

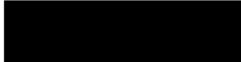
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Dismissed in part	<b>Appeal Number:</b>	2304659
<b>Decision Date:</b>	10/03/2023	<b>Hearing Date:</b>	07/11/2023
<b>Hearing Officer:</b>	Mariah Burns	<b>Record Open to:</b>	08/04/2023

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, RN for Optum



*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; Dismissed in part	<b>Issue:</b>	Prior Authorization; Personal Care Attendant Hours
<b>Decision Date:</b>	10/03/2023	<b>Hearing Date:</b>	07/11/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN <sup>1</sup>	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 May 24, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on June 7, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

### Issue

The appeal issue is whether MassHealth was acting within its discretion in modifying the appellant's prior authorization request for PCA services.

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<sup>1</sup> There is no known relation between the MassHealth representative and the Hearing Officer.

## **Summary of Evidence**

The appellant is an adult MassHealth member over the age of 65 and was represented by his daughter and PCA telephonically at hearing. MassHealth was represented telephonically by a clinical nurse reviewer for Optum, which manages MassHealth's PCA program. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from a primary diagnosis of COPD and congestive heart failure. MassHealth received a prior authorization request on the appellant's behalf requesting 28 hours and 30 minutes of day and evening hours of services per week. On May 24, 2023, MassHealth modified the request and approved the appellant for 15 hours and 30 minutes of day and evening hours per week. Modifications were made in the areas of shaving, undressing,<sup>2</sup> medication assistance, meal preparation, and laundry. After hearing, the MassHealth representative agreed to the following modifications:

- Shaving: approved at five minutes, one time per day, seven days per week;
- Meal Preparation: approved at 630 minutes per week;
- Laundry: approved at 60 minutes per week.

Thus, after hearing, disputes remained only between undressing and medication assistance.

### **Undressing**

The prior authorization request indicated that the appellant requires minimum assistance with undressing activities due to "poor endurance, [shortness of breath] balance issues." Exhibit 5 at 21. The request was for 51 minutes, one time per day, seven days per week, but was likely a typographical error. The appellant's representative testified that the appellant struggles with bending over but can raise his arms over his head. She helps him take his shirt and pants off, unties and takes off his shoes. She then puts on his pajama pants and shirt on, and he assists with pulling his pants up. She estimated that the process takes, on average, ten minutes.

The MassHealth representative testified that standard of care typically dictates that undressing takes longer than dressing. Where the appellant requested and was approved for ten minutes for dressing, the most she would feel comfortable approving would be for seven minutes.

### **Medication Assistance**

The prior authorization request indicated that "PCA sets-up pill box and gives meds and assists

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<sup>2</sup> The notice stated that the modification was for dressing, however, based on the packet submitted by MassHealth it was clear that this was a typographical error and was meant to be for undressing.

with inhalers r/t poor endurance, [shortness of breath] and memory issues.” The request was for 10 minutes per week for assistance with prefilling his medication box and two minutes, five times per day, seven days per week for assistance with medications. The appellant’s representative testified that the appellant has shaky hands and struggles with the case. She is the one who pre-fills his medication box. Further, she reported that the appellant has bad memory issues and is not good at knowing to take his medications and when.

The MassHealth representative testified that time for medication assistance was not approved because the record indicates that the appellant has the functional ability to take his medications. She pointed to the fact that the appellant was not found to require a surrogate as evidence that he should be capable of knowing his medications. She reported that if the appellant does not know when to take his medication that he is likely not capable of managing his own care and does require a surrogate.

The appellant’s representative replied that she believed that she is the appellant’s surrogate. The record was kept open to give her time to provide surrogate documentation. As of the writing of this decision, the hearing officer has not received any such documentation from the appellant.

## **Findings of Fact**

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

1. The appellant is an adult MassHealth Standard member who suffers from COPD and congestive heart failure. Exhibit 4, Exhibit 5 at 12.
2. MassHealth received a prior authorization request on the appellant’s behalf requesting 28.5 day and evening hours of services per week. After reviewing the appellant’s application, MassHealth modified and approved 15.5 day and evening hours per week. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of shaving, undressing, medication assistance, meal preparation, and laundry. Exhibit 1.
4. After hearing testimony, MassHealth agreed to provide the appellant with the following hours:
  - Shaving: approved at five minutes, one time per day, seven days per week;
  - Meal Preparation: approved at 630 minutes per week;
  - Laundry: approved at 60 minutes per week;

Testimony.

5. With respect to undressing, the appellant struggles with bending over, but can raise his arms

over his head. The PCA assists with getting his shirt, pants, and shoes off and helps him put his pajama tops and bottoms on. Testimony.

6. Undressing typically takes longer than dressing. Testimony

7. The appellant requested, and MassHealth approved, ten minutes per day for dressing. Exhibit 5 at 21.

6. With respect to medication assistance, the appellant suffers from shaky hands and weakness and struggles to prefill his medication. He also has memory issues. His PCA prefills his medication box and physically assists him with taking his medications and inhaler due to these problems. Testimony.

## **Analysis and Conclusions of Law**

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.<sup>3</sup>
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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

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<sup>3</sup> ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

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...

...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.

130 CMR 450.204(A)-(B).

As the MassHealth representative reinstated the requested hours for nail care, hair care, and nighttime bladder care in full, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant's approved hours to include the following:

- Shaving: approved at five minutes, one time per day, seven days per week;
- Meal Preparation: approved at 630 minutes per week;
- Laundry: approved at 60 minutes per week.

Thus, at issue in this case is whether MassHealth was within its discretion to a) modify the appellant's request for PCA hours in assistance with undressing; and b) deny the request for coverage for assistance with medication.

#### **Undressing**<sup>4</sup>

MassHealth defines the ADL of dressing as "physically assisting a member to dress or undress." 130 CMR 422.410(A)(4). Although the appellant's representative credibly testified as to how she assists the appellant in undressing each night, the MassHealth representative's argument that undressing does not take as long as dressing is notable. There is no evidence before me that the appellant has any special circumstances that would lead to undressing taking the same amount of

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<sup>4</sup> As the MassHealth representative offered to reinstate seven hours per day, seven days per week for this task, I will decide whether the appellant is entitled to more than what was offered at hearing.

time as or longer than dressing. Because he requested, and MassHealth approved, ten minutes per day for dressing, it was reasonable for the MassHealth representative to approve seven minutes per day for undressing. The appellant has not met his burden of proof that he is entitled to more than that. Thus, as the amount offered at hearing is greater than what was modified on the notice, the appeal is approved as to undressing, but I limit the order for MassHealth to approve the appellant for seven minutes, one time per day, seven days per week for that task.

### **Medication Assistance**

Medication assistance is considered an ADL and is defined as “physically assisting a member to take medications by a physician that otherwise would be self-administered.” 130 CMR 422.410(A)(2). The MassHealth representative argued that the appellant does not qualify for coverage of assistance with his medication because his file does not reflect that he requires a surrogate, and that if he has memory issues with his medication, that would indicate that he is incapable of managing his care. This argument is not compelling. First, the MassHealth regulations do not limit coverage of assistance with medication to individuals who require surrogates to manage their care. Second, the appellant’s representative credibly testified as to how she assists the appellant with his medications. She testified that he has shaky hands that make pre-filling his medication box difficult for him, and she reported that she physically assists him with taking his medications as well. Although an argument could be made that assisting the appellant due to his memory issues could be considered cueing or supervising, the appellant’s representative provided enough evidence to prove that she is physically assisting her father due to his physical limitations.<sup>5</sup>

As such, I find that the appellant has met his burden of proof with respect to coverage of medication assistance. I order that MassHealth reinstate the requested time, which is as follows:

- Prefill Medication Box: approved at ten minutes, one time per week;
- Assist with Inhaler: approved at two minutes, five times per day, seven days per week.

## **Order for MassHealth**

Approve the following hours as agreed to at hearing and ordered by this decision:

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<sup>5</sup> I do credit the MassHealth representative’s assertion that the appellant likely requires a surrogate due to his memory issues. The appellant should bear in mind that MassHealth can terminate him from the PCA program if he is found to require a surrogate and does not comply with the requirements of 130 CMR 422.420(B). However, the fact remains that the regulations do not offer denial of coverage for a specific task in the event that a member requires a surrogate. His apparent memory issues can only be used as evidence that a surrogate is necessary.

- Shaving: approved at five minutes, one time per day, seven days per week;
- Meal Preparation: approved at 630 minutes per week;
- Laundry: approved at 60 minutes per week;
- Undressing: approved at seven minutes, one time per day, seven days per week;
- Prefill Medication Box: approved at ten minutes, one time per week;
- Assist with Inhaler: approved at two minutes, five times per day, seven days per week.

## **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 your MassHealth Enrollment Center. 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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Mariah Burns  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 02215