

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Dismissed in part;  
Denied in part

**Appeal Number:** 2204414

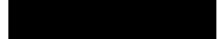
**Decision Date:** 10/5/2022

**Hearing Date:** 08/26/2022

**Hearing Officer:** Thomas Doyle

**Record Open to:**

**Appearance for Appellant:**

 (daughter)

**Appearance for MassHealth:**


Cheryl Eastman, R.N.

**Interpreter:** Joel #214439



*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>	Prior Authorization – Personal Care Attendant hours
<b>Decision Date:</b>	10/5/2022	<b>Hearing Date:</b>	08/26/2022
<b>MassHealth's Rep.:</b>	Cheryl Eastman, R.N.	<b>Appellant's Rep.:</b>	 (daughter)
<b>Hearing Location:</b>	Remote (phone)	<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

Through a notice dated May 9, 2022, MassHealth modified the appellant's prior authorization request for personal care attendant services (Ex. 1). The appellant filed this appeal in a timely manner on June 7, 2022 (130 CMR 610.015 (B); Ex. 2). Challenging a modification of assistance is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct in modifying appellant's prior authorization request for personal care attendant services.

## Summary of Evidence

Appellant was represented by her daughter, who appeared by telephone. The daughter is also appellant's PCA. The daughter was authorized by appellant's surrogate, who is appellant's son. MassHealth was represented by an R.N. who testified to the following: appellant is a female in her [REDACTED] with a primary diagnosis of Alzheimer's dementia and osteoporosis. Currently there is no aid pending. On May 4, 2022, the provider, Elder Services, submitted a reevaluation request for 54 hours and 15 minutes of day/evening hours per week and 2 nighttime hours. On May 9, 2022, MassHealth modified the request to 40 hours and 0 minutes of day/evening hours and agreed with 2 hours per night.

There were multiple modifications. MassHealth modified repositioning from 4 minutes, 8 times a day, 7 days a week to 2 minutes, 8 times a day, 7 days a week because appellant had the use of a Hoyer lift. After testimony by appellant's daughter/PCA, MassHealth agreed to the requested time. Appellant requested 20 minutes a day, 1 time a day for 7 days a week for a quick wash. MassHealth modified this to 10 minutes a day, 1 time a day for 7 days. MassHealth agreed to the requested amount of time after hearing testimony from appellant's daughter/PCA. Appellant requested 15 minutes, 1 time a week to refill a medicine box. MassHealth modified it to 10 minutes, 1 time a week. After clarification by MassHealth, the appeal representative agreed to the modification. The time for meal preparation, laundry and shopping were also modified. MassHealth calculated the time for these tasks based on a shared basis because appellant's reevaluation found there was another MassHealth member receiving PCA services in the same household.

## Findings of Fact

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

1. The appellant is a [REDACTED] female MassHealth member who lives in the community with her daughter, who is the PCA, and her grandson. (Testimony; Ex. 7, p. 36). Appellant's surrogate is her son [REDACTED]. (Ex. 2; Ex. 7, p. 29).
2. The appellant's medical diagnoses include Alzheimer's dementia, osteoporosis, incontinent of bowel and bladder. (Testimony; Ex. 7, p. 9).
3. Elder Services, a PCM agency, submitted a PA re-evaluation request to MassHealth on the appellant's behalf on or about May 4, 2022, seeking 54 hours, 15 minutes of PCA assistance per week (day/evening hours), and 2 nighttime hours per night. (Testimony; Ex. 7, p. 3).
4. By notice dated May 9, 2022, MassHealth modified the requested time to 44 hours, 0 minutes of day/evening PCA assistance per week, and 2 nighttime hours every night for services from May 31, 2022 to May 30, 2023. (Testimony; Ex. 1; Ex. 7, p. 3).
5. There is no aid pending. (Ex. 4).

6. MassHealth modified repositioning, quick wash, pre-filling medicine box, meal preparation, laundry and shopping. (Testimony; Ex. 7).
7. MassHealth rescinded its modification on repositioning and the parties agreed to 4 minutes an episode, 8 times a day, 7 days a week. (Testimony).
8. After testimony, MassHealth rescinded its modification on the quick wash and the parties agreed to 20 minutes a day, 1 time a day, 7 days a week. (Testimony).
9. The appeal representative agreed to the modification for pre-filling the medicine box as 10 minutes, 1 time a week. (Testimony).
10. Appellant's living arrangements include another person receiving MassHealth PCA services. (Ex. 7, p. 21). Her reevaluation was calculated on a shared basis. (Testimony).
11. Appellant's reevaluation was conducted on March 8, 2022. Present for the reevaluation were the nurse conducting the reevaluation, appellant's surrogate/son, [REDACTED], and her daughter, [REDACTED], who was also appellant's appeal representative and PCA. (Ex. 7, p. 36; Testimony).

## **Analysis and Conclusions of Law**

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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 PCA 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 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.

MassHealth made modifications to appellant's prior authorization requests for the IADL's of meal preparation, laundry and shopping. (Testimony). The sole reason for the modifications was the appellant lives with another family member and so it was calculated on a shared basis pursuant to 103 CMR 422.410 (C) (2) (When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks ...**must** be calculated on a shared basis)(emphasis added). The MassHealth nurse testified that the nurse evaluator from appellant's provider noted this was the living arrangement. (Testimony). The documentary evidence bears this out. The nurse evaluator listed the name of the other person receiving MassHealth PCA services. (Ex. 7, p. 21). The appeal representative/PCA said this person was her father. (Testimony). The MassHealth nurse stated that appellant's provider of PCA services said appellant's residence was one unit and two PCA's are on a shared basis with the consumers. (Testimony). She also stated when they receive the report on the reevaluation, they look up the other person receiving services and saw that person is at the same address as appellant and therefore, pursuant to the regulation, they have to view the PCA services on a shared basis. The provider did not designate appellant's property as two separate addresses. (Testimony).

The appeal representative testified that appellant's provider has incorrectly designated the PCA services as shared in the past and that this has always been an issue with MassHealth. (Testimony). She was asked if she reviewed the written reevaluation that was done in March 2022 and she said the nurse would not show it to her. (Testimony). However, as the record reflects, appellant's surrogate/son was also present during the reevaluation and the surrogate/son signed off on the inspection. (Ex. 7, pp. 30, 36). Therefore, the surrogate implicitly accepted the finding that it was one residence and PCA services would be shared. The fact appellant's daughter/appeal representative and surrogate/son had not corrected this situation before with the provider diminishes the credibility of the daughter's testimony that it is two separate residences.

MassHealth representative's testimony is persuasive and supported by the documentary evidence. MassHealth's modifications are justified and appellant, who has the burden, has provided no convincing evidence to support that it takes longer than 15 minutes a day, 1 time per week for meal preparation: 30 minutes a day, 1 time a week for laundry and 30 minutes a day, 1 time a week for shopping. All disputed incidental activities of daily living were correctly calculated on a shared basis pursuant to the regulation.

For these reasons, the part of the appeal challenging the modifications for meal preparation, laundry and shopping is DENIED.

Due to the above stated agreements between the parties, the part of the appeal challenging the MassHealth modifications to repositioning, quick wash and prefilling the medicine box is DISMISSED.

## **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.

---

Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]