

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2205166
<b>Decision Date:</b>	11/23/2022	<b>Hearing Date:</b>	10/06/2022
<b>Hearing Officer:</b>	Scott Bernard		

**Appearance for Appellant:**  
*Pro se via telephone*

**Appearance for MassHealth:**  
Donna Burns, RN

**Interpreter:**  
Spanish



*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	<b>Issue:</b>	Personal Care Attendant (PCA) Prior Authorization (PA)
<b>Decision Date:</b>	11/23/2022	<b>Hearing Date:</b>	10/06/2022
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	<i>Pro se</i>
<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

Through a notice dated June 17, 2022, MassHealth modified the appellant's PA request for PCA services because it determined that the time she requested for assistance was longer than ordinarily required for someone with her physical needs. (See 130 CMR 422.410(A)(1); 450.204(A) and Exhibit (Ex.) 1; Ex. 7, pp. 4-6). The appellant filed this appeal in a timely manner on July 11, 2022, albeit unsigned. (See 130 CMR 610.015(B) and Ex. 2). Modification of a PA request is valid grounds for appeal. (See 130 CMR 610.032).

On July 13, 2022, the Board of Hearing informed the appellant it would dismiss her appeal if she did not submit a signed copy of the fair hearing request within 10 days of the date on the letter. (Ex. 3). The Board did not receive the appellant's response (by fax) until July 28 but did not dismiss the appeal. (Ex. 4). The Board initially scheduled a hearing for September 9, 2022 but this was later changed to the present date. (Ex. 5; Ex. 6; Ex. 8).<sup>1</sup>

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<sup>1</sup> The record does not evidence an explanation for this postponement. A search of the Board's Appeal Processing System Event Log indicates that the appellant may not have appeared for the hearing scheduled for September 9. (Ex. 8). The Event Log also indicates, however, that on September 13, a Board employee rescheduled the hearing. (*Id.*). The appellant may have contacted the Board and provided a good cause explanation for this, but it is not documented. In any case, the Board neither requested that this hearing officer demand an explanation from the appellant nor did he, on his own initiative, request the appellant provide one (as he probably should have). In any case, because the appellant was not disadvantaged by these delays, this hearing officer will presume there was good cause and leave it at that.

## Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.010, in determining that the PA request for PCA services should be modified.

## Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The appellant is an individual under the age of 65 with diagnoses of osteoarthritis, fibromyalgia, carpal tunnel syndrome, asthma, sinus arrhythmia, cervical stenosis, spinal stenosis, and aneurysm. (Ex. 7, pp. 7-8). The personal care management (PCM) agency stated the following relevant medical history:

Consumer...lives with her husband in a single family 2 floor home with 4 external stairs and 15 internal stairs. First floor has 1 bedroom and bath, the 2nd floor has bedrooms and a bathroom. Consumer presents with known dx of osteoarthritis, fibromyalgia, carpal tunnel, asthma and SA. Consumer reports new dx of cervical and spinal stenosis. Reports she has been having increased difficulty breathing and has been following with a pulmonologist who has been helping to push for dx of increased pain and difficulty breathing over the last 4 years. Reports that this year she had an episode of bleeding out of her ear and was dx with stenosis. Consumer reports multiple ED visits, but no overnight stays. Also reports increased falls r/t drowsiness and pain. Consumer reports she has been instructed not to lift more than 3 pounds currently and is now following a Neurosurgeon for the stenosis. Consumer reports she is currently in discussion about cervical surgery as she reports she is told surgery is the only option for the stenosis. However, consumer reports anxiety related to surgery and decision making, expressing she is worried she will not be able to have the help she needs. Due to her diagnoses, consumer reports poor hand grasps, inability to raise arms fully above head, inability to bend/twist/stretch without pain, pain to back, legs, neck, shoulders. (Ex. 7, pp. 8-9).

On June 13, 2022, the PCM agency submitted a PA reevaluation request for PCA services. (Ex. 7, pp. 7-20). The PCM agency requested 25 hours, 15 minutes of day and evening PCA services for one year. (Ex. 1; Ex. 7, pp. 5, 20). In a letter dated June 17, 2022, MassHealth notified the appellant that it was modifying her request because the time requested was longer than ordinarily required for someone with her physical needs. (Ex. 1; Ex. 7, p. 5). MassHealth approved 23 hours, 45 minutes day and evening PCA services per week from June 24, 2022 through June 23, 2023. (Ex. 1; Ex. 7, p. 5).

The MassHealth representative stated that MassHealth modified the following three activities of daily living:

1. Mobility. The PCM agency requested 3 minutes, 5 times per day, 7 days per week. (Ex. 7, p. 10). MassHealth modified this to 2 minutes, 5 times per day, 7 days per week. (Ex. 1; Ex. 7, p. 5).
2. Bathing. The PCM agency requested 37 minutes, 1 time per day, 7 days per week. (Ex. 7, p. 13). MassHealth modified this to 30 minutes, 1 time per day, 7 days per week. (Ex. 1; Ex. 7, p. 5).
3. Nail care. The PCM agency requested 15 minutes per week. (Ex. 7, p. 14). MassHealth modified this to 10 minutes per week. (Ex. 1; Ex. 7, p. 5).

After questioning the appellant, the MassHealth representative decided to overturn MassHealth's modification of mobility and approve 3 minutes, 5 times per day, 7 days per week as requested. The appellant agreed to MassHealth's modification to 30 minutes per day for bathing and 10 minutes per week for nail care. The appellant was concerned that even with the total time increased to 24 hours, 30 minutes per week total (after restoration of the time for mobility), it would mean that the PCA would only be present for part of the day each day. The MassHealth representative explained that the hearing only concerned the time MassHealth modified. For activities that MassHealth approved as requested, the appellant would need to discuss this with the PCM agency, which could submit a request for increases concerning these other activities. The appellant was not comfortable withdrawing the appeal.<sup>2</sup>

## Findings of Fact

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

1. The appellant is an individual under the age of 65. (Ex. 7, p. 7).
2. The appellant's diagnoses include osteoarthritis, fibromyalgia, carpal tunnel syndrome, asthma, sinus arrhythmia, cervical stenosis, spinal stenosis, and aneurysm. (Ex. 7, pp. 8).
3. The appellant lives with her husband in a single family two floor home with four external stairs and 15 internal stairs. (Ex. 7, p. 8).
4. On June 13, 2022, the PCM agency submitted a PA reevaluation request for PCA services. (Ex. 7, pp. 7-20).
5. The PCM agency requested 25 hours, 15 minutes of day and evening PCA services for one year. (Ex. 1; Ex. 7, pp. 5, 20).
6. In a letter dated June 17, 2022, MassHealth notified the appellant that it was modifying her request because the time requested was longer than ordinarily required for someone with her physical needs. (Ex. 1; Ex. 7, p. 5).

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<sup>2</sup> The MassHealth representative stated that in the absence of a withdrawal, she would not be able to overturn the determination concerning mobility without a decision.

7. MassHealth approved 23 hours, 45 minutes day and evening PCA services per week from June 24, 2022 through June 23, 2023. (Ex. 1; Ex. 7, p. 5).
8. MassHealth modified the following three activities of daily living:
  - a. Mobility.
    1. The PCM agency requested 3 minutes, 5 times per day, 7 days per week. (Ex. 7, p. 10).
    2. MassHealth modified this to 2 minutes, 5 times per day, 7 days per week. (Ex. 1; Ex. 7, p. 5).
  - b. Bathing.
    1. The PCM agency requested 37 minutes, 1 time per day, 7 days per week. (Ex. 7, p. 13).
    2. MassHealth modified this to 30 minutes, 1 time per day, 7 days per week. (Ex. 1; Ex. 7, p. 5).
  - c. Nail care.
    1. The PCM agency requested 15 minutes per week. (Ex. 7, p. 14).
    2. MassHealth modified this to 10 minutes per week. (Ex. 1; Ex. 7, p. 5).
9. At the hearing the MassHealth representative overturned MassHealth's modification of mobility and approved 3 minutes, 5 times per day, 7 days per week as requested. (Testimony of the MassHealth representative).
10. The appellant agreed to the modifications MassHealth made to bathing and nail care. (Testimony of the appellant).

## **Analysis and Conclusions of Law**

MassHealth may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*). After considering the appellant's testimony, the MassHealth representative approved the time the provider requested for mobility. The appellant did not object to this. The appellant's representative agreed to the modifications to the time requested for bathing and nail care.

For the above stated reasons, the appeal is DISMISSED.

## **Order for MassHealth**

Approve 3 minutes, 5 times per day, 7 days per week for mobility starting June 24, 2022. The modifications for bathing, and nail care will remain in place, as agreed at the hearing.

## **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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Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

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