

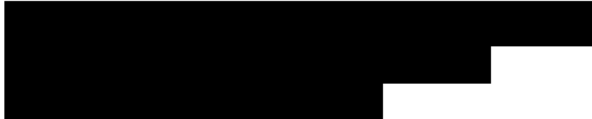
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED IN PART; DISMISSED IN PART	Appeal Number:	2300938
Decision Date:	3/31/2023	Hearing Date:	03/10/2023
Hearing Officer:	Christopher Taffe		

Appearances for Appellant:



Appearance for MassHealth:

Mary Jo Elliott, RN – Clinical Reviewer
from OPTUM (by phone)



*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

Appeal Decision:	DENIED IN PART; DISMISSED IN PART	Issue:	PA – PCA hours
Decision Date:	3/31/2023	Hearing Date:	03/10/2023
MassHealth's Rep.:	M.J. Elliott, RN	Appellant's Rep.:	Appellant, with Spouse & [REDACTED]
Hearing Location:	HarborSouth Tower, Quincy	Aid Pending:	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 January 9, 2023, MassHealth informed Appellant that it had modified her Prior Authorization (PA) request for Personal Care Attendant (PCA) hours, by approving 5.75 hours/week of day and evening PCA hours for the PA period from January 9, 2023 through January 8, 2024. See Exhibit 1; 130 CMR 422.410; 130 CMR 450.204. Appellant filed a timely request for an appeal with the Board of Hearings on February 6, 2023. See Exhibit 1; 130 CMR 610.015(B). Challenging a MassHealth determination of the scope of assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth partially approved Appellant's initial PCA request by approving 5.75 PCA hours/week of day and evening services for the current PA period.

Issues

Is the MassHealth decision regarding the number of hours justified based on the request, record and regulations? or has Appellant produced sufficient evidence to allow her to be entitled to greater

assistance from the PCA program at this time?

Summary of Evidence

Appellant is a ■-year old female MassHealth member who appeared and testified at hearing by phone. She was joined at hearing on the phone by both her husband and by Mr. Forman, her Appeal Representative.¹ Ms. Elliott, a registered nurse, also appeared by phone to provide testimony on behalf of the OPTUM, the MassHealth contractor who helps to administer some of the agency's prior approval services.

The MassHealth Personal Care Attendant program involves unskilled and unlicensed personnel who are hired to assist members with physical disabilities by providing paid time for hands-on assistance with a member's Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). The PA review process utilized by the MassHealth PCA program allows the agency to determine medical necessity for the minutes requested by the member and make "modifications" where appropriate; the PCA time approved by MassHealth must be based on the member's capabilities, bear a relationship to the member's diagnosis and request, and comply with the applicable MassHealth PCA regulations.

At the time of the PA request in question, Appellant was a MassHealth member who lived at home in the community with her spouse. She had not personally received PCA services prior to the PA request at issue which was first submitted in December of 2022. The dates of the PA period are 1/9/2023 to 1/9/2024. When it issued the determination notice appealed in this matter, MassHealth approved 5.75 hours/week, but the PA request sought 17.50 hours/week.²

Appellant's need for PCA service is based on her diagnosis of long-standing severe arthritis with congenital adrenal hyperplasia. She recently injured her shoulder and foot prior to the PA request. She suffers from pain, decreased strength, and has some impaired mobility and deficits with regard to endurance, stamina and gross motor coordination. She is able to walk with the assistance of ambulatory devices (such as a rolling walker and cane) and the PCA report from the Occupational Therapist indicates she uses a tub seat, a handheld shower device, and may use grab-bars when washing or toileting.

Appellant's PCA request sought PCA time with the ADL activities of Bathing, Grooming, and Dressing/Undressing, as well as time with the IADL of Laundry, Shopping, Housekeeping, and Meal Preparation and Clean-Up.

¹ During the phone call, Appellant verbally designated Mr. Forman to serve as her Appeal Representative during this matter. Appellant and Mr. Forman also indicated that a fax had been sent in, prior to the hearing date (on March 9th) and from Mr. Forman, regarding this representation designation. As of March 27, 2023, the Hearing Officer has still not received this writing, but the verbal authorization given by Appellant at appeal is sufficient for designating authority of the representative.

² All hours in this matter and decision are "day and evening hours", which under the MassHealth PCA program means hours for assistance between the hours of 6:00 AM and 12:00 AM (Midnight). There were no nighttime hours (between 12 midnight and 6:00 AM) requested or approved, nor was there any iota of evidence in the record indicating nighttime hours were needed or should be considered.

All the time for the hands-on assistance for the ADLs of Bathing and Grooming were approved in the approval notice. At hearing, after receiving testimony and re-reviewing Appellant's doctor's note about Appellant's limitations on getting dressed, the time requested for both Dressing and Undressing was approved in full. With that approval, Appellant was approved for 433 minutes/week of PCA time, which was rounded up to 7.25 hours/week. The only portion not approved of the request involved IADLs, where Appellant's time was only partially approved. A summary of the time requested and approved for the four IADLs is as follows:

Issue #	Activity	Request of Appellant is...	MassHealth Approved...	Decrease caused by MassHealth's Modifications
1	Meal Preparation and Clean-Up (IADL)	525 minutes/week (30 minutes for lunch daily, and 45 minutes for dinner daily)	NO time per week	525 minutes/week
2	Laundry (IADL)	60 minutes/week	NO time per week	60 mins./week
3	Shopping (IADL)	60 minutes/week	45 minutes/week	15 mins./week
4	Housekeeping (IADL)	60 minutes/week	45 minutes/week	15 mins./week
			<i>Total of "denied" minutes =</i>	<i>615 minutes/</i>

See Exhibit 1 and Exhibit 3, pages 26-27. Based on this denial of 615 minutes/week, that represent the difference of 10.25 hours between 7.25 approved and 17.50 requested

The justification for MassHealth's denial of time for IADLs is that Appellant lives with her husband,³ who is also a MassHealth member who already receives PCA services, and as part of that, he receives PCA time, not just for his ADLs, but also for the IADLs. MassHealth explained that while ADLs are consumer-specific, there is a regulatory requirement that PCA time for IADLs be calculated on a shared basis among same-household members.

MassHealth testified that, per its records, Appellant's husband is approved for 700 minutes/week (100 minutes daily) of Meal Preparation and Clean-Up and it was believed this was an adequate amount of time for the couple. Appellant and her husband testified that the couple often eats at the same time but not always. Appellant testified that her diet is very similar to her husband and they eat many of the same meals, and that the Appellant sometimes makes meals (for both herself and her husband) as the PCA that Appellant has doesn't have enough time to do the other tasks. MassHealth explained that 700 minutes/week was an appropriate amount of time for the couple in light of these circumstances.

Regarding the IADL of Laundry, 90 minutes was already approved for laundry for husband. Appellant stated that she herself sometimes does laundry herself, although she needs assistance transferring the clothes to and from the laundry, or removing sheets soiled by her husband from the bed. Appellant can fold clothes but struggles with putting them away. Per Appellant, laundry is

³ Per a note in Exhibit 3, Appellant's husband has muscular dystrophy. The parties discussed how Appellant's spouse uses a catheter and is wheelchair bound, and how he himself (the spouse) can't contribute to the help of his wife or with any of the IADLs.

often done 3 to 4 times per week.

In making the decision to approve Appellant for 45 minutes/week instead of the requested 60 minutes/week for the activity of Shopping, MassHealth noted that 45 minutes was already approved for the husband and that 90 minutes for the couple should suffice. The couple testified that they do some shopping on their own, but they often need the PCA to help with bags or with accompanying them or assisting them into getting to the local Market Basket or other stores.

As to housekeeping, MassHealth testified that, like the activity Shopping, 45 minutes/week was already approved for the husband for housekeeping, so that by reducing the requested total for the wife to 45 minutes, the couple now had an equal amount (45 minutes each) and 90 minutes total which should suffice. The couple has a 5-room residence. Appellant testified that while the PCAs or aides clean the bathroom every day, that is the only room regularly cleaned, although Appellant testified that she herself cleans the shower every day.

Appellant and her husband questioned whether they were approved for 17.50 hours initially but the parties then realized at hearing that the 17.50 hours was the total requested, but not approved. Upon learning it was a request, Appellant and her husband objected to the fact that the initial request was not just approved in full. Appellant and her husband also talked about the difficulties of finding workers that could be trustworthy and that limited hours did not help them get the care and help they need. Appellant and her husband testified that the total amount of time that the couple had, both through the spouse, and by Appellant, was not enough.

Findings of Fact

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

1. Appellant is a ■-year old MassHealth member who applied for 17.50 hours/week of PCA services. Through the appealable action notice, MassHealth approved 5.75 hours/week, and Appellant timely filed an appeal with the Board of Hearings. (Testimony and Exhibits 1 and 3)
 - a. This is an initial application for PCA services for Appellant. (Testimony and Exhibit 3)
2. Appellant's request for PCA service is based on her diagnosis of long-standing severe arthritis with congenital adrenal hyperplasia. She recently injured her shoulder and foot prior to the PA request. (Testimony and Exhibit 3)
3. Appellant suffers from pain, decreased strength, and has some impaired mobility and deficits with regard to endurance, stamina and gross motor coordination. She is able to walk with the assistance of ambulatory devices (such as a rolling walker and cane). Appellant uses a tub seat, a handheld shower device, and may use grab-bars when washing or toileting. (Testimony and Exhibit 3)
4. Appellant lives with her husband in a 5-room residence and the husband receives his own

separate amount of PCA services from MassHealth. (Testimony)

5. As of the end of the hearing, MassHealth had approved all PCA time as requested for all ADLs. This included the full time requested for the activities of Bathing, Grooming, and Dressing/Undressing. (Testimony and Exhibit 3)

- a. Dressing/Undressing time was not approved in full in the denial notice, but it was approved at hearing after testimony and evidence was provided about Appellant's struggles with this task. This approval resulted in a temporary approval and eligibility of Appellant for 7.25 PCA hours/week. (Testimony and Exhibits 1 and 3)

6. As of the close of hearing, the only disputed or denied request involves four disputes involving Appellant's time for IADLs. The specifics of the request and what was approved are as follows:

Issue #	Activity	Request of Appellant is...	MassHealth Approved...	Decrease caused by MassHealth's Modifications
1	Meal Preparation and Clean-Up (IADL)	525 minutes/week (30 minutes for lunch daily, and 45 minutes for dinner daily)	NO time per week	525 minutes/week
2	Laundry (IADL)	60 minutes/week	NO time per week	60 mins./week
3	Shopping (IADL)	60 minutes/week	45 minutes/week	15 mins./week
4	Housekeeping (IADL)	60 minutes/week	45 minutes/week	15 mins./week
			<i>Total of "denied" minutes =</i>	<i>615 minutes/</i>

(Testimony and Exhibits 1 and 3)

7. Appellant's husband has already been approved for the following amounts of PCA time:

- a. 700 minutes/week for the ADL of Meal Preparation and Clean-Up;
b. 90 minutes/week for the IADL of Laundry;
c. 45 minutes/week for the IADL of Shopping; and
d. 45 minutes/week for the IADL of Housekeeping
(Testimony)

8. Appellant herself can do some meal preparation of basic meals. (Testimony)

9. Appellant and her husband do not have different diets or meals. (Testimony)

10. The couple does 3 to 4 loads of laundry for the household per week. (Testimony)

11. Appellant is able to do some components of laundry, but certain tasks, such as folding clothes after the dryer, are those which are least taxing for her. (Testimony)

12. Both the Appellant and her husband occasionally go with their PCA for shopping at the local Market Basket. (Testimony)

13. Appellant is capable of cleaning the bathtub on an occasional basis. (Testimony)

Analysis and Conclusions of Law

The regulations concerning PCA Services are found at 130 CMR 422.000 et seq. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when “(1) *they 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 ADLs as defined in 130 CMR 422.410(A)*; and (4) *MassHealth has determined that the PCA services are medically necessary*.” It is undisputed that this Appellant is a MassHealth member eligible for PCA services.

All requested PCA services must be medically necessary for prior authorization to be approved. A portion of the MassHealth regulation which applies to all providers, including the PCA program, and which describes what kind of services meet the definition of “*medical necessity*”, appears below:

130 CMR 450.204: Medical Necessity

The MassHealth agency 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) *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...*

(**Bolded** emphasis added.)

The relevant portion of 130 CMR 422.410 which further defines the specific ADLs and IADLs covered by this program reads as follows:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). *Activities of daily living include the following categories of*

activities. Any number of activities within one category of activity is counted as one ADL:

- (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: 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 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.**

(Bolded emphasis added.)

In this case, although MassHealth initially denied some portion of the time for the ADLs of Dressing and Undressing, that modification and dispute was resolved completely in Appellant's favor resulting in additional time for Appellant. With this partial resolution, Appellant's total time approved as of the end of hearing is equal to a slight increase of 7.25 hours/week. This appeal is DISMISSED IN PART as to this portion of the appeal involving ADLs.

The remaining disputed items involve how much, if any, time Appellant should be given for her IADLs. The regulation at 130 CMR 422.410(C) offers guidance on assessing how much time should be given for IADLs, and MassHealth's decision appears to correctly apply that regulation. First, even though Appellant lives with a family member (her husband), MassHealth approved some IADL time for Appellant as there was some recognition that the husband, who is himself a MassHealth member with a chronic disabling condition causing him to need physical assistance from a PCA, would not be able to provide Appellant with assistance with IADLs. However, MassHealth's decision on reducing the IADL time also appeared to show a logically decision consistent with 130 CMR 422.422, as how much previously-approved PCA time a fellow family members has is a circumstance that the regulation says should be taken into account. Whether Appellant and her spouse think it's fair or not, the legal standard says that time should be shared between family members and should be requested appropriately. There is no basis for indicating why Appellant should get more shopping or housekeeping time (the requested 60 minutes) than which her disabled husband received, especially when there are no unique or unusual shopping and housekeeping needs (such as an unusually large residence where the MassHealth member can't clean at all, or a need for regular shopping and picking up medical items and other needs at multiple stores). In fact, testimony suggests that the couple participates in some of these activities of shopping, and to a lesser degree, with some of the housekeeping. If PCA time is scarce as testified to by the parties, then perhaps a more efficient use of the time, consistent with 130 CMR 450.204(A)(2) would be to let the PCA do the shopping independently (and theoretically more quickly), and also have the PCA do the IADL task that the state has approved them to do. Moreover, 90 minutes of weekly shopping and housekeeping seems adequate for a household of two people, especially when that is consistent with the maximum amount of weekly time given for most MassHealth members in a Fair Hearing setting.

Similarly as to issue of the Meal Preparation, there is no evidence showing the couple has unique meal prep needs (such as different diets), and Appellant indicated she is admittedly able to participate with some basic meal preparation. 700 minutes/weekly is a substantial amount of time for the couple who often eat together and eat the same meals, and there is no evidence justifying why more time for this task should be considered and allowed for this Appellant. Finally, with regard to the last item of laundry, Appellant admitted that she is able to participate to some limited degree, and it is noted that the total amount of time approved is for hands-on assistance done by the PCA, and thus the length of a laundry's machine's wash cycle or drying cycle cannot be a factor. A PCA can simply do other tasks while the laundry device runs its cycle. Thus, 90 minutes/week for Laundry time, is again very consistent and on the high end of what MassHealth approves for one household, and the laundry needs do not seem unusual for the couple.

Based on this analysis, I find the MassHealth modifications to reduce all the time for IADL in this case to be logical, proper, and in accordance with the regulations. The IADL regulation requires that the agency considers the individual circumstances, and it appears the agency made decisions on limiting the IADL time based on the facts present in this appeal and 130 CMR 422.410(C). Appellant's request is thus DENIED IN PART as to the additional time for the IADLs.

Order for MassHealth

To the extent that it has not already been done, and by no later than 30 days of the date of this decision, MassHealth should issue a written, non-appealable notice to Appellant and her PCA provider indicating that Appellant has been approved for 7.25 hours/week of PCA services on the current PA period.

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 OPTUM through either the MassHealth Prior Authorization Unit (1-800-862-8341) or general MassHealth Customer Service (1-800-841-2900). 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Appeals Coordinator @ OPTUM

