

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part, Approved in part, Denied in part	<b>Appeal Number:</b>	2303767
<b>Decision Date:</b>	7/5/2023	<b>Hearing Date:</b>	06/06/2023
<b>Hearing Officer:</b>	Paul C. Moore		

**Appearance for Appellant:**  
Pro se (by telephone)

**Appearance for MassHealth:**  
Donna Burns, 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>	Dismissed in part, Approved in part, Denied in part	<b>Issue:</b>	Prior Authorization, Personal Care Attendant Services
<b>Decision Date:</b>	7/5/2023	<b>Hearing Date:</b>	06/06/2023
<b>MassHealth Rep.:</b>	Donna Burns, R.N.	<b>Appellant Rep.:</b>	Pro se
<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 April 21, 2023, MassHealth modified the appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services from the requested 24 hours, 30 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night, to 18 hours, 30 minutes of day/evening PCA assistance per week, and no PCA assistance at night (Exhibit 1). The appellant filed this appeal with the Board of Hearings (BOH) in a timely manner on May 8, 2023 (130 CMR 610.015; Exhibit 2). Modification of a PA request is valid grounds for appeal to BOH (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified 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 modify the appellant's PA request for PCA services from the requested 24 hours, 30 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night, to 18 hours, 30 minutes of day/evening PCA assistance per week, and no PCA assistance at night?

## Summary of Evidence

The MassHealth representative, who is a Registered Nurse and clinical appeals reviewer, testified that the appellant is ■ year-old woman who lives alone in the community. Her primary medical diagnoses are small fiber neuropathy, vestibular neuritis, vertigo, a history of migraines, and late-stage Lyme Disease (Testimony, Exh. 3). The MassHealth representative testified that Independence Associates, a Personal Care Management (“PCM”) services agency (“Independence”), submitted a PA reevaluation request to MassHealth on the appellant’s behalf on March 20, 2023, seeking 24 hours, 30 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night (Exh. 3). The MassHealth representative testified that by notice dated April 21, 2023, MassHealth modified the requested time to 18 hours, 30 minutes of day/evening PCA assistance per week, and no PCA assistance at night. The time period for this PA request is June 1, 2023 through May 31, 2024 (Testimony, Exh. 3).

The MassHealth representative stated that MassHealth modified requested time for PCA assistance with the appellant’s mobility (ambulation within her home), an Activity of Daily Living (ADL).<sup>1</sup> The MassHealth representative testified that Independence requested, on the appellant’s behalf, PCA assistance with the appellant’s ambulation three minutes, six times per day, seven days per week, and five minutes of assistance, twice per day, seven days per week descending and climbing the stairs in her home. MassHealth modified requested time in this area to zero, because the evaluation submitted with this PA request reflects that the appellant is independent with ambulation, according to the MassHealth representative (Testimony).<sup>2</sup>

The appellant testified that she lives on the third floor of a multi-family home, and has difficulty navigating the stairs. The appellant added that she has additional diagnoses (not included with the PA request) of Epstein-Barr virus, lupus, and postural orthostatic tachycardia syndrome (POTS). Her need for assistance with ambulation varies from day to day, depending on how well she has slept and how much vertigo she has. The MassHealth representative stated that MassHealth approved time for PCA assistance with the appellant’s transfers (into and out of bed, for example) for three minutes, twice per day, seven days per week. However, according to the MassHealth representative, MassHealth does not pay for PCAs to assist members into and out of their homes, as this would be considered socialization or recreation, which is not payable under the PCA program (Testimony).

The appellant testified that she needs to leave her home occasionally for exercise. She testified that four to five days per week she needs assistance walking within her apartment, which is approximately 600 square feet large (Testimony).

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<sup>1</sup> Activities of Daily Living (ADLs) are defined in 130 CMR 422.410 as mobility, assistance with medications or other health-related needs, bathing/grooming, dressing/undressing, passive range-of-motion exercises, eating, and toileting.

<sup>2</sup> Notes in the PCM agency evaluation state, “PCA guides [the appellant] while ambulating and going up and down the stairs from the third floor. [The appellant] requires assistance due to weakness, severe vertigo, impaired balance, chronic pain. [The appellant] uses cane and walking sticks also” (Exh. 3, p. 13).

The MassHealth representative testified that Independence also requested, on the appellant's behalf, five minutes of assistance, every day for shampooing her hair. The MassHealth representative explained that MassHealth approved PCA assistance time for the appellant's bathing/showering for 15 minutes daily, and the expectation is that the PCA will assist the appellant to wash her hair daily in the shower. Therefore, MassHealth did not authorize any separate time for the PCA to assist the appellant to shampoo her hair (Testimony, Exh. 3).

The appellant testified that usually her PCA assists her to wash her hair in the shower, but "a couple of times per week" she washes her hair in the sink. Her PCA will assist her when she is unsteady in the shower. Sometimes the appellant has difficulty extending her upper extremities, and gets dizzy when washing her hair. She needs some PCA assistance with shampooing her hair (Testimony).

The appellant testified that she takes two baths every day, per her doctor's orders. She bathes in the morning and again in the evening, sitting in Epsom Salt. She cannot take muscle relaxers, or she becomes tachycardic. The baths ease her pain. Sometimes she takes a third bath during the day. The MassHealth representative testified that Independence requested PCA assistance with bathing only once per day, and MassHealth authorized the full amount of PCA time assistance time requested for this ADL (15 minutes per day).<sup>3</sup>

The MassHealth representative testified that Independence requested, on the appellant's behalf, three minutes of PCA assistance daily with brushing her hair (grooming). MassHealth modified requested PCA assistance time in this area to zero, because the appellant has the functional ability to brush her hair. The appellant did not contest this modification.

Next, the MassHealth representative testified that Independence requested, on the appellant's behalf, 15 minutes of PCA assistance daily with dressing, and 10 minutes of PCA assistance daily with undressing. MassHealth modified requested time in this area to 12 minutes of PCA assistance daily with dressing, and 8 minutes of PCA assistance daily with undressing. Notes in the re-evaluation request reflect that the appellant has difficulty bending/reaching, poor standing endurance, an unsteady gait, severe vertigo, and extreme fatigue and weakness due to late-stage Lyme Disease (Testimony, Exh. 3, p. 19).

The appellant testified that these amounts of time (12 minutes of PCA assistance with dressing, and 8 minutes of PCA assistance with undressing) are sufficient; however, it is the frequency of the dressing and undressing that the appellant does not agree with. Because she bathes twice per day, she also dresses twice per day, and undresses twice per day. The hearing officer explained that Independence requested PCA assistance with these ADLs only once per day. The appellant was advised that if she needs PCA assistance more than once per day with these ADLs, she should contact Independence and ask them to submit a request for an adjustment to MassHealth.

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<sup>3</sup> The MassHealth representative advised the appellant that she should contact her PCM agency, Independence, if she needs PCA assistance with bathing more than once per day.

The MassHealth representative testified that Independence requested 3 minutes of PCA assistance, six times a day, every day with the appellant's bladder care, and 3 minutes once per day, every day of PCA assistance with the appellant's bowel care. In addition, the PCM agency requested five minutes of PCA assistance, two times per night with bladder care (Testimony, Exh. 3). MassHealth approved no nighttime PCA assistance with the appellant's bladder care.<sup>4</sup> For day and evening hours of assistance, MassHealth authorized 2 minutes, 6 times per day, every day for assistance with bladder care, and 2 minutes once a day for bowel care (Testimony, Exhs. 1 & 3).

The appellant testified that her PCA will assist her to ambulate to and from the bathroom, and then will wait outside the bathroom door while the appellant is urinating or having a bowel movement. The appellant testified that she does not need assistance with hygiene following urination or a bowel movement. The appellant testified that on some days, she has to urinate more than twenty times per day due to her Lyme Disease treatment. The MassHealth representative pointed out that the PCM agency requested PCA assistance for the appellant only six times per day with bladder care, and that if the frequency of her requested bladder care is inaccurate, she needs to contact the PCM agency to ask for an adjustment in her hours (Testimony).

The appellant testified that she really needs assistance for bladder care at night, when she sometimes gets up multiple times to urinate. Sometimes she is unsteady on her feet, and has narrowly avoided falling. She has used a bedpan at times at night. In response to this testimony, the MassHealth representative agreed to authorize two hours of PCA assistance for the appellant with bladder care at night, every night. With regard to the day/evening hours of PCA assistance for bladder and bowel care, the appellant did not specifically dispute the length of time the PCA spends on each episode of assistance with bladder/bowel care (Testimony).

The PCM agency requested 10 minutes weekly of PCA assistance with prefilling a medication box for the appellant. The MassHealth representative testified that MassHealth modified requested assistance in this area to zero, since the PCM agency did not provide the appellant's medication list with the PA request. The appellant did not contest this modification (Exh. 3, Testimony).

The PCM agency also requested 10 minutes per week of PCA assistance with completing paperwork related to the PCA program; MassHealth authorized no PCA assistance time for this task. The MassHealth representative stated that the appellant fills out the paperwork, and the PCA simply checks it. The appellant testified that she does need assistance with this task, and spends about fifteen minutes per week sitting with the PCA to ensure the timesheets are accurate. She testified that due to her Lyme Disease neurological impairment, she has "brain fog" at times and needs to corroborate the accuracy of these timesheets with her PCA before they are submitted for payment (Exh. 3, Testimony).

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<sup>4</sup> Nighttime is 12 midnight to 6 am per 130 CMR 422.402.

## Findings of Fact

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

1. The appellant is ■ year-old woman who lives independently in the community (Testimony).
2. The appellant's medical diagnoses include small fiber neuropathy, vestibular neuritis, vertigo, a history of migraines, lupus, and late-stage Lyme Disease (Testimony, Exh. 3).
3. Independence Associates, a PCM agency, submitted a PA reevaluation request to MassHealth on the appellant's behalf on March 20, 2023, seeking 24 hours, 30 minutes of day/evening PCA assistance per week, and 2 hours of PCA assistance at night, every night (Exh. 3).
4. By notice dated April 21, 2023, MassHealth modified the requested time to 18 hours, 30 minutes of day/evening PCA assistance per week, and no PCA assistance at night (Exh. 1).
5. The time period for this PA request is June 1, 2023 through May 31, 2024 (Exh. 3).
6. Independence requested, on the appellant's behalf, PCA assistance with the appellant's ambulation three minutes, six times per day, seven days per week, and five minutes of assistance, twice per day, seven days per week descending and climbing the stairs in her home (Exh. 3).
7. MassHealth modified requested time in this area to zero (Testimony, Exh. 1).
8. The appellant lives on the third floor of a multi-family home (Testimony).
9. Due to her vertigo, the appellant sometimes needs assistance in her home with ambulation (Testimony).
10. Notes in the PCM agency evaluation state, "PCA guides [the appellant] while ambulating and going up and down the stairs from the third floor. [The appellant] requires assistance due to weakness, severe vertigo, impaired balance, chronic pain. [The appellant] uses cane and walking sticks also" (Exh. 3, p. 13).
11. Independence also requested, on the appellant's behalf, five minutes of assistance, every day for shampooing her hair (Testimony, Exh. 3).
12. MassHealth approved PCA assistance time for the appellant's bathing/showering for 15 minutes daily, and the expectation is that the PCA will assist the appellant to wash her hair daily in the shower (Exh. 1, Exh. 3, Testimony).
13. MassHealth allocated zero time for the appellant's PCA to assist her with shampooing her hair.

14. Usually the appellant's PCA assists her to wash her hair in the shower, but "a couple of times per week" she washes her hair in the sink (Testimony).
15. Sometimes the appellant has difficulty extending her upper extremities, and gets dizzy when washing her hair (Testimony).
16. The appellant takes two baths every day, per her doctor's orders. She bathes in the morning and again in the evening, sitting in Epsom Salt. She cannot take muscle relaxers, or she becomes tachycardic. The baths ease her pain (Testimony).
17. Independence requested PCA assistance with bathing only once per day, and MassHealth authorized the full amount of PCA time assistance time requested for this ADL (15 minutes per day) (Testimony, Exh. 1).
18. Independence requested, on the appellant's behalf, three minutes of PCA assistance daily with brushing her hair (grooming) (Testimony, Exh. 3).
19. MassHealth modified requested PCA assistance time in this area to zero (Testimony).
20. The appellant did not contest this modification of PCA assistance time for brushing her hair (Testimony).
21. Independence requested, on the appellant's behalf, 15 minutes of PCA assistance daily with dressing, and 10 minutes of PCA assistance daily with undressing (Testimony, Exh. 3).
22. MassHealth modified requested time in this area to 12 minutes of PCA assistance with dressing, and 8 minutes of PCA assistance daily with undressing (Testimony, Exh. 1).
23. The appellant dresses and undresses more than once per day, because she takes at least two baths per day to ease her pain (Testimony).
24. The appellant did not agree with the frequency of PCA time requested for dressing and undressing, but agreed with the duration of time allotted for the PCA to assist her (12 minutes for dressing, and 8 minutes for undressing) (Testimony).
25. Independence requested 3 minutes of PCA assistance, six times a day, every day with the appellant's bladder care, and 3 minutes once per day, every day of PCA assistance with the appellant's bowel care (Exh. 3).
26. The PCM agency also requested five minutes of PCA assistance, two times per night with bladder care (Testimony, Exh. 3).

27. For day and evening hours of assistance, MassHealth authorized 2 minutes, 6 times per day, every day for assistance with bladder care, and 2 minutes once a day for bowel care (Testimony, Exhs. 1 & 3).
28. MassHealth approved no nighttime PCA assistance with the appellant's bladder care (Exh. 1).
29. On some days, the appellant has to urinate more than twenty times per day due to her Lyme Disease treatment (Testimony).
30. At the appeal hearing, MassHealth agreed to authorize two hours of PCA assistance for the appellant's bladder care every night, seven days per week.
31. With regard to the day/evening hours of PCA assistance for bladder and bowel care, the appellant did not specifically dispute the length of time the PCA spends on each episode of assistance with bladder/bowel care (Testimony).
32. Independence requested 10 minutes weekly of PCA assistance with prefilling a medication box for the appellant (Testimony).
33. MassHealth modified requested PCA assistance time for this task to zero (Testimony).
34. The appellant did not contest this modification of PCA assistance time.
35. Independence also requested 10 minutes per week of PCA assistance with completion of paperwork related to the PCA program (Exh. 3).
36. MassHealth allocated zero time for PCA assistance with this task (Exh. 1).
37. The appellant needs assistance with this task, and spends about fifteen minutes per week sitting with the PCA to ensure the timesheets are accurate; due to her Lyme Disease neurological impairment, she has "brain fog" at times and needs to corroborate the accuracy of these timesheets with her PCA before they are submitted for payment (Exh. 3, 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.

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 (130 CMR 422.402).

Pursuant to 130 CMR 422.410(C), in determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

Next, pursuant to 130 CMR 422.412, "Non-Covered Services:"

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;

- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility, or a resident of a provider-operated residential facility subject to state licensure, such as a group home
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

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.

At issue in this appeal were modifications of time requested for PCA assistance for the appellant with the following ADLs: bathing/showering; dressing/undressing; bladder and bowel care; and prefilling a medication box weekly.

The appellant, at hearing, agreed to the following amounts of PCA assistance time authorized by MassHealth:

Bathing/showering: 15 minutes per day/evening

Dressing: 12 minutes per day/evening

Undressing: 8 minutes per day/evening

Bladder care: 2 minutes, six times per day/evening and 2 hours, every night, seven days a week

Bowel care: 2 minutes once per day/evening

Pre-filling a medication box weekly: no time

The appellant did *not* agree with the frequency of time requested by the PCM agency for bathing/showering; and for dressing and undressing. The appellant was advised that MassHealth cannot award more PCA assistance time than the amount requested by the PCM agency in the PA request. Therefore, if she disagrees with the frequency of PCA assistance for these ADLs requested by Independence, she should ask the PCM agency to submit a request for an adjustment in her PCA hours to MassHealth, with supporting documentation.

These portions of the appeal are therefore DISMISSED.

#### Assistance with Mobility on Stairs and Within her Home

Independence requested, on the appellant's behalf, PCA assistance with the appellant's ambulation three minutes, six times per day, seven days per week for ambulation within her home, and five minutes of assistance, twice per day, seven days per week descending and climbing the stairs in her home. MassHealth allocated zero time for assistance with these ADLs.

One rationale cited by MassHealth for denying PCA assistance time navigating the stairs in the appellant's multi-family home is that the PCA program does not cover recreational or social activities.

However, walking in her home is neither recreational nor social for the appellant. Also, descending and ascending stairs in her multi-family home may be, but is not necessarily, recreational or social; the appellant may need to check her mailbox on the first floor of the home, for example.

I conclude that it is medically necessary for the appellant to receive PCA assistance with ambulation within her home for two minutes, six times a day, seven days a week, and four minutes of assistance, once per day, seven days a week for navigating the stairs in her home.

This portion of the appeal is therefore APPROVED IN PART.

#### Shampooing her Hair in the Sink

Independence also requested, on the appellant's behalf, five minutes of assistance, every day for shampooing her hair. MassHealth allocated zero time for this ADL, because usually, the appellant's hair is washed in the shower daily.

However, evidence adduced at hearing shows that a couple of days a week, the appellant's hair is actually washed in the sink, due to physical limitations of her upper extremities.

I conclude that it is medically necessary for the appellant to receive PCA assistance with grooming/shampooing her hair in the sink for five minutes, two days a week.

This portion of the appeal is also APPROVED IN PART.

### Assistance with PCA Paperwork

Independence requested PCA assistance with completing timesheets and other paperwork needed for the PCAs to be paid, for a total of 10 minutes per week. MassHealth allocated no PCA assistance time with this task.

The appellant credibly testified that she has “brain fog” at times due to her advanced Lyme Disease and needs to corroborate the accuracy of timesheets with her PCAs before they are submitted for payment.

I conclude that it is medically necessary for the appellant to receive PCA assistance with completion of paperwork for her PCAs to be paid for 10 minutes weekly.

This portion of the appeal is also APPROVED IN PART.

### **Order for MassHealth**

Rescind notice of April 21, 2023. Send notice to the appellant informing her that for the PA period June 1, 2023 through May 31, 2024, she will receive two hours of PCA assistance every night (12 midnight to 6 am), and will receive 20 hours, 45 minutes of day/evening PCA assistance every week.

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.

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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Optum appeals representative