

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2300665
<b>Decision Date:</b>	3/15/2023	<b>Hearing Date:</b>	03/09/2023
<b>Hearing Officer:</b>	Sara E. McGrath		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Donna Burns, RN



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Prior Authorization for PCA Services
<b>Decision Date:</b>	3/15/2023	<b>Hearing Date:</b>	03/09/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Remote)		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through a notice dated January 6, 2023, 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 January 26, 2023 (130 CMR 610.015(B); Exhibit 2). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)).

## Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

## Issue

The appeal issue is whether the appellant qualifies for additional PCA services under MassHealth regulations.

## Summary of Evidence

The MassHealth representative, who is a registered nurse, appeared at the hearing by phone and testified to the following factual background: The appellant is a female in her 50s with diagnoses that include epilepsy, arthritis, depression, and anxiety. The nurse evaluator included that the appellant has a history of falls, right shoulder pain, and decreased range of motion related to a fall (Exhibit 3, p. 12). A recent occupational therapy assessment indicates that the appellant is independent with mobility, transfers, and eating; that she needs minimal assistance with toileting, passive range of motion exercises, and medication administration; and that she needs moderate assistance with bathing, grooming, and dressing (Exhibit 3, pp. 8-9). The report also notes that the appellant is dependent for all instrumental activities of daily living (meal preparation, housekeeping, laundry, and shopping) (Exhibit 3, p. 9).

On December 23, 2022, MassHealth received an initial prior authorization (PA) request for PCA services for the appellant in the amount of 17.5 day/evening hours per week, and 14 night hours per week. On January 6, 2023, MassHealth reviewed the request and made six modifications, resulting in an authorization of 14 day/evening hours per week, and 0 night hours per week. At hearing, the parties reviewed all of the modifications and were able to resolve five of them (PCA assistance with passive range of motion exercises, bathing, grooming, laundry, and housekeeping). The parties were unable to resolve the request for PCA assistance at night (14 hours per week), which MassHealth continues to deny in full (Exhibit 3, p. 22).

The MassHealth representative explained that the appellant requested PCA assistance at night solely to assist with bowel care.<sup>1</sup> The appellant requested 10 minutes per night for assistance with bowel care. The nurse evaluator writes that the PCA “[a]ssists with hygiene after BM’s” (Exhibit 3, p. 22). The MassHealth representative stated that most people sleep at night and move their bowels during the day. The appellant appeared at hearing by phone and stated that she sometimes gets a stomachache at night and needs to use the bathroom. She focused mainly on the fact that she is afraid to sleep because of her seizures. She is worried that she is going to have a “blue seizure,” and need breathing assistance. Therefore, for safety reasons, she needs someone to monitor and watch over her while she sleeps. The MassHealth representative stated that because the appellant does not move her bowels at night on a regular basis, PCA assistance at night has not been medically justified. Further, she stated that the PCA program covers hands-on assistance, not the monitoring that the appellant seeks.

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<sup>1</sup> The MassHealth representative stated that the request for PCA assistance with bowel care during the day/evening was approved as requested (Exhibit 3, p. 22).

## **Findings of Fact**

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

1. The appellant is a female in her 50s with diagnoses that include epilepsy, arthritis, depression, and anxiety.
2. The appellant has a history of falls, right shoulder pain, and decreased range of motion related to a fall.
3. A recent occupational therapy assessment found that the appellant is independent with mobility, transfers, and eating; that she needs minimal assistance with toileting, passive range of motion exercises, medication management; and that she needs moderate assistance with bathing, grooming, and dressing. The report also notes that the appellant is dependent for all instrumental activities of daily living (meal preparation, housekeeping, laundry, and shopping).
4. On December 23, 2022, MassHealth received an initial PA request for PCA services for the appellant in the amount of 17.5 day/evening hours per week, and 14 night hours per week.
5. On January 6, 2023, MassHealth reviewed the request and made six modifications, resulting in an authorization of 14 day/evening hours per week, and 0 night hours per week.
6. At hearing, the parties reviewed all of the modifications, and were able to resolve five of them (PCA assistance with passive range of motion exercises, bathing, grooming, laundry and housekeeping).
7. The parties were unable to resolve the request for PCA assistance at night to assist with bowel care, which MassHealth denied in full.
8. The appellant requested 10 minutes per night for assistance with hygiene related to bowel care.
9. The appellant “sometimes” has a stomachache at night and needs the bathroom, but her primary request is for the PCA to sit with her while she sleeps to monitor for seizures.
10. On January 26, 2023, the appellant filed a timely appeal of the PCA modification/denial notice.

## Analysis and Conclusions of Law

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, *et seq.* PCA services are 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 (130 CMR 422.402). Per 130 CMR 422.403(C), MassHealth covers PCA 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 PCA services are authorized for the member in accordance with 130 CMR 422.416; (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A); and (4) the MassHealth agency has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 basic care such as 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 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 personal care services;and

(c) other special needs approved by MassHealth 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 personal care 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

MassHealth also limits coverage to those services that have been determined to be medically necessary. Per 130 CMR 450.204(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: *Potential Sources of Health Care*, or 517.007: *Utilization of Potential Benefits*.

MassHealth denied the appellant's PA request for PCA services at night because it determined that these services are not medically necessary. The record supports this determination. PCA "night hours" are defined as the hours between 12:00 a.m. and 6:00 a.m. (130 CMR 422.402). The appellant has conceded that her need for bowel care assistance at night is not consistent - she sometimes has a stomachache that results in the need for the bathroom, but not regularly. Notably, the appellant's need for assistance with this task has been determined to be minimal. Because the appellant does not need consistent assistance with this task at night, MassHealth appropriately denied the request. Further, the appellant's request for night monitoring was also appropriately denied.

PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA” (130 CMR 420.402). The appellant’s request for monitoring is not a request for physical assistance, and thus is not a covered service under the PCA program.

The appellant has not demonstrated that additional PCA hours are medically necessary, and 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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Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Optum