

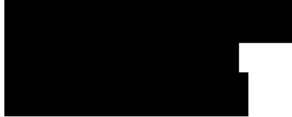
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; denied in part	<b>Appeal Number:</b>	2200198
<b>Decision Date:</b>	3/25/2022	<b>Hearing Date:</b>	2/11/2022
<b>Hearing Officer:</b>	Cynthia Kopka		

**Appearance for Appellant:**



**Appearance for MassHealth:**


Mary Jo Elliott, RN

**Interpreter:**



*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>	Approved in part; denied in part	<b>Issue:</b>	PCA services
<b>Decision Date:</b>	3//25/2022	<b>Hearing Date:</b>	2/11/2022
<b>MassHealth's Rep.:</b>	Mary Jo Elliott, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy (remote)	<b>Aid Pending:</b>	No

## Authority

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

## Jurisdiction

By notice dated December 21, 2021, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on January 10, 2022. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied Appellant's request for prior approval of PCA 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 PCA services.

## Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and testified as follows. Appellant is in her nineties with a primary diagnosis of a right-side cerebrovascular accident (CVA) with left-sided hemiparesis. Exhibit 4 at 9. Her recent medical history was

significant for pneumonia in August 2019, after which she was rehabilitated for endurance. Appellant has cataracts and requires eye surgery. In August 2021 she had a malignant lesion on her nose removed. Appellant is not able to ambulate and requires maximum assistance with transfers. She is incontinent and wears briefs. Appellant has not been hospitalized in the past year. *Id.*

On December 8, 2021, Appellant's personal care management agency (PCMA) submitted a re-evaluation for PCA services, requesting 56 day/evening hours and 14 night hours per week of PCA services on Appellant's behalf. On December 21, 2021, MassHealth modified Appellant's request and approved 45 day/evening and 14 night PCA hours per week. The dates of service were from December 25, 2021 through December 24, 2022. Exhibit 1.

After discussion at hearing, two of MassHealth's modifications to activities of daily living (ADLs) remained in dispute: passive range of motion (PROM) and bathing.<sup>1</sup> Regarding PROM, Appellant requested 15 minutes, 3 times per day, 7 days per week for both the upper left and lower left extremities. *Id.* at 12. MassHealth approved 8 minutes, 2 times per day, 7 days per week, arguing that the time requested was considered excessive. MassHealth testified that PROM is not a strengthening exercise but rather the movement of a joint that has functional loss. Appellant's son testified that the PCA does 30 minutes of PROM for Appellant when she wakes up in the morning, 30 minutes when she wakes from a mid-day nap, and other times throughout the day. Appellant becomes stiff when the PROM is not done. The PCA works on Appellant's left shoulder, elbow, wrist, and fingers as well as her knee and ankle. Appellant's fingers are contracted. Appellant has been approved for the amount requested in the past and nothing has changed about her medical condition to reduce this need.

Regarding bathing, Appellant requested 50 minutes for a daily shower and 10 minutes for an evening quick wash. *Id.* at 13. MassHealth approved 50 minutes daily for both the bathing and quick wash. MassHealth relied on documentation provided that stated that Appellant showers by using a shower chair, and the PCA assists the transfer on and off the chair. The quick wash at night is of the hands, face, and peri area. *Id.* Appellant's son argued that Appellant no longer uses the shower because she cannot step into the tub. Instead, Appellant receives two 20 minute bed baths per day, daily hair washing in the sink, and quick washes. Appellant also requires washing when she has a bowel movement due to her incontinence. MassHealth argued that bowel care was approved in full and would include time to clean Appellant after a bowel movement. *Id.* at 18.

## Findings of Fact

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

1. On December 8, 2021, Appellant's PCMA submitted a re-evaluation for PCA services, requesting 56 day/evening PCA hours and 14 night PCA hours per week on Appellant's

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<sup>1</sup> In its denial, MassHealth modified other ADLs and instrumental activities of daily living (IADLs). The parties agreed to adjustments made at hearing by MassHealth to the modifications to medication assistance, other health care functions at night, meal preparation, equipment maintenance, and assistance with PCA paperwork. The appeal is dismissed to those modifications. See 130 CMR 610.035(A)(8).

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2. On December 21, 2021, MassHealth modified Appellant's request and approved 45 day/evening PCA hours and 14 night PCA hours per week for dates of service from December 25, 2021 through December 24, 2022. Exhibit 1.
3. Appellant filed a timely appeal on January 10, 2022. Exhibit 2.
4. Appellant is in her nineties with a primary diagnosis of a right-side CVA with left-sided hemiparesis. Exhibit 4 at 9. Her recent medical history was significant for pneumonia in August 2019, after which she was rehabilitated for endurance. Appellant has cataracts and requires eye surgery. In August 2021 she had a malignant lesion on her nose removed. Appellant is not able to ambulate and requires maximum assistance with transfers. She is incontinent and wears briefs. Appellant has not been hospitalized in the past year. Exhibit 4 at 9.
5. Regarding PROM, Appellant requested 15 minutes, 3 times per day, 7 days per week for both the upper left and lower left extremities. *Id.* at 12.
6. MassHealth approved 8 minutes, 2 times per day, 7 days per week.
7. Appellant's PCA provides 30 minutes of PROM when Appellant wakes up in the morning and 30 minutes of PROM when she wakes up from a nap.
8. Regarding bathing, Appellant requested 50 minutes for a daily shower and 10 minutes for an evening quick wash. *Id.* at 13.
9. MassHealth approved 50 minutes daily for both the bathing and quick wash.
10. Appellant does not use a shower chair, but receives two 20 minute bed baths per day, daily hair washing in the sink, and quick washes.
11. Bowel care was approved in full, including time to clean Appellant after a bowel movement. *Id.* at 18.

## **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 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 requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program:

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:

- (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 (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.

MassHealth modified Appellant's request for PCA services. After discussion at hearing, two areas where MassHealth made a modification remained in dispute.

Regarding Appellant's request for assistance with PROM, this appeal is approved in part. Appellant's son provided credible testimony that Appellant receives a minimum of 15 minutes, 2 times per day, 7 days of week for both the upper and lower extremity. MassHealth merely argued that the time provided was excessive. Appellant's son's testimony that Appellant requires PROM for every joint and finger on her left side was compelling.

Regarding bathing, this appeal is denied in part. Though MassHealth modified the bathing time based on an inaccurate description of Appellant's bathing needs, Appellant's son's testimony did not set forth why more than 50 minutes for washing daily was medically necessary. The 50 minutes approved covers both 20 minute bed baths as well as additional washes in the day. Further, the documentation shows that the time requested (and approved) for bowel care includes time required to clean Appellant after a bowel movement.

## **Order for MassHealth**

Modify the approved PROM assistance to 15 minutes, 2 times per day, 7 days per week for the left arm and 15 minutes, 2 times per day, 7 days per week for the left leg. Recalculate the weekly hours of PCA assistance with that modification for the dates of service of the prior authorization period.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

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

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