

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	APPROVED IN PART; DISMISSED IN PART	<b>Appeal Number:</b>	2203209
<b>Decision Date:</b>	6/7/2022	<b>Hearing Date:</b>	06/01/2022
<b>Hearing Officer:</b>	Christopher Taffe		

**Appearance for Appellant:**  
Appellant, pro se (by phone)

**Appearance for MassHealth:**  
Donna Burns, RN, Clinical Reviewer on  
behalf of MassHealth/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

<b>Appeal Decision:</b>	APPROVED IN PART; DISMISSED IN PART	<b>Issue:</b>	PA – Personal Care Attendant- hours
<b>Decision Date:</b>	6/7/2022	<b>Hearing Date:</b>	06/01/2022
<b>MassHealth's Rep.:</b>	D. Burns, RN	<b>Appellant's Rep.:</b>	Appellant, pro se
<b>Hearing Location:</b>	HarborSouth Tower, Quincy	<b>Aid Pending:</b>	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 April 7, 2022, MassHealth informed Appellant that it had modified Appellant's Prior Authorization (PA) request for Personal Care Attendant (PCA) hours, by approving 38.50 hour/week of day and evening PCA hours and 2 hours/night<sup>1</sup> for the PA period from May 8, 2022 through May 7, 2023. See Exhibit 1; 130 CMR 422.410; 130 CMR 450.204. Appellant filed a timely request for an appeal with the Board of Hearings on April 28, 2022. See Exhibit 1; 130 CMR 610.015(B). Challenging a MassHealth determination of the scope of assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Because of the timing of Appellant's PA request, the timing of his filing with the Board of Hearings, and the amount of hours previously received, the Appellant is entitled to, and is receiving, Aid Pending benefits until this decision is resolved. See 130 CMR 610.036. Per MassHealth testimony, the Aid Pending amount is 38.75 day and evening PCA hours/week.

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<sup>1</sup> Nighttime PCA hours, which are for the time between midnight and 6:00 AM, were approved in full as requested. The remainder of the decision will thus focus and allude only to the disputed amount of "day and evening" PCA hours, which cover the period from 6:00 AM to 12:00 midnight.

## Action Taken by MassHealth

MassHealth approved only a portion of the PCA time requested by Appellant, resulting in an approval of 38.50 day and evening hours/week of assistance in the appealable action notice.

## 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 appeared and testified at hearing by phone. Ms. Burns, a registered nurse, also appeared by phone to provide testimony on behalf of the OPTUM, the MassHealth contractor who helps to administer some of the agency's Prior Approval/Prior Authorization services (collectively and commonly referred to as "PA 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 hearing, Appellant was a [REDACTED] MassHealth member who lives in a community setting and who has received PCA services from the MassHealth agency in the past. This PA request involves a reevaluation. The main medical reason why Appellant needs helps with ADLs and PCA services specifically is because Appellant is a paraplegic as a result of a spinal cord injury. Appellant's medical history also includes or indicates he has generalized pain, depression, neurogenic bladder and bowel, frequent UTIs, and decreased sensation from his chest down to his toes. He is wheelchair bound and uses a manual wheelchair to get around his home. Medical issues also include pain and spasms, and bilateral hand weakness, and his PCA helps with his foley catheter and all bowel care.

Appellant received 38.75 hours/week of day and evening PCA services in the prior PA period. Prior to the current PA period (which runs from May 8, 2022 to May 7, 2023), Appellant's PCA provider, Northeast ARC, Inc., submitted a PA request to MassHealth seeking 43.50 hours/week. MassHealth initially approved 38.50 hours/week as a result of four modifications to activities or components that fell within two Activities of Daily Living (ADLs). At hearing, the parties reached agreement on three of the four disputed activities, leaving one item (the activity of "Mobility – Repositioning") in dispute and in need of resolution by this decision, and increasing the number of

approved hours.

As to the resolved disputes, Appellant agreed to accept MassHealth's modification to the Activity of Mobility – General (resulting in 1 minutes of PCA assistance, 6 times/day, 7 days/week). MassHealth also agreed to approve in full and as originally requested the amount of PCA time for (1) Mobility – Repositioning (allowing 3 minutes of PCA assistance, 6 times/day, 7 days/week) and (2) Bathing – Main Wash (allowing 40 minutes of PCA assistance, 1 time/day, 7 days/week). MassHealth indicated that, with these changes, Appellant would be entitled to 40 hours/week of PCA assistance pending the outcome and any additional potential time granted as a result of the one unresolved issue.

Concerning the disputed issue of “Mobility-Transfers”, Appellant requested 8 minutes of assistance per transfer, 6 transfers/day, 7 days/week for a total of 336 minutes/week. MassHealth approved 210 minutes/week (5 minutes/transfer x 6 transfers/day x 7 days/week).

MassHealth testified that the time requested was longer than ordinarily needed for a maximum assistance for someone with Appellant's conditions and limitation and that, combined with the additional approved time for general mobility (6 minutes/day, which may not be needed as Appellant testified to being able to use his hands on his manual wheelchair for moving from room to room), Appellant should have a sufficient amount of time for his transfer needs. MassHealth also noted that Appellant only asked for and received 2 minutes of assistance per each Mobility-Transfer activity in the prior PA year as well so the increase to 5 minutes may be reflective and appropriate for any greater need of assistance Appellant needs in the new and current PA year.

The comments on the relevant pages of the PA packet for Mobility, submitted by Northeast Arc, state that Appellant now requires “[Maximum] assistance with... w/c assistance due to [bilateral] hands weakness. [Dependent] with all transfers due to paraplegia.... Decreased sensation and increased pain to [bilateral lower extremities] and shoulders d/t overuse of muscles. [Maximum] assist with reposition to prevent skin ulcers, minimize skin breakdown.” See Exhibit 3, page 11. Appellant testified in general how, as he ages and his condition progresses, his bone density has been at a dangerously low level, and as a result, all activities, including the mobility related one, have to be done at a much slower pace in order to be more careful, which in turn lengthens the process and justifies the need for the time.<sup>2</sup>

When asked to offer specifics about the length of the transfer, Appellant testified that it was difficult as it could vary from transfer to transfer but it could take several minutes. For example, if the pivot board slid or was in danger of sliding during a transfer from bed to chair that could add time to the process. Appellant also said he had to go slow to avoid injuries, such as dislocating or straining something in the shoulder or other muscle areas. Appellant also testified to the importance of skin integrity, and the parties all agreed on the value and goal of minimizing or avoiding skin breakdown or ulcers and bruising. Appellant testified as to how the carefulness and deliberate nature of the

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<sup>2</sup> It is noted that these comments and the Appellant's corroborative testimony were certainly not ignored by MassHealth, as this evidence led to the MassHealth Representative rationally approving the additional time for repositioning and bathing.

speed of his transfers and repositions were paying off, in that he had avoided for the most part such skin issues and that was a goal considering his current age and what he would be dealing with for many years.

In response to questioning, Appellant testified to the amount of transfers he has in a given day. Appellant testified to how in the morning, he may transfer from bed to chair, then transfer from chair to sofa, and then back to chair to get to the table for his meal. (There are also additional transfers related to daily bathing and toileting needs.) Appellant testified that it is important to keep moving and being put in different positions in order to protect the skin and reduce the risk of skin issues.

## Findings of Fact

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

1. Appellant's PCA provider submitted a reevaluation PA request to MassHealth for 43.50 hours/week of day and evening PCA services for the PA period from May 8, 2022 through May 7, 2023. (Testimony and Exhibits 1 and 3)
2. MassHealth approved all of the request except for four activities or sub-activities related to or falling within the ADLs of Mobility and Bathing. This resulted in an approval of 38.50 hours/week. (Testimony and Exhibits 1 and 3)
  - a. Appellant has Aid Pending protection of 38.75 hours/week of PCA assistance, as this was the amount he was approved for in the preceding PA year. (Testimony)
3. At hearing, the parties reached agreement on three of the four disputed activities, leaving one item (the activity of "Mobility – Repositioning") in dispute. (Testimony and Exhibit 3)
  - a. Specifically, Appellant agreed to accept MassHealth's modification to the Activity of Mobility – General (resulting in 1 minutes of PCA assistance, 6 times/day, 7 days/week);
  - b. MassHealth agreed to approve in full and as originally requested the amount of PCA time for Mobility – Repositioning (allowing 3 minutes of PCA assistance, 6 times/day, 7 days/week; and
  - c. MassHealth agreed to approval in full and as originally requested the amount of PCA time for Bathing – Main Wash (allowing 40 minutes of PCA assistance, 1 time/day, 7 days/week). (Testimony and Exhibit 3)
4. As to the disputed issue of "Mobility-Transfers", Appellant requested 8 minutes of assistance per transfer, 6 transfers/day, 7 days/week for a total of 336 minutes/week. MassHealth approved 210 minutes/week (5 minutes/transfer x 6 transfers/day x 7 days/week). (Testimony and Exhibits 1 and 3)

5. At the time of hearing, Appellant was a [REDACTED] member who is a paraplegic due to a spinal cord injury. Appellant's medical history also includes or indicates he has generalized pain, depression, neurogenic bladder and bowel, frequent UTIs, and decreased sensation from his chest down to his toes. He is wheelchair bound and uses a manual wheelchair to get around his home. Medical issues also include pain and spasms, and bilateral hand weakness, and his PCA helps with his foley catheter and all bowel care. (Testimony and Exhibit 3)
6. Due to his medical condition, Appellant has valid concerns about skin integrity issues, and requires frequent repositioning and careful slow movements when using his PCA to do ADLs in order to minimize the risk of developing skin issues or suffering other issues (such as bone dislocations or bone bruising) related to low bone density. (Testimony)
7. Although approved for six Mobility-Transfers per day, Appellant has frequent transfers (beyond those involving bathing and toileting) between his bed, his wheelchair, and his sofa at home. (Testimony and Exhibit 3)
8. Like the rest of the activities, the activity of Transfer also takes longer this year than in prior years, due to Appellant's need to move slower and be more reliant on his PCA due to increased weakness. (Testimony and Exhibit 3)

## 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 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.*

*(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.*

Although MassHealth made four modifications, there were two which were rescinded and treated as if they had been approved in full initially (for the activities of (1) Mobility – Repositioning and (2) Bathing – Main Wash) for the member. Appellant also agreed to accept the modification and reduction of requested minutes for the ADL of Mobility – General. As to that portion of the appeal involving these ADL issues, there is no remaining dispute to address so this section of the appeal is DISMISSED per 130 CMR 610.051.

As to the disputed amount of time for the request for “Mobility - Transfers” activities, the majority of the testimony from Appellant involved the increasing need to take things slow and how there was a need for additional time for all activities. Appellant’s testimony and explanation was grounded, reasonable, and plausible, offering a detailed and logical concern about the potential risk for bone injuries and skin issues. The amount of time does not seem excessive or inappropriate for this activity, considering the severity of Appellant’s condition (paraplegia) and the slightly increased weakness he is experiencing, and it is noted that Appellant has several transfers per day. Although there was no detailed amount of time for the scope of a transfer activity, the Appellant did plausibly speak as to the use of equipment (the pivot board) and challenges with such equipment, and the needs and concerns of being slow. Based on this Appellant’s testimony and current medical conditions and concerns, I find the request for eight minutes per transfer to be more justified and medically appropriate than the five minutes per activity stated by MassHealth, and I will APPROVE the requested time for Appellant. It is also noted that, with this approved time, Appellant’s PCA request will have all but 84<sup>3</sup> of the minutes approved of the request for 2,597 minutes/week. See Exhibit 3, pages 10, 11, and 28. That means a total of 2,513 minutes/week or 42.00 day and

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<sup>3</sup> The 84-minute difference is caused by the reduction of Mobility – General from 3 minutes/activity x 6 times/day x 7 days/week to 1 minute/activity x 6 times/day x 7 days/week for this task.



evening PCA hours/week will be authorized.<sup>4</sup>

Based on the above, the appeal is APPROVED IN PART and DISMISSED IN PART. Post-hearing, Appellant may contact his PCA provider Northeast ARC, Inc. to discuss the effects of this approval and how it may be retroactively applied and utilized by the MassHealth member and his provider.

## **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 42.00 day and evening hours/week of PCA time to be approved for the current PA period.
- Send notice to Appellant and his PCA provider of the new amount of approved time in writing.

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<sup>4</sup> MassHealth customarily rounds this amount up to the nearest 15-minute increment. See Exhibit 3, page 28. It is noted that the increase from 38.75 hours last year to 42.00 hours this year does not seem exorbitant or unjustified per the specific medical conditions of this member.

## **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.

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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: Optum LTSS Appeals Coordinator