

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:**      Approved in part;  
                                 Denied in part;  
                                 Dismissed in part


**Appeal Number:**      2301227

**Decision Date:**      4/5/2023

**Hearing Date:**      3/16/2023

**Hearing Officer:**      David Jacobs

**Appearances for Appellant:**

 Appellant's daughter

**Appearances for MassHealth:**

Cheryl Eastman, 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>	Approved in part; Denied in part; Dismissed in part	<b>Issue:</b>	Prior Authorization (PCA Services)
<b>Decision Date:</b>	4/5/2023	<b>Hearing Date:</b>	3/16/2023
<b>MassHealth Rep:</b>	Cheryl Eastman, RN	<b>Appellant Rep:</b>	Appellant's Daughter
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

### Authority

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

### Jurisdiction

Through notice dated January 17, 2023, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410) (Exhibit 1). The appellant filed a timely appeal on February 10, 2023. (130 CMR 610.015(B)). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

### Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

## **Summary of Evidence**

MassHealth was represented at the hearing by a registered nurse who testified telephonically to the following factual background: The appellant is a female in her early 70s whose provider, Boston Center for Independent Living, submitted an initial request for PCA services on her behalf. The record reflects that the appellant has a primary diagnosis of osteoarthritis with multiple spinal disorders. (Exhibit 5) On January 5, 2023, MassHealth received an initial prior authorization request for PCA services. The appellant was represented by her daughter who also acts as her PCA. The appellant seeks PCA services in the amount of 56.5 hours day/evening hours per week, and 2 night hours per week. On January 17, 2023, MassHealth modified the request and authorized 49 hours day/evening hours per week, and 2 night hours per week. Six modifications were made by MassHealth.

### **1. Passive Range of Motion to the Lower Extremities (Exhibit 6, pg. 3)**

The record includes an occupational therapy functional status report. (Exhibit 10) For Passive Range of Motion (PROM), the occupational therapist reports that no PROM was ordered as it is too painful for the appellant due to her condition (Exhibit 10). The appellant requested time for PCA assistance with PROM of lower extremities for 8 minutes, 2 times a day, for 7 days. The request was modified by MassHealth to include no time for PROM to the lower extremities. The MassHealth representative testified that MassHealth reduced the time to 0 because the occupational therapist recommended that no PROM be performed for the appellant as it is too painful for her. Furthermore, PROM to the upper extremities was not requested by the appellant likely for this very reason. The appellant's daughter argued that the appellant's primary care provider approved of a PCA to perform PROM to the lower extremities. The record was left open until March 30, 2023 for the appellant to submit documentation from the appellant's primary care provider stating that a PCA was authorized to perform PROM to the lower extremities (Exhibit 13). No request for an extension was made and no documents were submitted by the appellant by the open record deadline (Exhibit 14).

### **2. Bathing (Exhibit 6, pgs. 3-5)**

The parties were able to resolve the dispute regarding the bathing task (time for PCA assistance with a shower and quick wash). The appeal is therefore dismissed as to this issue.

### **3. Grooming (Exhibit 6, pgs. 5-6)**

The parties were able to resolve the dispute regarding one grooming task (other healthcare needs used primarily for the application of powders and creams). The appeal is therefore dismissed as to this issue. The parties were unable to resolve disputes regarding the time for PCA assistance with one other grooming task (hair care).

For grooming, the occupational therapist reports that the appellant requires total assistance with grooming needs as she has limited hand and arm movement due to her condition (Exhibit 10). The

appellant requested time for PCA assistance with hair care for 5 minutes, 2 times a day, for 7 days. The request was modified by MassHealth to 5 minutes, 1 time a day, for 7 days. The appellant's daughter initially testified that her mother is bedridden and has very long hair that she takes great pride in. The MassHealth representative responded that PCA care is limited to medically necessary care which is typically limited to the washing, drying, and brushing of hair once per day. The appellant's daughter then added ever since her mother went through menopause she gets very sweaty throughout the day which damages her hair and requires care a second time per day.

#### **4. Dressing (Exhibit 6, pgs. 6-7)**

For dressing, the occupational therapist reports that due to the limited mobility caused by her condition, the appellant requires the maximum levels of assistance with dressing and undressing. (Exhibit 10) The appellant requested time for PCA assistance with dressing and undressing for 20 minutes, 1 time a day, for 7 days and 10 minutes, 1 time a day, for 7 days. The request was modified by MassHealth to just 20 minutes, 1 time a day, for 7 days. The pre-authorization notes indicate that the appellant requires a full change of clothes in the morning and a partial change of the clothes in the evening (Exhibit 6, pg. 7). The MassHealth representative testified that all this time was approved. The full change of clothes in the morning was approved for 20 minutes, 1 time a day, for 7 days and the partial change of clothes in evening was approved as part of undressing section for 10 minutes, 1 time a day, 7 days a week and 5 minutes, 1 time a day, 7 days a week. It is not clear to MassHealth what the 10 minutes, 1 time a day, for 7 days represents. The appellant representative testified that the appellant does not always require a full change of clothes each morning and that the 10 minutes, 1 time a day, for 7 days may represent time for special orthopedic socks and a knee brace the appellant wears. The MassHealth representative responded that time for orthopedic socks and the knee brace were considered in the approval for 20 minutes, 1 time a day, for 7 days. (Exhibit 6, pg. 7)

#### **5. Other Healthcare Needs (Exhibit 6, pgs. 10-12)**

For other healthcare needs, the occupational therapist reports that the appellant wears a continuous positive air pressure (CPAP) machine at night to treat sleep apnea. She requires assistance putting the device on, adjusting it, and cleaning it. (Exhibit 6, pg. 11). The appellant requested time for PCA assistance with other healthcare needs for 5 minutes, 2 times a day, for 7 days. The request was modified by MassHealth to 5 minutes, 1 time a day, for 7 days. The appellant's daughter testified that she generally needs more time to care for the CPAP machine. Her mother uses the machine every night when she sleeps, and the daughter assists her with putting it on and adjusting it. She further testified that often for convenience the task of cleaning and maintaining the device is divided into two jobs throughout the day. The MassHealth representative responded that some of the maintenance of the CPAP machine is already considered under equipment maintenance. Furthermore, the time for use of the CPAP machine was not reduced, rather only the frequency of times per day was reduced from two to one.

#### **6. Equipment Maintenance (Exhibit 7, pg. 4)**

For equipment maintenance, the occupational therapist reports that the appellant requires assistance with the cleaning and maintenance of a CPAP machine, a walker, and a wheelchair. The appellant requested time for PCA assistance with equipment maintenance for 84 minutes a week. The request was modified by MassHealth to 35 minutes per week. The appellant's representative testified that they required more time for the cleaning the equipment but was generally unsure of how much time they spend each week on maintenance. The MassHealth representative responded that time for cleaning the equipment was considered and approved under the request for PCA time for housekeeping (Exhibit 7, pg. 2) and that 5 minutes, 1 time per day, 7 days a week (35 minutes total) was what was typical for just the maintenance of the equipment.

### **Findings of Fact**

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

1. The appellant is female in her early 70's with diagnoses that include osteoarthritis with multiple spinal disorders
2. A recent occupational therapy report notes that the appellant has limited mobility of her hands and arms and general pain in her upper and lower extremities caused by her condition.
3. On January 5, 2023, the appellant submitted an initial request for PCA services in the amount of 56.5 hours day/evening hours per week and 2 night hours per week.
4. On January 17, 2023, MassHealth modified the request and authorized 49 day/evening hours per week and 2 night hours per week.
5. At hearing, the parties were able to resolve the dispute regarding time for PCA assistance with the bathing task and the grooming task related to other healthcare needs.
6. The parties were unable to resolve disputes regarding the time for PCA assistance with PROM for the lower extremities, dressing, grooming related to hair care, other healthcare needs related to the care of a CPAP machine, and equipment maintenance.
7. The appellant requested time for PCA assistance with PROM for lower extremities as follows: 8 minutes, 2 time per day, 7 days per week; MassHealth did not authorize any time for PCA assistance with PROM for lower extremities.
8. The occupational therapist recommended no PROM be performed due to pain it could inflict on the appellant due to her diagnosis of osteoarthritis.
9. The appellant requested time for PCA assistance with hair care as follows: 5 minutes, 2 times per day, 7 days per week; MassHealth modified the appellant's request for hair care as follows: 5 minutes, 1 time per day, 7 days a week.

10. Ever since menopause the appellant gets very sweaty throughout the day which damages her very long hair.
11. The appellant requested time for assistance with dressing as follows: 20 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week; MassHealth modified the time to 20 minutes, 1 time per day, 7 days per week.
12. The appellant usually, but not always, has a full clothing change in the morning and a partial clothing change in the evening.
13. The 20 minutes, 1 time per day, 7 days a week represents the full clothing change in the morning and the partial clothing change in the evening is covered in the undressing time of the prior authorization request granted by MassHealth.
14. The appellant requested time for assistance with other health care needs for the use of a CPAP machine as follows: 5 minutes, 2 times per day, 7 days per week; MassHealth modified the time to 5 minutes, 1 time per day, 7 days per week.
15. The appellant uses the CPAP machine every night when she sleeps and uses the assistance of the daughter to put it on and adjust it.
16. The appellant's daughter typically splits the cleaning of the CPAP machine into two tasks performed throughout the day for convenience.
17. Time for maintenance of the CPAP machine was also included under the equipment maintenance section of the prior authorization request.
18. The appellant requested time for assistance equipment maintenance as follows: 84 minutes per week; MassHealth modified the time to 35 minutes per week.
19. The equipment considered in the equipment maintenance task is a CPAP machine, a walker, and a wheelchair.
20. MassHealth considers 5 minutes per day the typical amount of time necessary to perform regular maintenance on medical equipment.
21. The appellant's daughter does not time how long it takes to maintain the medical equipment and is unsure how much time she spends doing such a task.
22. Time for cleaning of the appellant's medical equipment was included and fully authorized as requested by MassHealth in the housekeeping section of the prior authorization request.

## **Analysis and Conclusions of Law**

Regulations concerning PCA Services are found at 130 CMR 422.000, *et seq.* PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. 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.

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, 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.

(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.

By regulation, MassHealth will not pay a provider for services that are not medically necessary. Pursuant to 130 CMR 450.204(A), a service is considered “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 or cause to aggravate a handicap, or result in illness or infirmity; and
- (2) there is no other medical services or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to [MassHealth]. . . .

### **Passive Range of Motion to the Lower Extremities**

The appellant disputes MassHealth’s modification of the time requested for PCA assistance with PROM to the lower extremities.

The appellant has not demonstrated PROM to the lower extremities is medically necessary. MassHealth denied the request in full on the basis that behavioral therapists report recommends the appellant not have any form of PROM performed on her due to the pain it would cause due to the appellant’s osteoarthritis. The appellant’s daughter testified that PROM to the appellant’s lower extremities was recommended by the appellant’s primary care provider and the record was left open for her to provide documentation to support this assertion. (Exhibit 13) However, no documentation was submitted during the open record period. (Exhibit 14) The fact that MassHealth denied the appellant’s request for PROM to the lower extremities due to the potential harm to the appellant as describe by the occupational therapist is found to be reasonable. Therefore, this portion of the appeal is denied.

### **Grooming**

The appellant disputes MassHealth’s modification of the time requested for PCA assistance with the grooming task of hair care.

The appellant has demonstrated that 5 minutes, two times a day for assistance with hair care is medically necessary. MassHealth modified the request on the basis that hair care is typically limited to once per day. The appellant’s daughter testified that ever since going through menopause the appellant sweats profusely throughout the day and damages her very long hair necessitating an extra grooming. It is reasonable based on the daughter’s detailed testimony about the damage the sweating does to the appellant’s very long hair that a second grooming is medically necessary. Therefore, this portion of the appeal is approved.



## **Dressing**

The appellant disputes MassHealth's modification of the time requested for PCA assistance with dressing.

The appellant has not demonstrated that an extra 10 minutes per day for assistance with dressing is medically necessary. MassHealth made the modification on the basis that the notes under the prior authorization request for dressing section say that the time is for a full change of clothing in the morning and a partial change in the evening. The MassHealth representative testified that the full morning change of clothes was granted as requested and the partial change in the evening was contemplated and fully granted within the provider's request for 10 minutes, 1 time a day, 7 days a week and 5 minutes, 1 time a day, 7 days a week for undressing time. The appellant's representative provided no reasonable basis why the appellant required more time for help with dressing and even conceded that the appellant does not always receive a partial change of clothes in the evening. Therefore, this portion of the appeal is denied.

## **Other Healthcare Needs**

The appellant disputes MassHealth's modification of the time requested for PCA assistance with the other healthcare needs of maintaining the appellant's CPAP machine.

The appellant has not demonstrated that 5 minutes, 2 times per day for maintenance and cleaning of the appellant's CPAP machine is medically necessary. MassHealth modified the request on the basis that 5 minutes per day is the typical amount of time it takes for maintain and clean a CPAP machine. The MassHealth representative testified that none of the time for maintenance or cleaning of the machine had been reduced, and only the frequency was reduced from two times to one. Furthermore, she argued that even if the PCA requires more time, such time was granted under the equipment maintenance section where time was also given for maintenance of the CPAP machine. The appellant's daughter testified that her mother only uses the CPAP machine when she goes to sleep each night, but the daughter typically breaks the job of cleaning of the device into two separate tasks throughout the day for convenience. The fact that the daughter herself chooses to break the task of cleaning the CPAP machine into two tasks throughout the day due to convenience is not considered a medical necessity. Furthermore, any extra time the appellant requires is reflected in the additional time granted for maintenance of the CPAP in the equipment maintenance section of the prior approval. (Exhibit 6, pg. 11) Therefore, this portion of the appeal is denied.

## **Equipment Maintenance**

The appellant disputes MassHealth's modification of the time requested for PCA assistance with the maintenance of a CPAP machine, walker, and wheelchair.

The appellant has not demonstrated that 84 minutes per week for assistance with medical equipment maintenance is medically necessary. MassHealth modified the request on the basis that 5 minutes per day is the typical amount of time it takes to do basic maintenance tasks on the appellant's medical

equipment. The appellant's daughter testified that she is generally unsure of how much time each day is spent maintaining the appellant's equipment, but that it takes at least longer than 5 minutes per day to clean them. The MassHealth representative responded that any time for cleaning the equipment was considered and fully approved in the housekeeping section of the prior approval. (Exhibit TBD) The appellant has not given a reasonable basis for why more than 5 minutes per day is medically necessary to maintain the appellant's medical devices. Therefore, this portion of the appeal is denied.

### **Order for MassHealth**

Rescind notice on appeal, and approve time requested for PCA assistance with bathing and the grooming task of hair care.

### **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 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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David Jacobs  
Hearing Officer  
Board of Hearings

cc: Optum