

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2304897
<b>Decision Date:</b>	8/11/2023	<b>Hearing Date:</b>	07/19/2023
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**  
Pro se with wife

**Appearance for MassHealth:**  
Donna Burns, RN, 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>	Denied	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	8/11/2023	<b>Hearing Date:</b>	07/19/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN, Optum	<b>Appellant's Rep.:</b>	Pro se with wife
<b>Hearing Location:</b>	Quincy Harbor South	<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 04/14/2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 10 hours and 15 minutes (10:15) of day/evening hours per week plus 0 daily night time attendant hours to 7:45 day/evening hours per week plus 0 daily night time attendant hours for the dates of service from 04/14/2023 to 04/13/2024 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 06/15/2023 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

## **Action Taken by MassHealth**

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

## **Issue**

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

## **Summary of Evidence**

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that on 03/29/2023, a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA provider, Stavros, Inc. ("provider"), and is a re-evaluation request for the dates of service of 04/14/2023 to 04/13/2024. In the PA request for PCA services (Exhibit 4), the provider requested 10:15 day/evening hours per week plus 0 daily nighttime attendant hours. The appellant is an adult man who lives in the community with his wife.

The appellant is an adult male who lives with his wife who works full time in a second floor apartment with laundry completed at laundromat. The appellant's primary diagnosis is cardiomyopathy/chronic heart failure per consumer onset greater than a year manifestations includes: shortness of breath, chest pain, poor endurance/activity tolerance, reports poor heart function, getting a sleep study, generalized weakness, insomnia, reports chronic back pain, fluid retention, bloating in stomach/large stomach girth, impaired standing, air loss with reaching/bending, hand tremors, reports numbness to his feet. He is ambulating today without with shortness of breath noted, independent with home transfers aside from tub transfers because of safety concerns (no bar). He reports last emergency room visit last week due to prostate issues. He denies recent falls, last hospitalization December 2022 due to CHF. He reports collapsed ankles that impedes his standing and ambulation endurance with pain reported (Exhibit 4).

The Optum representative testified that on 04/14/2023, MassHealth modified the PCA request to 7:45 day/evening hours per week. Nighttime attendant hours were not requested. A Modification was made to the request for PCA services in the instrumental activity of daily living (IADL) task of meal preparation and clean-up.

The appellant's provider requested no daily time for breakfast; 30 minutes per day, 1 time per day, 5 days per week (30 X 1 X 5) for lunch and 30 X 1 X 5 for dinner. The provider noted that the

appellant has a cardiac restrictions diet, needs maximum assistance for all meals prep and clean up due to air loss and increased pain with bending/reaching, decreased strength, impaired mobility/balance, poor standing tolerance, poor endurance, low activity tolerance, large and girth secondary to chronic heart failure, obesity and mental health diagnoses. Requesting meals prep time while spouse out for work Monday through Friday, 8:00 a.m. to 5:00 p.m. Appellant reports wife has back issues too" (Exhibit 4).

MassHealth modified the request for assistance with meal preparation and clean up to 30 X 1 X 5. The MassHealth nurse testified that 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.

The appellant responded that his wife works overtime occasionally and is usually home by 6:30 p.m. each night. He stated he is not able to make his own dinner but he can re-heat food. He eats soup for lunch; but frequently only has one meal per day.

## **Findings of Fact**

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

1. On 03/29/2023, MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, Stavros, Inc. ("provider"). It is a re-evaluation request for the dates of service of 04/14/2023 to 04/13/2024 (Testimony; Exhibit 4).
2. In the PA request for PCA services, the provider requested 10:15 day/evening hours per week (Testimony; Exhibit 4).
3. No nighttime attendant hours were requested (Testimony; Exhibit 4).
4. The appellant is an adult male who lives with his wife who works full time in a second floor apartment with laundry completed at laundromat. The appellant's primary diagnosis is cardiomyopathy/chronic heart failure per consumer onset greater than a year manifestations includes: shortness of breath, chest pain, poor endurance/activity tolerance, reports poor heart function, getting a sleep study, generalized weakness, insomnia, reports chronic back pain, fluid retention, bloating in stomach/large stomach girth, impaired standing, air loss with reaching/bending, hand tremors, reports numbness to his feet. He is ambulating today without with shortness of breath noted, independent with home transfers aside from tub transfers because of safety concerns (no bar). He reports last emergency room visit last week due to prostate issues. He denies recent falls, last hospitalization December 2022 due to chronic heart failure. He reports collapsed ankles that impedes his standing and ambulation endurance with pain reported

(Testimony; Exhibit 4).

5. On 04/14/2023 MassHealth modified the PCA request to 7:45 day/evening hours per week (Testimony; Exhibits 1 and 4).
6. The appellant filed his timely request for a fair hearing with the Board of Hearings on 06/15/2023. A fair hearing was held on 07/19/2023 (Exhibits 2 and 3).
7. The appellant's provider requested no daily time for breakfast; 30 minutes per day, 1 time per day, 5 days per week (30 X 1 X 5) for lunch and 30 X 1 X 5 for dinner. The provider noted that the appellant has a cardiac restrictions diet, needs maximum assistance for all meals prep and clean up due to air loss and increased pain with bending/reaching, decreased strength, impaired mobility/balance, poor standing tolerance, poor endurance, low activity tolerance, large and girth secondary to chronic heart failure, obesity and mental health diagnoses. Requesting meals prep time while spouse out for work Monday through Friday, 8:00 a.m. to 5:00 p.m. Appellant reports wife has back issues too" (Testimony; Exhibit 4).
8. MassHealth modified the request for assistance with meal preparation and clean up to 30 X 1 X 5 (Testimony; Exhibit 4).
9. The appellant's wife works outside of the home; however, she is normally home by 6:30 p.m. each night.
10. The appellant can prepare and clean up his own simple lunch and does not eat breakfast (Testimony).

## **Analysis and Conclusions of Law**

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 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, or 517.007 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA 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;
- (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; or
- (G) surrogates, as defined in 130 CMR 422.402.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The personal care services 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 following ADLs as defined in 130 CMR 422.410(A):

- (a) mobility, including transfers;
- (b) medications,
- (c) bathing/grooming;
- (d) dressing or undressing;
- (e) range-of-motion exercises;
- (f) eating; and
- (g) toileting

(4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

(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/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 the MassHealth agency as being instrumental to the health care of the member.

***(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 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.

***(Emphasis added.)***

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

MassHealth modified the appellant's request for PCA time in one task – meal preparation and clean up. The provider requested 30 minutes per day for lunch and 30 minutes per day for dinner (5 days per week). MassHealth modified the request to 30 minutes per day total (5 days per week). MassHealth argued that the documentation shows the appellant does not need PCA time for breakfast and that he is able to prepare and clean up a simple lunch. The wife, who works outside the home, is home at night at about 6:30 p.m. The appellant stated he cannot prepare his own dinner. He was not able to state how much meal preparation and clean up his wife is able to incorporate into her own meals or how much time the PCA requires to assist the appellant with his meals. According to the above regulations, the presumption is that a family member can assist a member with meal preparation and clean up (and other IADLs). The appellant has not rebutted this presumption. Accordingly, the appellant has not met his burden to show MassHealth's modification is not supported by the regulations or facts.

This appeal is therefore 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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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc:

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