

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved-in-part; Dismissed-in-part	<b>Appeal Number:</b>	2206162
<b>Decision Date:</b>	10/24/2022	<b>Hearing Date:</b>	09/22/2022
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Mary Jo Elliot, R.N., Clinical Reviewer,  
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>	Approved-in-part; Dismissed-in-part	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	10/24/2022	<b>Hearing Date:</b>	09/22/2022
<b>MassHealth's Rep.:</b>	Mary Jo Elliot, R.N.	<b>Appellant's Rep.:</b>	Spouse
<b>Hearing Location:</b>	Board of Hearings (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

Through a notice dated July 15, 2022, MassHealth informed Appellant that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1, pp. 4-6. On August 16, 2022, Appellant filed a timely request for a fair hearing to appeal the action. See 130 CMR 610.015(B); Exhibit 1, p. 2. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 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 PCA services.

## Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his wife. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a MassHealth member under the age of 65 and has a primary diagnosis of Multiple System Cerebellar Atrophy (MSA). See Exh. 4, p. 9. His relevant medical history includes neoplasm of hypothalamus, gait abnormality, urinary retention, Raynaud's disease, and blurred and double vision. Id. On July 15, 2022, MassHealth received an initial prior authorization (PA) request from Appellant's personal care management (PCM) agency, seeking personal care attendant (PCA) services for dates of service beginning July 29, 2022 through July 28, 2023. Id. at 3. The PA sought approval for 70 hours and 45 minutes per-week of day/evening PCA services and two hours per-night (14 hours per-week) of nighttime PCA services. Id. at 4-6. The request was made after a PCM nurse and occupational therapist conducted an initial evaluation of Appellant to assess his health care needs.

Through a letter dated July 15, 2022, MassHealth notified Appellant that it modified his PA request by approving 62 hours and 45 minutes per-week of day/evening services. See Exh. 1, pp 4-6. The nighttime PCA hours were approved as requested. Id. For the day/evening services, MassHealth made modifications to the time and/or frequency requested for the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): (1) bathing, (2) hair wash, (3) medications, (4) meal preparation, (5) housekeeping, and (6) shopping. Id.

At hearing, the parties resolved all modifications except for bathing. For the resolved ADLs/IADLs, MassHealth agreed to approve the requested times/frequencies, as follows: hair wash (15x1x3), medications (10x4x7), meal preparation (60x1x7), housekeeping (25x1), and shopping (20x1). See Exh. 4 at 13-25.

The only remaining issue in dispute concerned Appellant's request for assistance with "bathing." According to the PA request, Appellant's PCM agency identified him as "totally dependent" for all bathing tasks and requested 75 minutes, once daily (75x1x7) for physical assistance with a sponge/bed-bath and drying, with routine transfers. See id. at 13. Pursuant to its evaluation, the PCM nurse commented that: Appellant can only be bathed in bed due to advancing MSA; he is dependent for gathering all supplies; the task involves assistance of two people to roll him side-to-side; he is washed, rinsed, and dried head-to-toe; supplies are cleaned up; and due to continuous build-up of dead skin cells between Appellant's toes and fingers, the PCA applies lotion to these areas prior to washing with a facecloth. Id. at 13-14. The PCM agency also noted that separate from the bathing procedure, Appellant's hair is washed every-other day and he requires a daily "quick wash" prior to going to bed for his face, hands, axilla, and any areas of increased perspiration. Id. Times for these latter two tasks (hair wash and quick wash), were requested under separate line-items and not included in the 75 minutes requested for his daily sponge bath.<sup>1</sup>

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<sup>1</sup> As noted above, the modification to "hair wash" was resolved at hearing as MassHealth agreed to approve 15 minutes, three times per week, as was requested. MassHealth did not modify the time requested for quick wash,

In its July 15, 2022 notice, MassHealth informed Appellant that it modified the request for bathing by approving 60 minutes daily (60x1x7). See Exh. 1. At hearing, the MassHealth RN representative testified that 60 minutes is typically the maximum it should take, under standards of care, for a two person assist with bathing, and not including time for hair washing (as this was requested separately) or time for transfers (as he is being bathed in bed). Finally, MassHealth approved 60 minutes under the assumption that two PCA's are physically assisting Appellant. If Appellant's wife is the second assist, then part of the assistance is being provided by a non-paid family member and this would reduce the "PCA time" necessary to complete the task.

In response, Appellant's spouse testified that while she assists the PCA with tasks that require two people, such as rolling Appellant side-to-side, she can only offer limited assistance due to her own health concerns and frailty. She will help the PCA as needed, but the PCA does all the work. Although 75 minutes was requested, it takes the PCA, alone, closer to 90 minutes to perform this task, and this is not inclusive of time spent on hair washing. Appellant's wife explained that the PCM nurse that conducted the evaluation understood how difficult and time-consuming it is to provide Appellant with the care he requires, which is why the agency requested 75 minutes. Appellant has very limited movement, he is large, and it takes a long time to get all areas of his body exposed to be washed, cleaned, and dried. Although they do not transfer him into a bathroom, the PCA spends time setting up the area to make sure the bed is protected from the water, soap, and lotions. These required set-up tasks, plus associated clean-up tasks, add to the total bathing procedure time. Because there is no real treatment for MSA, Appellant is prescribed high-powered vitamins and supplements, which cause extra skin growth on his body. This side effect, coupled with his lack of movement, creates problematic skin build-up, and if not cleaned daily, becomes a problem. Initially, the skin build-up occurred primarily between his fingers and toes, however, it is becoming more noticeable on other areas of his body, such as his legs. Appellant's wife testified that Appellant has a super pubic catheter (SPC) and despite the risk of infection, they have not had to take him to the hospital because his hygiene is taken seriously. Furthermore, seepage can appear around the SPC area, which can build up if not addressed during bathing. He is incontinent of bladder and bowel. Although he received time for assistance with toileting, the areas subject to multiple accidents also require special attention during bathing.

## **Findings of Fact**

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

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which, under the PA request was for 10 minutes daily (10x1x7) and was approved accordingly.

1. Appellant is a MassHealth member under the age of 65 and has a primary diagnosis of Multiple System Cerebellar Atrophy, with a relevant medical history including neoplasm of hypothalamus, gait abnormality, urinary retention, Raynaud's disease, and blurred and double vision.
2. On July 15, 2022, MassHealth received an initial PA request from Appellant's PCM agency, seeking PCA services for dates of service beginning July 29, 2022 through July 28, 2023 in the amount of 70 hours and 45 minutes per-week of day/evening PCA services and two hours per-night of nighttime PCA services.
3. Through a letter dated July 15, 2022, MassHealth notified Appellant that it modified his PA request by approving 62 hours and 45 minutes per-week of day/evening services, which consisted of modifications to the following ADLs/IADLs: (1) bathing, (2) hair wash, (3) medications, (4) meal preparation, (5) housekeeping, and (6) shopping.
4. At hearing, MassHealth agreed to approve-in-full the requested times/frequencies, for hair wash (15x1x3), medications (10x4x7), meal preparation (60x1x7), housekeeping (25x1), and shopping (20x1); however, MassHealth upheld its decision to modify time requested for a daily sponge/bed bath.
5. Appellant's PCM agency requested 75 minutes, once daily (75x1x7) for physical assistance with a sponge/bed-bath and drying, with routine transfers; and this did not include time for the separately addressed tasks of hair-wash and quick wash.
6. MassHealth modified the request for bathing by approving 60 minutes daily (60x1x7).
7. Appellant is "totally dependent" for all bathing tasks; he can only be bathed in bed due to advancing MSA; he is dependent for gathering all supplies; the task involves assistance of two people to roll him side-to-side during the bathing procedure; he is washed, rinsed and dried head-to-toe; supplies are cleaned up; and due to continuous build-up of dead skin cells between Appellant's toes and fingers, the PCA applies lotion to these areas prior to washing with a facecloth.
8. Appellant's spouse helps the PCA for tasks that require the assistance of a second person, such as rolling Appellant side-to-side; however, she can only offer limited assistance due to her own health concerns and frailty.
9. Although 75 minutes was requested, it takes the PCA closer to 90 minutes to perform this task, and this is not inclusive of time spent on hair washing.
10. Appellant has very limited movement, he is large, and it takes a long time to get all areas of his body exposed to be washed, cleaned, and dried.
11. The PCA spends time setting up the area to make sure the bed is protected from the water, soap, and lotion, and spends time performing associated clean-up tasks.

12. Appellant is prone to skin-build up on various parts of his body (due to medication side effects and immobility), which require specialized care, and can become problematic if not cleaned daily.
13. Appellant is incontinent of bowel and bladder and has a super public catheter which can result in build-up of seepage around the area.

## Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:<sup>2</sup> First, the services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair the member’s functional ability to perform [at least two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive assistance with his activities of daily living (ADLs) to meet his health care needs. The ADLs that are within the scope of the PCA program are set forth as follows:

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<sup>2</sup> PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.402.

(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 bathing, personal hygiene, or grooming;***
- (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.

See 130 CMR 422.410 (emphasis added).

MassHealth reimburses for the “activity time performed by a PCA in providing assistance with the ADL.” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

At hearing, the parties resolved all modifications, except for the time requested for “bathing.” Through his PA request, Appellant sought 75 minutes per-day (75x1x7) for PCA assistance in performing a daily bed/sponge bath. MassHealth modified this request by approving only 60 minutes per-day, which, according to MassHealth, is within the standard of care for someone totally dependent for bathing needs. Based on the evidence in the record, however, Appellant successfully demonstrated that 60 minutes is insufficient for a PCA to provide adequate care in this area. Appellant has a primary diagnosis of MSA, which renders him immobile and completely dependent for all ADLs, including bathing-related assistance. Due to his condition, Appellant is bathed in bed via a sponge bath. Appellant’s spouse provided credible testimony, which, along with documentary evidence, demonstrated that this task takes at least 75 minutes to perform due to numerous complicating factors. Such factors include Appellant’s level of immobility and large size; the time it takes the PCA to gather bathing supplies, prepare the bed and surrounding area to protect it from water and lotion; ensuring cleanliness around his super pubic catheter and areas of incontinence; providing specialized cleaning in between fingers, toes, and other areas susceptible to skin build-up; and performing associated clean-up tasks.

Accordingly, the requested time for bathing is medically necessary and supported by the evidence in the record.

This appeal is APPROVED-in-part with respect to bathing.

This appeal is DISMISSED-in-part with respect to the resolved ADLs/IADLs, as MassHealth agreed to approve as follows: hair wash (15x1x3); medications (10x4x7); meal preparation (60x1x7); housekeeping (25x1); and shopping (20x1).

## **Order for MassHealth**

Approve-in-full Appellant's prior authorization request for PCA dates of service 7/29/22 through 7/28/23; including: bathing at 75x1x7 (in addition to 10x1x7 quick wash); and, as agreed-to at hearing: hair wash at 15x1x3, medications at 10x4x7, meal preparation at 60x1x7, housekeeping at 25x1, and shopping at 20x1.

## **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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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

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

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