

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part, Denied in part	<b>Appeal Number:</b>	2301460
<b>Decision Date:</b>	4/11/2023	<b>Hearing Date:</b>	03/20/2023
<b>Hearing Officer:</b>	Paul C. Moore		

**Appellant Representatives:**



**MassHealth Representative:**

Mary-Jo Elliot, R.N., clinical reviewer, Optum  
(by telephone)



*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, Denied in part	<b>Issue:</b>	Prior Authorization, Personal Care Attendant Services
<b>Decision Date:</b>	4/11/2023	<b>Hearing Date:</b>	03/20/2023
<b>MassHealth Rep.:</b>	Mary-Jo Elliot, R.N.	<b>Appellant Reps.:</b>	Pro se, with mother
<b>Hearing Location:</b>	Board of Hearings (remote)		

## 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 February 15, 2023, MassHealth denied the appellant's prior authorization (PA) request for fifteen hours, forty-five minutes of day/evening personal care attendant (PCA) services per week, and two hours of PCA services per night, every night because the appellant does not require physical assistance with two or more activities of daily living (ADLs) (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on February 22, 2023 (130 CMR 610.015; Exhibit 2). Denial of a PA request is valid grounds for appeal to BOH (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's PA request for PCA services.

## Issue

Was MassHealth correct, pursuant to 130 CMR 422.410(A), (B) and (C), and 130 CMR 450.204(A), to deny the appellant's request for PCA services?

## Summary of Evidence

The MassHealth representative, who is a Registered Nurse consultant with Optum, testified that the appellant is a [REDACTED] woman who lives in the community with her parents. Her medical diagnoses include fibromyalgia, neuropathy, chronic pain, sleep apnea, opioid dependence, tardive dyskinesia, epilepsy, cognitive deficits, asthma, bipolar disorder and borderline personality disorder. The MassHealth representative testified that Independence Associates (“Independence”), a Personal Care Management (“PCM”) services agency, submitted an initial PA evaluation request to MassHealth on the appellant’s behalf on or about January 30, 2023, seeking fifteen hours, forty-five minutes of day/evening personal care attendant (PCA) services per week, and two hours of PCA services per night, every night (Testimony, Exh. 3). The PA period at issue is January 27, 2023 through January 26, 2024. By notice dated February 15, 2023, MassHealth denied the PA request because it determined that the appellant does not require physical assistance with two or more activities of daily living (ADLs) (Exh. 1).

The MassHealth representative stated that an occupational therapy (OT) evaluation submitted with the instant PA request reflects that the appellant has pain, bilateral hand tremors, decreased strength, impaired mobility/weight bearing, gross motor coordination deficits, fine motor coordination deficits, sensory loss, reduced memory and concentration (Testimony, Exh. 3, p. 7). The occupational therapy evaluation also indicates that the appellant needs minimal assistance with mobility/transfers, grooming, toileting, dressing/undressing, bathing and showering, and that she is independent with eating, and passive range-of-motion (*Id.*, pp. 8-9). The evaluation also reflects that the appellant needs maximum assistance with medication administration/management, meal preparation and cleanup, housekeeping and laundry (*Id.*).<sup>1</sup>

The MassHealth representative testified that documentation received from Innovive Health, a home health agency, indicates that the appellant receives skilled nursing visits at least twice per day for medication management, due to the appellant’s history of non-compliance with medications (Testimony, Exh. 3, p. 40). These skilled nursing visits are scheduled to continue through August, 2023. Each visit from a nurse lasts about five minutes, according to the appellant. The MassHealth representative testified that the appellant was hospitalized with pneumonia in December, 2022 (Testimony).

Because MassHealth determined that the appellant does not needs hands-on, physical assistance with at least two of her ADLs, it denied the instant PA request (Exh. 1).

The MassHealth representative testified that Independence requested: one minute of PCA assistance, six times a day with the appellant’s transfers/mobility; 10 minutes of PCA assistance, once a day, every day for bathing/showering; 57 minutes per week of PCA assistance with grooming (including weekly nail care, weekly shaving, daily oral care, daily hair-brushing, daily application of deodorant, daily skin care, and ear care); 7 minutes of PCA assistance for dressing daily, and 5 minutes of PCA assistance for undressing daily; 3 minutes, six times a day of PCA

---

<sup>1</sup> The date of the Independence OT evaluation was January 26, 2023 (Exh. 3).

assistance for bladder care, and 5 minutes of PCA assistance for bowel care once per day; 5 minutes, twice per night, of PCA assistance with toileting; 2 minutes of PCA assistance, twice per day for assistance with medication administration, and 3 minutes of PCA assistance, twice per day, for assistance with administration of the appellant's nebulizer treatments; 10 minutes of PCA assistance daily with breakfast preparation and cleanup, 15 minutes of PCA assistance daily with lunch preparation and cleanup, and 20 minutes of PCA assistance daily with dinner preparation and cleanup; 30 minutes of PCA assistance with laundry every week; 30 minutes of PCA assistance with housekeeping every week; 45 minutes of PCA assistance with shopping every week; and 8 minutes per week of PCA assistance with transportation to and from medical appointments per week (Testimony, Exh. 3).<sup>2</sup>

The appellant testified by telephone, assisted by her mother. The appellant testified that she does not leave her home, except to go to a methadone clinic daily. The appellant's stepfather and three siblings also live in the home. The appellant's mother, a Registered Nurse, assists the appellant with some of her ADLs, and her stepfather does as well. A visiting nurse comes to administer the appellant's medications twice per day, but the visiting nurse does not assist the appellant with any of her ADLs. The appellant's current weight is 335 lbs. (Testimony).

The appellant's mother testified that she (the appellant's mother) was working a day shift as a nurse (7 am to 3 pm), but is about to start working an evening shift (3 pm to 11 pm) (Testimony).

The appellant's mother testified that the appellant can ambulate independently within the home. She sometimes needs assistance transferring from her bed to the bathroom. The appellant's mother assists the appellant to dress. The appellant can transfer to and from the toilet independently, but needs assistance with wiping/hygiene. The appellant does not remember to take all her prescribed medications, which include Prednisone, Clonidine, Seroquel, Prozac, Xanax, Lyrica and Budesonide nebulizer treatments (twice daily). Her medications are placed in a lockbox for safety (Testimony).

For most of her doctor's appointments, the appellant gets medical transportation from MassHealth (PT-1) (Testimony).

The appellant testified that her mother assists her to get into the shower, shampoo her hair, and wash her body. The appellant's mother also assists her to get out of the shower and to dry off. The appellant's mother applies Nystatin powder under the appellant's breasts, as the appellant otherwise gets rashes and infections under her breasts (Testimony).

The appellant's mother testified that she assists the appellant to transfer into and out of the shower, and to wash the appellant, for about ten to fifteen minutes daily. The appellant's mother also shampoos the appellant's hair in the shower (Testimony).

---

<sup>2</sup> The PCM agency evaluation submitted by Independence states that upon approval of PCA hours for the appellant (for assistance with medications), "Innovive visiting nurse 2 x day to be discontinued" (Exh. 3, p. 21).

The appellant's mother testified that she assists the appellant to brush her hair for about two minutes every day. The appellant's mother testified that the appellant can brush her own teeth (Testimony).

The appellant's mother testified that she trims the appellant's fingernails and toenails weekly, for about five minutes (Testimony).

The appellant's mother testified that she assists the appellant to shave her lower body weekly, for five minutes (Testimony).

Also, the appellant's mother testified that she assists the appellant with hygiene following urination for about one minute, six to eight times per day. The appellant's mother testified that she assists the appellant with hygiene following a bowel movement, which takes about two minutes once per day (Testimony).

The appellant's mother testified that she assists the appellant to dress for about eight to ten minutes each morning. At night, the appellant's mother assists the appellant to undress, which requires five to six minutes of hands-on assistance (Testimony).

The appellant can sometimes apply her deodorant on her own, and is independent with ear care. The appellant's mother testified that she spends about five minutes applying Nystatin powder under the appellant's breasts, twice daily (Testimony).

The appellant uses the toilet two to four times every night, according to the appellant's mother. She sometimes wets the bed.<sup>3</sup> Following urination at night, the appellant's mother assists her with hygiene for two to three minutes. About once or twice a week, the appellant's bed linens need to be changed following an episode of incontinence. The appellant's mother testified that if the appellant wets the bed, it takes her about eight to ten minutes to clean up the appellant and dress her again. The appellant's mother testified that she changes the appellant's bed linens on occasions when the appellant wets the bed, because the appellant cannot do this on her own. According to the appellant's mother, this takes five minutes per occurrence (Testimony).

## Findings of Fact

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

1. The appellant is [REDACTED] MassHealth member who lives in the community with her mother, stepfather and three siblings (Testimony).
2. The appellant's medical diagnoses include fibromyalgia, neuropathy, chronic pain, sleep apnea, opioid dependence, tardive dyskinesia, epilepsy, cognitive deficits, asthma, bipolar disorder and borderline personality disorder, and morbid obesity (Testimony, Exh. 3).

---

<sup>3</sup> There is no documentation in the record that the appellant has any incontinence (Exh. 3).

3. Independence Associates (“Independence”), a PCM agency, submitted an initial PA evaluation request to MassHealth on the appellant’s behalf on or about January 30, 2023, seeking fifteen hours, forty-five minutes of day/evening PCA services per week, and two hours of PCA services per night, every night (Testimony, Exh. 3).
4. The PA period at issue is January 27, 2023 through January 26, 2024 (Exh. 3).
5. By notice dated February 15, 2023, MassHealth denied the PA request because it determined that the appellant does not require physical assistance with two or more activities of daily living (ADLs) (Exh. 1).
6. The appellant filed a timely appeal of this notice with the BOH (Exh. 2).
7. An OT evaluation submitted with the instant PA request reflects that the appellant has pain, bilateral hand tremors, decreased strength, impaired mobility/weight bearing, gross motor coordination deficits, fine motor coordination deficits, sensory loss, reduced memory and concentration (Testimony, Exh. 3, p. 7).
8. The OT evaluation also indicates that the appellant needs minimal assistance with mobility/transfers, grooming, toileting, dressing/undressing, bathing and showering, and that she is independent with eating, and passive range-of-motion (*Id.*, pp. 8-9).
9. The OT evaluation also reflects that the appellant needs maximum assistance with medication administration/management, meal preparation and cleanup, housekeeping and laundry (*Id.*).
10. The appellant receives two visits from a Registered Nurse daily, to ensure her medication compliance; her medications are secured in a lockbox (Testimony).
11. Independence requested: one minute of PCA assistance, six times a day with the appellant’s transfers/mobility; 10 minutes of PCA assistance, once a day, every day for bathing/showering; 57 minutes per week of PCA assistance with grooming (including weekly nail care, weekly shaving, daily oral care, daily hair-brushing, and daily application of deodorant, daily skin care, and ear care); 7 minutes of PCA assistance for dressing daily, and 5 minutes of PCA assistance for undressing daily; 3 minutes, six times a day of PCA assistance for bladder care, and 5 minutes of PCA assistance for bowel care once per day; 5 minutes, twice per night, of PCA assistance with toileting; 2 minutes of PCA assistance, twice per day for assistance with medication administration, and 3 minutes of PCA assistance, twice per day, for assistance with administration of the appellant’s nebulizer treatments; 10 minutes of PCA assistance daily with breakfast preparation and cleanup, 15 minutes of PCA assistance daily with lunch preparation and cleanup, and 20 minutes of PCA assistance daily with dinner preparation and cleanup; 30 minutes of PCA assistance with laundry every week; 30 minutes of PCA assistance with housekeeping every week; 45 minutes of PCA assistance with shopping every week; and 8 minutes per week of PCA assistance with transportation to and from medical appointments per week (Testimony, Exh. 3).

12. The appellant can ambulate independently within the home (Testimony).
13. The appellant sometimes needs assistance transferring from her bed to the bathroom (Testimony).
14. The appellant's mother assists the appellant to dress and undress; the appellant's mother spends about eight to ten minutes each morning assisting the appellant to dress, and about five to six minutes each night assisting the appellant to undress (Testimony).
15. The appellant's mother assists her to get into the shower, shampoo her hair, and wash her body. The appellant's mother also assists her to get out of the shower and to dry off, which can take ten to fifteen minutes daily (Testimony).
16. The appellant's mother assists the appellant to brush her hair for about two minutes every day (Testimony).
17. The appellant is independent with her oral care (*e.g.*, brushing her teeth) (Testimony).
18. The appellant's mother applies Nystatin powder under the appellant's breasts twice daily, as the appellant otherwise gets rashes and infections under her breasts; the appellant's mother spends about five minutes per application (Testimony).
19. The appellant's mother trims the appellant's fingernails and toenails weekly, for about five minutes (Testimony).
20. The appellant's mother assists the appellant to shave her lower body, for five minutes weekly (Testimony).
21. The appellant's mother assists the appellant with hygiene following urination for about one minute, six to eight times per day (Testimony).
22. The appellant's mother assists the appellant with hygiene following a bowel movement, which takes about two minutes once per day (Testimony).
23. The appellant can sometimes apply her deodorant on her own, and is independent with ear care (Testimony).
24. At night, the appellant uses the toilet two to four times, and the appellant's mother assists her with hygiene following urination, which takes about two to three minutes per occurrence (Testimony).
25. The appellant's mother works full-time outside the home (Testimony).

26. The appellant uses MassHealth medical transportation (a PT-1 Form) to attend most of her doctor's appointments (Testimony).

## Analysis and Conclusions of Law

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living (ADLs) and instrumental activities of daily living (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; (2) the member's disability is permanent or chronic in nature; (3) the member 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; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services (boldface added).

Activities of daily living are listed at 130 CMR 422.410(A) and include mobility, assistance with medications or other health-related needs, bathing/grooming, dressing and undressing, passive range-of-motion exercises, eating, and toileting (including bowel care and bladder care). MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive personal care services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned instrumental activities of daily living.

Next, pursuant to 130 CMR 422.410(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.

(Emphasis added)

Pursuant to 130 CMR 450.204(A), 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

Here, the evidence shows that the appellant needs physical assistance with both bathing/showering, and with toileting, due to her chronic pain and morbid obesity. I disagree with MassHealth's determination that the appellant does not need assistance with at least two of her ADLs. Thus, the appellant meets the threshold requirement to qualify for PCA services.

Thus, the appeal is APPROVED IN PART.

The appellant's mother has been, to date, the primary provider of assistance with the appellant's ADLs. However, the appellant's mother works full-time outside the home, and recently changed to working an evening shift.

#### Transfers/Mobility

Independence requested, on the appellant's behalf, one minute, six times a day, every day, of PCA assistance with the appellant's mobility/transfers. The documentation and testimony, however, reflect that the appellant is mostly independent with mobility and transfers inside the home.

This portion of the appeal is therefore DENIED.

#### Bathing/Showering

Independence requested, on the appellant's behalf, ten minutes of PCA assistance, once a day, every day for bathing/showering.

The appellant's mother testified credibly that she spends approximately ten to fifteen minutes daily physically assisting the appellant with bathing/showering (including washing her hair).

Thus, I find that it is medically necessary that the appellant receive ten minutes of PCA assistance, every day, to assist with her bathing/showering.

This portion of the appeal is APPROVED.

### Grooming

Independence requested, on the appellant's behalf, 57 minutes per week of PCA assistance with the appellant's grooming, including brushing her hair, oral care, nail care, applying deodorant, and ear care.

The evidence shows that the appellant is independent with oral care, applying deodorant, and ear care. The appellant's mother assists the appellant to brush her hair for two minutes every day. The appellant's mother also assists in trimming the appellant's fingernails and toenails for five minutes per week.

The appellant's mother also shaves the appellant's lower body once per week, for five minutes.

The appellant testified credibly that she requires the application of Nystatin powder under her breasts, twice daily, to avoid rashes and infections. The appellant's mother also credibly testified that this application of Nystatin powder takes her five minutes, twice daily.

Therefore, it is medically necessary for the appellant to receive 5 minutes per week of PCA assistance for both nail care and shaving, respectively; two minutes per day of PCA assistance daily for hair-brushing; and some PCA assistance time daily for the application of Nystatin powder.

The PCM agency requested only 57 minutes per week of PCA assistance with the appellant's grooming. The hearing officer cannot approve more time than was requested on the appellant's behalf by the PCM agency.

Therefore, it is medically necessary for the appellant to receive 57 minutes per week of PCA assistance with grooming. This portion of the appeal is APPROVED IN PART.<sup>4</sup>

### Dressing/Undressing

---

<sup>4</sup> If the appellant believes she needs more than 57 minutes per week of PCA assistance with grooming, she may submit a request for an adjustment to MassHealth through her PCM agency.

Independence requested, on the appellant's behalf, 7 minutes of PCA assistance for dressing daily, and 5 minutes of PCA assistance for undressing daily.

The appellant's mother testified credibly that she provides hands-on assistance to the appellant for eight to ten minutes daily to dress; and about five to six minutes each night assisting the appellant to undress.

The hearing officer may not award more time than was requested by the PCM agency for PCA assistance with dressing and undressing.

Therefore, it is medically necessary that the appellant receive 12 minutes of PCA assistance daily with dressing/undressing.

This portion of the appeal is APPROVED IN PART.

#### Bladder/Bowel Care

Independence requested, on the appellant's behalf, 3 minutes, six times a day of PCA assistance for bladder care, and 5 minutes of PCA assistance for bowel care once per day.

The appellant's mother credibly testified that she assists the appellant with hygiene/wiping following urination, for one minute, six to eight times per day. She also testified credibly that she assists the appellant with hygiene/wiping following a bowel movement, two minutes once per day.

I conclude that it is medically necessary for the appellant to have PCA assistance with hygiene following urination for 7 minutes per day, and for her to have PCA assistance with hygiene following a bowel movement for two minutes per day.

This portion of the appeal is APPROVED IN PART.

#### Medication Administration

Independence requested, on the appellant's behalf, 2 minutes of PCA assistance, twice per day for assistance with medication administration, and 3 minutes of PCA assistance, twice per day, for assistance with administration of the appellant's nebulizer treatments.

Currently, the appellant has a visiting nurse twice per day to administer her medications and assist with nebulizer treatments. These visits are slated to continue through August, 2023.

At this time, it is therefore not medically necessary for the appellant to have PCA assistance with medication administration. If and when skilled nursing visits are terminated, the appellant may submit a request for an adjustment to MassHealth through her PCM agency.

This portion of the appeal is therefore DENIED.

#### Transportation to Medical Appointments

Independence requested, on the appellant's behalf, 8 minutes per week of PCA assistance with transportation to and from medical appointments per week.

However, the appellant testified that she receives medical transportation from MassHealth (by way of a PT-1 Form) for most of her medical appointments.

Therefore, this portion of the appeal is DENIED.

#### Meal Preparation and Cleanup, Laundry, Shopping and Housekeeping

Independence requested daily PCA assistance for preparation and cleanup of the appellant's meals, and weekly PCA assistance with her shopping, housekeeping and laundry.

However, the appellant lives with her family. In these circumstances, pursuant to 130 CMR 422.410(C)(1), above, routine laundry, housekeeping, shopping, and meal preparation and cleanup should include those needs of the member (the appellant).

Therefore, at this time, it is not medically necessary for the appellant to have weekly PCA assistance with any of these IADLs.

This portion of the appeal is therefore DENIED.

#### Night PCA hours

Independence requested ten minutes of PCA assistance for the appellant, every night, for PCA assistance with bladder care. In its request to MassHealth, the PCM agency rounded up this requested time to two hours per night, per the directions contained on the PCA PA request form (Exh. 3, p. 29).

The appellant's mother indicated that she assists the appellant with hygiene for "two to three minutes" following urination at night. This contrasts with her testimony that during the day, she assists the appellant with wiping/hygiene for only one minute following urination. It is not clear why hygiene and wiping following urination at night would take the appellant, or a PCA, longer than it does during the day.

In addition, the appellant testified she has episodes of incontinence at night about two nights per week, requiring her to be undressed and dressed again, and sometimes requiring her bed linens to be changed.

Despite the lack of corroborative documentary evidence in the record of the appellant's incontinence, I credit the testimony of the appellant's mother that she assists the appellant with hygiene following episodes of urination at night.

I conclude that it is medically necessary for the appellant to receive two hours per night, every night, of PCA assistance with bladder care.

This portion of the appeal is APPROVED.

## **Order for MassHealth**

Rescind notice of February 15, 2023. Send the appellant a notice apprising her that for the PA period January 27, 2023 through January 26, 2024, she is eligible for 4 hours, 45 minutes per week of day/evening PCA assistance, and 2 hours of PCA assistance at night, every night.

Send notice of implementation only; do not include appeal rights.

## **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.

---

Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Optum appeals representative