daily medications. MassHealth denied a separate request for 10 minutes daily because it could not identify which medication the appellant would need 10 minutes of assistance to administer. The appellant clarified that she no longer takes this medication and thus does not need this time. The appellant presented other credible testimony regarding her extensive medication list, as well as the various times during the day she takes these medications, including the need to space them out due to potential drug interactions and the need to take some of these medications with food.

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<sup>2</sup> The appellant did indicate that it takes "about 15 minutes[.]" depending on the specific PCA's skill, to reposition her from her left side to her right side (Exhibit 4, p. 2). However, it is not clear if this information relates to the total process of repositioning or just the portion of the repositioning relating to using the foot cradle. Without clarification and a more precise estimate of time, this information is too vague to affect the time MassHealth allotted for repositioning.

If the appellant's frequency needs have increased and now exceed 4 times per day, the provider agency may request an adjustment. However, because MassHealth has authorized all of the time requested (except the 10 minutes that the appellant states she no longer needs), this part of the appeal is denied.

MassHealth modified the time requested for assistance with housekeeping on the basis that the time requested is longer than ordinarily required for someone with the appellant's physical needs. MassHealth authorized 90 of the 105 minutes per week requested. MassHealth acknowledges that the appellant is dependent for housekeeping tasks and noted that 60 minutes per week is typically authorized for dependent single persons. Here, because the appellant's diagnoses require some extra cleaning and disinfecting, MassHealth authorized its maximum of 90 minutes per week. The appellant did not provide any specific evidence to demonstrate that MassHealth's authorization falls short of meeting her medical needs. She lives in a one-bedroom apartment and has had separate time authorized for assistance with laundry (Exhibit 5, p. 25). The extra cleaning and disinfecting would be needed for commonly-touched surfaces, not the entire apartment. The additional time authorized (30 minutes over the standard time) should be sufficient to address these special needs. This part of the appeal is denied.

MassHealth modified the time requested for assistance with shopping on the basis that the time requested is longer than ordinarily required for someone with the appellant's physical needs. MassHealth authorized 90 of the 120 minutes per week requested. The appellant argues that the PCA needs more time for shopping because she has to travel to 4 stores to purchase all of the items needed to accommodate her dietary restrictions and needs, and must shop more than once per week to buy fresh produce. The appellant's dietary restrictions are fairly straightforward; she has some food restrictions and eats an organic, gluten-free diet. These items are mostly widely available and multiple stops should not be regularly required. The PCA may wish to streamline the shopping process and bulk shop at one store one week, and another shop another week. The appellant has not demonstrated that MassHealth's authorization falls short of meeting her needs. This part of the appeal is denied.

For the foregoing reasons, 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.

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Samantha Kurkja  
Hearing Officer  
Board of Hearings

cc: Optum