

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2304742
<b>Decision Date:</b>	09/05/2023	<b>Hearing Date:</b>	07/21/2023
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**

Pro se

**Appearance for MassHealth:**

MaryJo Elliott, RN



*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>	DENIED	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	09/05/2023	<b>Hearing Date:</b>	07/21/2023
<b>MassHealth’s Rep.:</b>	MaryJo Elliott, RN	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy		

### Authority

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

### Jurisdiction

Through notice dated April 19, 2023, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed this appeal in a timely manner on June 12, 2023 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

### Issue

The appeal issue is whether MassHealth acted in accordance with the controlling regulations when it modified Appellant’s request for prior authorization for PCA services by denying some of the requested time for service.

## Summary of Evidence

Both parties appeared by telephone. MassHealth was represented by a registered nurse reviewer. MassHealth submitted a copy of the written prior authorization request (Exhibit B). Appellant appeared on his own behalf and did not file any documentation other than his Fair Hearing Request (Exhibit A).

Appellant's PCA provider agency filed a written prior authorization request for renewed PCA services. The request sought 18 hours and 45 minutes per week and 2 hours overnight hours per day. MassHealth approved 18 hours and 45 minutes per week, but denied all of the overnight hours.

According to the request, Appellant is an adult male with tetraplegia resulting from a gunshot wound sustained in 2017. Appellant is afflicted with neurogenic bladder and bowel, no sensation on his right side, decreased mobility of the left side, muscle irritability, muscle spasms, history of falls due to spasms (but has no record of recent falls), and left-sided weakness. Appellant ambulates with a limp, but there is no indication that he needs any assistive devices and he is able to drive a car. Appellant currently attends outpatient physical therapy at Spaulding once per week and is going to the gym to improve his stamina. Recently, Appellant suffered whiplash after his car was rear ended a month prior to the re-evaluation and he had to go to the emergency room on at the end of [REDACTED] 2023.

According to the request, Appellant needs the two overnight hours to assist with transfers on/off toilet due to balance issues, non-functional left side of body and a history of falls. The request also indicates that Appellant has no fine motor control in his left hand leaving him unable to grasp/grip.

MassHealth denied the overnight hours because the evaluation reveals that Appellant is independent (needs no assistance) with bathroom transfers or bladder care during the day, accordingly MassHealth determined that Appellant has the functional ability to perform the same tasks independently during the overnight hours.

Appellant testified that he is a college student and has classes very early in the morning. Appellant explained that he needs 1 to 1.5 hours each morning to get ready for class before 6:00 a.m., and needs the assistance of his PCA. As the overnight hours encompass the time between midnight and 6:00 a.m., he needs the 2 requested overnight hours each day. Appellant also testified that getting ready in the morning has become more difficult in the winter when his spasticity tends to increase.

In response, the MassHealth representative testified that Appellant presents an issue with scheduling, not the total amount of time approved. Time to assist Appellant with getting up in

the morning and dressing and such was approved as requested. If he needs this activity performed early in the morning, it makes no difference as to the amount of PCA assistance he has been granted. The PCA is still being paid to assist Appellant with getting ready in the morning regardless of when Appellant and the PCA decide to have these tasks performed.

## **Findings of Fact**

By a preponderance of the evidence, this record supports the following findings:

1. Appellant's PCA provider agency filed a written prior authorization request for renewed PCA services.
2. The request sought 18 hours and 45 minutes per week of day/evening hours and 2 hours overnight hours per day.
3. MassHealth approved 18 hours and 45 minutes day/evening per week, but denied all of the overnight hours.
4. According to the request, Appellant is an adult male with tetraplegia resulting from a gunshot wound sustained in 2017.
5. Appellant is afflicted with neurogenic bladder and bowel, no sensation on his right side, decreased mobility of the left side, muscle irritability, muscle spasms, history of falls due to spasms (but has no record of recent falls), and left-sided weakness.
6. Appellant ambulates with a limp, but there is no indication that he needs any assistive devices and he is able to drive a car.
7. Appellant currently attends outpatient physical therapy at Spaulding Rehabilitation once per week and is going to the gym to improve his stamina.
8. Recently, Appellant suffered whiplash after his car was rear ended a month prior to the re-evaluation and he had to go to the emergency room on at the end of [REDACTED] 2023.
9. According to the written request, Appellant needs the two overnight hours to assist with transfers on/off toilet due to balance issues due to the non-functional left side of his body, a history of falls and the lack of fine motor control in his left hand leaving him unable to grasp/grip.
10. The evaluation reveals that Appellant is independent (needs no assistance) with bathroom transfers or bladder care during the day.

11. MassHealth denied the 2 overnight hours upon concluding that, during the overnight hours, Appellant has the functional ability to perform the same tasks that he performs independently during the day.
12. Appellant is a college student and has classes very early in the morning.
13. Appellant needs 1 to 1.5 hours each morning to get ready for class before 6:00 a.m., and needs the assistance of his PCA.
14. MassHealth approved time to get Appellant ready in the morning as requested during the day/evening hours (6:00 a.m. through midnight).
15. PCA overnight hours encompass the time between midnight and 6:00 a.m.

## **Analysis and Conclusions of Law**

"The burden of proof is on the appealing party to show that the order appealed from is invalid, and we have observed that this burden is heavy" (*Massachusetts Inst. of Tech. v. Department of Pub. Utils.*, 425 Mass. 856, 867, 684 N.E.2d 585 (1997)).

The reasons Appellant gave for needing PCA overnight hours was entirely inconsistent with what the nurse evaluator indicated in the prior authorization request. The PA request stated the time was need for overnight bathroom transfers and bladder care. Appellant testified the need rose from having to get ready to leave the house early for college. MassHealth denied the request as stated in the evaluation because Appellant is reported to be independent with all toileting and transfers during the day. Accordingly, it was reasonable for MassHealth to conclude that there was no medical necessity for overnight PCA hours for assistance with activities Appellant has the functional capacity to perform independently (130 CMR 450.204(A)). Appellant did not address the denial based on the PA request. Accordingly, this record provides no reasonable basis in law or fact to disturb MassHealth's denial of the 2 overnight hours as requested.

Appellant's hearing testimony was not only inconsistent with the PA request, it also did not provide a basis for disturbing MassHealth's determination insofar as it merely described a scheduling issue. Appellant's PCA is currently authorized to be paid to assist Appellant with getting ready in the morning. Whether this takes place during the typical day/evening hours or the overnight hours doesn't affect the PCA's ability provide these services and bill for the time.

If for some reason Appellant and the PCA would prefer to have this assistance attached to the overnight hours, they would need to seek an adjustment whereby they would remove the approved time from the day/evening hours and have it applied to the overnight hours instead.

Additionally, the adjustment would need to identify an accurate basis for the nature of the assistance that is in fact needed during this time.

For the foregoing reasons, the appeal is denied.

## **Order for MassHealth**

None.

## **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.

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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

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