

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2209446
<b>Decision Date:</b>	2/3/2023	<b>Hearing Date:</b>	01/23/2023
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*

Pro se

**Appearance for MassHealth:**

*Via telephone:*

Mary-Jo Elliott, RN

**Interpreter:** Ellen, 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>	Denied	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	2/3/2023	<b>Hearing Date:</b>	01/23/2023
<b>MassHealth’s Rep.:</b>	Mary-Jo Elliott, RN	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South Remote	<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 December 6, 2022, MassHealth modified the appellant’s prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on December 21, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth modified the appellant’s prior authorization request for PCA services.

## Issue

The appeal issue is whether MassHealth was correct in modifying the appellant’s prior authorization request for PCA services.

## Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. She testified that the documentation submitted showed that the appellant is an adult MassHealth member under the age of 65 with a primary diagnosis of osteoarthritis and a history of lupus, vertigo, depression, degenerative neuro muscular disease, and herniated discs of lumbar and cervical.

The MassHealth representative testified that the appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services on November 21, 2022 requesting 23 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night, 7 nights per week for dates of service of December 6, 2022 through December 5, 2023. MassHealth modified the request to 22 hours and 45 minutes per week and approved the nighttime hours. The appellant is in aid pending during the appeals process, receiving 23 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night.

MassHealth stated that the only modifications made were to the instrumental activities of daily living (IADLs) of laundry and housekeeping. All other activities of daily living (ADLs) and IADLs were approved as requested. MassHealth stated that it modified laundry and housekeeping because there are two other PCA consumers in the home receiving those services. MassHealth looks at the shared amount of time for these IADLs. One daughter was approved for 60 minutes per week for both laundry and housekeeping. It was not immediately clear what the other daughter was receiving for services.<sup>1</sup> The notes indicate that the laundry is in the appellant's home and the appellant is unable to load/unload the machine. The notes also indicate that she is unable to carry wet loads of laundry, vacuum, sweep, mop, or scrub due to difficulty bending, flexing, extending, reaching, and lifting arms over the shoulder. These limitations are due to degenerative disc disease of the lumbar and cervical discs and weakness, decreased strength, and endurance related to muscular atrophy, and lupus. It also notes the appellant has decreased motivation due to depression.

The appellant testified that at the time of her evaluation for this prior authorization request, she was walking, but she has not been able to walk for the past seven days. She is scheduled for knee replacement surgery which she hopes will take place on February 2, 2023. Her daughters have the same condition she has and require PCA assistance. The appellant repeatedly stated that she wanted the PCM agency nurse to request 30 hours per week and she does not know why the nurse only requested 23 hours and 15 minutes. She used to have 30 hours per week and wants more time.

The MassHealth representative explained that the appellant needs to ask for an adjustment due to the upcoming surgery, but MassHealth cannot approve more time than what was requested by her PCM agency. The MassHealth representative and this hearing officer both tried to elicit further testimony as to why 60 minutes per week for both laundry and housekeeping was insufficient, but

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<sup>1</sup> After hearing, this hearing officer received an email from the MassHealth nurse clarifying the amount of time each daughter was receiving for laundry and housekeeping. Daughter 1 was approved for 15 minutes of housekeeping and no time for laundry. Daughter 2 had 30 minutes of laundry approved, but in a new prior authorization, the PCM agency did not request any time for laundry, housekeeping, or other IADLs. See Exhibit 6.

the appellant continued to focus on the PCM agency not requesting 30 hours per week as desired by the appellant. It was noted that the prior authorization request was signed off on by the appellant. The appellant did state that they live on the second floor but the laundry is on the third floor. She abruptly hung up the phone when it was again explained to her that she needed to request an adjustment and MassHealth could not approve more time than her PCM agency requested.

## **Findings of Fact**

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

1. The appellant is an adult MassHealth member under the age of 65 with a primary diagnosis of osteoarthritis and a history of lupus, vertigo, depression, degenerative neuro muscular disease, and herniated discs of lumbar and cervical (Testimony and Exhibit 5).
2. MassHealth received a prior authorization request for PCA services on November 21, 2022 requesting 23 hours and 15 minutes per week of day/evening hours and 2 nighttime hours per night, 7 nights per week for dates of service of December 6, 2022 through December 5, 2023 (Testimony and Exhibit 5).
3. On December 6, 2022, MassHealth modified the request to 22 hours and 45 minutes per week and approved the nighttime hours (Testimony and Exhibits 1 and 5).
4. The appellant seeks time for PCA assistance with the IADL of laundry as follows: 75 minutes per week (Testimony and Exhibit 5).
5. MassHealth modified the request for assistance with laundry to 60 minutes per week (Testimony and Exhibit 5).
6. The appellant seeks time for PCA assistance with the IADL of housekeeping as follows: 75 minutes per week (Testimony and Exhibit 5).
7. MassHealth modified the request for assistance with housekeeping to 60 minutes per week (Testimony and Exhibit 5).
8. The laundry is in the appellant's home on the third floor and the appellant lives on the second floor (Testimony).

## Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of 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 or grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth 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 service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

Regarding the appellant's request for both laundry and housekeeping, the appeal is denied. The appellant has not demonstrated that PCA assistance with laundry and housekeeping take longer than the time approved. She did not provide any testimony related to how long it takes the PCA to complete the hands-on tasks related to laundry and housekeeping. Instead, her testimony focused on how she wanted her PCM agency to request 30 hours per week and did not.<sup>2</sup> There is no note in the documentation provided by her PCM agency of excessive laundry needs. While there are two other PCA consumers in the home, PCA assistance with household services are specific to the "care of the member," not others in the household. Thus, time allowed for laundry and housekeeping are for the appellant's own laundry and personal spaces. For these reasons, the appellant has not shown that any further PCA assistance with laundry or housekeeping is medically necessary.

Therefore, the appeal is denied.

## **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.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

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

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<sup>2</sup> The appellant is encouraged to request an adjustment through her PCM agency, especially considering her upcoming surgery. But MassHealth cannot grant more hours than requested.