

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2179597
<b>Decision Date:</b>	02/16/2022	<b>Hearing Date:</b>	01/18/2022
<b>Hearing Officer:</b>	Marc Tonaszuck	<b>Record Open to:</b>	01/20/2022

**Appearance for Appellant:**



**Appearance for MassHealth:**

Mary Jo Elliott, 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 in part; Denied in part	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	02/16/2022	<b>Hearing Date:</b>	01/18/2022
<b>MassHealth's Rep.:</b>	Mary Jo Elliott, RN, Optum	<b>Appellant's Rep.:</b>	██████████
<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<sup>1</sup>

Through a notice dated 12/01/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 22:30 day/evening hours per week plus 2 daily night time attendant hours to 11:45 day/evening hours per week plus 2 daily night time attendant hours for the dates of service from 12/09/2021 to 12/08/2022 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 12/17/2021 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

Upon request of the appellant's representative, the record remained open in this matter

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<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

until 01/20/2022 for additional evidence.

## **Action Taken by MassHealth**

MassHealth modified appellant's prior authorization request for personal care attendant services.

## **Issue**

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

## **Summary of Evidence**

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that on 11/12/2021 a prior authorization request (PA) for PCA services was received on appellant's behalf from her PCA provider, The Northeast ILP, Inc. ("provider"), and is a re-evaluation request for the dates of service of 12/09/2021 to 12/08/2022. In the PA request for PCA services, the provider requested 22:30 day/evening hours per week plus 2 daily nighttime attendant hours. The appellant is in her 60's, she lives with her spouse, and her primary diagnosis affecting her ability to function independently is rheumatoid arthritis (Exhibit 4).

The Optum representative testified that on 12/02/2021 MassHealth modified the PCA request to 11:45 day/evening hours per week plus 2 daily night time attendant hours. Modifications were made to the request for PCA services that include a modification in the activity of daily living (ADL) tasks of grooming – nail care and denial of requested time in the instrumental activities of daily living (IADL) of meal preparation and cleanup, laundry, shopping and housekeeping.

### Grooming

The appellant's provider requested on the appellant's behalf 5 minutes, 1 time a day, 7 days a week (5 X 1 X 7<sup>2</sup>) for assistance with grooming – nail care. The provider made no specific notations regarding this task. MassHealth modified the request for assistance with nail care to 10 X 1 X 1, increasing the time for assistance with the task, but reducing the frequency to once per week. The MassHealth representative testified that the time to wash the hands and feet are not included with this task, as it was approved as part of the assistance requested with showering. This time is to file or trim the nails. The time

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<sup>2</sup> PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

request is more than ordinarily required for someone with the appellant's needs.

The appellant's daughter responded that she did now know how much time the PCA needs to assist the appellant with the nailcare. She stated that the PCA soaks the appellant's feet a "couple of times a week," and cuts her nails. She testified "it takes 10 minutes."

#### IADLS – Meal Preparation/clean-up, Laundry, Shopping and Housekeeping

The appellant's PCA provider requested 60 minutes a day for meal preparation and clean-up. The provider noted that the appellant needs assistance to prepare and clean up after all meals. She has "deformities on bilateral hands, unable to grasp due to arthritis. The appellant has pain on joints, stiffness, severe limited range of motion in her neck and upper and lower extremities. She has severe pain daily. Limited ulnar deviation, poor standing tolerance. Severe vertigo; unable to bend."

The provider requested 75 minutes a week for assistance with laundry, noting that the appellant requires physical assistance with sorting laundry; loading/unloading laundry machine; and folding and putting away clothes.

The provider requested 60 minutes a week for assistance with shopping, noting that the appellant needs assistance with grocery shopping and personal items.

The provider requested 75 minutes a week for assistance with housekeeping noting that the appellant requires assistance with cleaning bedroom, bathroom, kitchen and living room.

MassHealth denied all time requested for meal preparation/clean-up, laundry, shopping, and housekeeping. The MassHealth representative testified that because the appellant lives with another adult, her husband, he is legally responsible for assisting the appellant with these IADL tasks. Moreover, he should incorporate the appellant's needs for assistance with these tasks into his own needs. The MassHealth representative stated that the appellant's husband should be able to prepare the appellant's meals when he prepares his own, clean up her dishes with his own, and incorporate her laundry, shopping and housekeeping into his own.

The appellant's daughter testified that the appellant and her husband are no longer "together." The appellant was living with her sister but can no longer live with her. The only person who would take her in was her husband. They are not legally separated, but they stay in separate bedrooms. He does not assist the appellant with any of her needs. In addition, the husband is disabled and retired. The appellant's stepdaughter cares for the husband; but the food is different for both due to personal preferences. The stepdaughter does not assist the appellant. The appellant's daughter submitted a packet of the appellant's recent medical records (Exhibit 5).

The appellant's daughter requested an opportunity to submit further documentation to show the amount of time the PCA requires to assist the appellant with the tasks addressed in this appeal. Her request was granted, and the appellant's submission was due by 01/19/2022. MassHealth's response was due by 01/20/2022 (Exhibit 6). Both parties made submissions during the record open period (Exhibits 7 and 8).

As a result of the information provided by the appellant's representative during the record open period, MassHealth made the following changes to the modified areas:

**Meal preparation/clean-up** – MassHealth restored all time as requested (60 X 1 X 7);

**Laundry** – MassHealth approved 60 X 1 X 1. Although the appellant's daughter describes incontinence, none is documented with the provider's PA request;

**Housekeeping** – MassHealth approved 45 X 1 X 1. MassHealth stated that the kitchen clean-up is part of the meal preparation/clean-up task. The living room and bathroom are considered shared spaces that would need to be cleaned by both spouses in the home; and

**Shopping** – MassHealth approved all time requested by the provider (60 X 1 X 1).

The MassHealth representative noted with her response that the appellant's representative described the time necessary by the PCA to assist the appellant with the above tasks; however, in some cases, the time she requested exceeds the time requested in the PA by the PCA provider. MassHealth is unable to approve more time than the PCA provider requests (Exhibit 8).

## Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf on 11/12/2021 from her PCA provider, The Northeast ILP, Inc. ("provider"). It is a re-evaluation request for the dates of service of 12/09/2021 to 12/08/2022 (Testimony; Exhibit 4).
2. In the PA request for PCA services, the provider requested 22:30 day/evening hours per week plus 2 daily nighttime attendant hours (Testimony; Exhibit 4).
3. The appellant is in her 60's, she lives with her spouse, and her primary diagnosis affecting her ability to function independently is rheumatoid arthritis (Testimony; Exhibit 4).
4. On 12/02/2021 MassHealth modified the PCA request to 11:45 day/evening hours

per week plus 2 daily night time attendant hours (Testimony; Exhibits 1 and 4).

5. The appellant's provider requested on the appellant's behalf 5 minutes, 1 time a day, 7 days a week (5 X 1 X 7) for assistance with grooming – nail care. The provider made no specific notations regarding this task (Testimony; Exhibits 1 and 4).
6. MassHealth modified the request for assistance with nail care to 10 X 1 X 1 (Testimony; Exhibit 4).
7. Time for nail care is to trim or file nails. Time for assistance washing the hands and feet is not included; it is included under the task of showering (Testimony).
8. The appellant's PCA provider requested 60 minutes a day for meal preparation and clean-up. The provider noted that the appellant "needs assistance to prepare and clean up after all meals. She has deformities on bilateral hands, unable to grasp due to arthritis. [The appellant] has pain on joints, stiffness, severe limited range of motion in her neck and upper and lower extremities. She has severe pain daily. Limited ulnar deviation, poor standing tolerance. Severe vertigo; unable to bend" (Testimony; Exhibit 4).
9. MassHealth initially denied the request for assistance with meal preparation and clean-up; however, after reviewing the appellant representative's submission during the record open period, MassHealth restored all time as requested for this task (Testimony; Exhibits 4 - 8).
10. The provider requested 75 minutes a week for assistance with laundry, noting that the appellant requires physical assistance with sorting laundry; loading/unloading laundry machine; and folding and putting away clothes (Testimony; Exhibit 4).
11. MassHealth initially denied time for assistance with laundry; however, after reviewing the submission by the appellant's representative during the record open period, MassHealth modified the request to 60 X 1 X 1 (Testimony; Exhibits 4 - 8).
12. The provider requested 60 minutes a week for assistance with shopping, noting that the appellant needs assistance with grocery shopping and personal items (Testimony; Exhibit 4).
13. MassHealth initially denied the request for assistance with shopping; however, after reviewing the appellant representative's submission during the record open period, MassHealth restored all time as requested for this task (Testimony; Exhibits 4 – 8).
14. The provider requested 75 minutes a week for assistance with housekeeping noting that the appellant requires assistance with cleaning bedroom, bathroom, kitchen and living room (Testimony; Exhibit 4).

15. MassHealth initially denied time for assistance with housekeeping; however, after reviewing the submission by the appellant's representative during the record open period, MassHealth modified the request to 45 X 1 X 1 (Testimony; Exhibits 4 – 8).

## **Analysis and Conclusions of Law**

Regulations at 130 CMR 450.204 described medical necessity, as follows:

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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA 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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

- (A) Activities of Daily Living (ADLs). 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/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 (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 personal care 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 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 agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

***(Emphasis added.)***

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg.*

*Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth modified the appellant's request for PCA time. In the areas of meal preparation and clean-up and shopping, MassHealth restored all time, as requested, during the fair hearing process. Thus, this portion of the appeal is dismissed.

In the area of grooming – nail care, the provider requested 5 X 1 X 7. MassHealth modified the request to 10 X 1 X 1. MassHealth testified that the time for nail care is exclusively to trim or file the nails. The appellant's representative testified that she did not know how much time the PCA spends assisting the appellant with her nail care, but she thought it was 10 minutes, "a couple of times a week." MassHealth's representative, a registered nurse testified that the time requested is in excess of the amount of time that it normally takes someone to assist a member with the appellant's conditions. The appellant representative could not explain that amount of time it takes and exactly how many instances per week the PCA spends trimming or filing the appellant's nails. Accordingly, MassHealth's testimony is given greater weight and this portion of the appeal is denied.

In the area of assistance with laundry, the appellant's provider requested 75 minutes a week. MassHealth ultimately approved 60 minutes a week for assistance with this task. The MassHealth representative testified that the time for assistance with laundry involves sorting the clothes, loading the machine, starting the machine, moving the clothes to the dryer, starting the dryer, removing the clothes, folding them and putting them away. The PCA time does not include the time during which the machines are functioning. MassHealth modified the time requested for assistance with laundry because the time requested is longer than ordinarily required for someone with the appellant's conditions. Although the appellant's representative submitted testimony that it takes longer than 60 minutes per week, she did not explain what part of the process takes the extra time; nor did she articulate why the PCA spends more than 60 minutes assisting with this task. As the appellant has not met her burden of showing MassHealth's decision is incorrect, this portion of the appeal is denied.

In the are of housekeeping, the appellant's PCA provider requested 75 minutes per week for assistance cleaning the kitchen, bathroom, living room and bedroom. MassHealth modified the time for assistance with housekeeping to 45 minutes per week. The MassHealth representative testified that the time cleaning the kitchen is included with meal preparation and clean-up, all of which time was approved by MassHealth. Also, the appellant lives with her spouse and the housekeeping for the living room and bathroom must be shared. Although the appellant's representative testified that the appellant requires at least 75 minutes of assistance per week with this task, she did not explain how the time would be spent. And although the appellant's spouse may be incapacitated and no longer in a relationship with the appellant, as described by the appellant's representative, his share of the housekeeping cannot be performed by the appellant's PCA. As the appellant has not met her burden of showing that MassHealth's decision is incorrect, this portion of the appeal is denied.

For the foregoing reasons, this appeal is dismissed in part; and denied in part.

## **Order for MassHealth**

Restore all time, as requested, in the areas of meal preparation and clean-up and shopping. With regard to other modifications, none.

## **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, Division of Medical Assistance, at the address on the first page of this decision.

## **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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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]