

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2305213
<b>Decision Date:</b>	11/16/2023	<b>Hearing Date:</b>	09/27/2023
<b>Hearing Officer:</b>	Patricia Mullen		

**Appearance for Appellant:**  
Pro se

**Appearances for MassHealth:**  
Robin Brown, OT, Optum; Laura Rose, 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>	PCA services
<b>Decision Date:</b>	11/16/2023	<b>Hearing Date:</b>	09/27/2023
<b>MassHealth's Reps.:</b>	Robin Brown, OT, Optum; Laura Rose, RN, Optum	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South (remote)	<b>Aid Pending:</b>	Yes

### 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 June 15, 2023, MassHealth modified the appellant's request for prior authorization for 66.25 hours per week in day/evening PCA services and 14 hours a week for a nighttime attendant (NTA) and approved 55.25 hours per week in day/evening PCA services and 14 hours a week for a NTA, because MassHealth determined that time requested for PCA assistance with certain activities including mobility, transfers, and bladder care, did not meet criteria under MassHealth medical necessity and PCA regulations. (see 130 CMR 422.410; 422.412; 450.204 and Exhibit 8, p. 4). The appellant filed this appeal in a timely manner on June 26, 2023 and received aid pending appeal. (see 130 CMR 610.015(B) and Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal (see 130 CMR 610.032). A hearing was scheduled for August 4, 2023, but was rescheduled at the request of the appellant. (Exhibit 6). The hearing was rescheduled for August 29, 2023, but was again rescheduled at the request of the appellant. (Exhibit 7). The hearing was held on September 27, 2023.

### Action Taken by MassHealth

MassHealth modified the appellant's request for prior authorization for PCA services.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.204; 422.410; 422.412 in determining that time requested for PCA assistance with certain activities did not satisfy the criteria set forth in the PCA and medical necessity regulations.

## Summary of Evidence

The appellant appeared telephonically and verified his identity. MassHealth was represented telephonically by an occupational therapist reviewer from Optum (hereinafter “the MassHealth representative”), and registered nurse reviewer from Optum, the agent of MassHealth that makes the prior authorization determinations for PCA services. The appellant’s provider, [REDACTED], submitted a re-evaluation request for prior authorization for 66.25 hours per week in day/evening PCA services and 14 hours per week for NTA services on June 9, 2023. (Exhibit 8, p. 3). By notice dated June 15, 2023, MassHealth approved 55.25 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service June 29, 2023 to June 28, 2024. (Testimony, exhibits 8, p. 3).

The appellant is over [REDACTED] old, is blind, and has diagnoses including a herniated disc, glaucoma, atrial fibrillation, history of stroke, degenerative disc disease, osteoarthritis, incontinence, impaired balance, shortness of breath, pain on right side, chronic kidney disease, impaired range of motion; he uses a cane for ambulation and has a history of falls. (Exhibit 8, p 10). The appellant has a prescription for treadmill exercises 15 minutes, 4 times a day. (Exhibit 8, p. 10).

The appellant was evaluated in his home by registered nurse from his provider agency on June 6, 2023. (Exhibit 8, p. 9). MassHealth modified the request for PCA assistance with transfers onto and off of the treadmill, assistance while on the treadmill, and bladder care. The MassHealth representative testified to the following modifications.

Mobility/Transfers: The appellant’s provider requested 3 minutes, 8 times a day, or 168 minutes a week, for PCA assistance with transferring the appellant onto and off of the treadmill. (Exhibit 8, p. 14). The provider further requested 15 minutes, 4 times, a day, or 420 minutes a week, for PCA assistance with guarding the appellant while he is on the treadmill. (Exhibit 8, pp. 14, 15). The nurse evaluator from the provider agency wrote that the appellant has a prescription for treadmill exercises from his cardiologist and requires physical assistance with this activity. (Exhibit 8, p. 15).

The MassHealth representative stated that the requests for PCA assistance with transferring onto and off of the treadmill and guarding during the exercises was denied by MassHealth because assistance with active exercise is not a covered PCA service. The MassHealth representative stated that even though the appellant needs to exercise and his cardiologist ordered such exercise, assistance with this task is not a covered activity of daily living (ADL) under the MassHealth PCA

program. Further the PCA program does not cover guarding, supervision, or safety monitoring. (Testimony). The MassHealth representative stated that she understands the dilemma of the appellant needing to exercise and assistance with exercise not being covered under the PCA program. The MassHealth representative suggested that the appellant ask the cardiologist about cardio exercises he could do independently, or meet with a physical therapist who could teach independent exercises.

The appellant testified his life depends on cardio exercises and his doctor prescribed the treadmill exercises. The appellant stated that the PCA holds onto him while he is on the treadmill. The appellant argued that this service should be covered by MassHealth as it is necessary for his health.

Bladder care: The appellant's provider requested 19 minutes, 7 times a day, or 931 minutes a week, for PCA assistance with bladder care. (Exhibit 8, p. 24). MassHealth approved 15 minutes, 7 times a day, for PCA assistance with bladder care. (Testimony). The appellant's provider requested 19 minutes, once a day, for PCA assistance with bowel care and MassHealth approved such time in full. (Exhibit 8, p. 24, testimony). The MassHealth representative stated that 19 minutes time for task for bladder care is longer than ordinarily required for someone with the appellant's physical limitations. The nurse evaluator from the provider agency wrote that the appellant requires physical assistance with transfers to and from the bathroom, on and off the toilet, and clothing management. (Exhibit 8, p. 25).

The appellant stated that he requires assistance maneuvering onto and off of the toilet, and needs assistance with clean up. The appellant noted that he is sometimes incontinent and wears incontinent products. The appellant stated that he has an enlarged prostate and sometimes needs to urinate 7 times a day, but it varies. The appellant stated that the time for assistance can vary and he did not know if it takes 19 minutes for assistance but he thinks it could take between 20-25 minutes. The appellant noted that his PCA stands by while he is using the bathroom to assist when needed.

The appellant argued that he needs more assistance with medications and eating, but the MassHealth representative noted that such time was approved in full.

## **Findings of Fact**

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

1. The appellant's provider, [REDACTED] submitted a re-evaluation request for prior authorization for 66.25 hours per week in day/evening PCA services and 14 hours per week for NTA services on June 9, 2023.

2. By notice dated June 15, 2023, MassHealth approved 55.25 hours per week in day/evening PCA services and 14 hours per week for NTA services for dates of service June 29, 2023 to June 28, 2024.
3. The appellant is over 65 years old, is blind, and has diagnoses including a herniated disc, glaucoma, atrial fibrillation, history of stroke, degenerative disc disease, osteoarthritis, incontinence, impaired balance, shortness of breath, pain on right side, chronic kidney disease, impaired range of motion; he uses a cane for ambulation and has a history of falls.
4. The appellant has a prescription for treadmill exercises 15 minutes, 4 times a day.
5. The appellant was evaluated in his home by registered nurse from his provider agency on June 6, 2023.
6. The appellant's provider requested 3 minutes, 8 times a day, or 168 minutes a week, for PCA assistance with transferring the appellant onto and off of the treadmill, and 15 minutes, 4 times, a day, or 420 minutes a week, for PCA assistance with guarding the appellant while he is on the treadmill.
7. MassHealth denied the requests for PCA assistance with transferring onto and off of the treadmill and assistance during the treadmill exercises.
8. The PCA holds onto the appellant while he is on the treadmill.
9. The appellant's provider requested 19 minutes, 7 times a day, or 931 minutes a week, for PCA assistance with bladder care; MassHealth approved 15 minutes, 7 times a day, for PCA assistance with bladder care.
10. The appellant's provider requested 19 minutes, once a day, for PCA assistance with bowel care and MassHealth approved such time in full.
11. The appellant requires physical assistance with transfers to and from the bathroom, on and off the toilet, hygiene, and clothing management.
12. The appellant is sometimes incontinent and wears incontinent products.
13. The appellant's PCA stands by while he is using the bathroom to assist when needed.

## **Analysis and Conclusions of Law**

MassHealth covers PCA 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 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 ADLs and IADLs without physical assistance.
- (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)).

The requested services must also be medically necessary for prior authorization to be approved. 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) A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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.
- (B) 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. A provider must make those records, including medical records, available to MassHealth upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

(130 CMR 450.204(A)-(C)).

Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
  - (4) dressing: 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 or 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 PCA 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 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.

(130 CMR 422.410).

Noncovered 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.

(130 CMR 422.412).

Assisting the appellant onto and off of the treadmill and holding him while he is on the treadmill would be considered assistance with active exercise. MassHealth does not cover PCA assistance with active exercise, rather only covers assistance with passive range of motion, pursuant to the above regulation. Safety monitoring, supervision, and guiding are also not covered under the PCA program pursuant to the above regulations. The appellant may benefit from using the treadmill, but such activity is not an activity of daily living for which MassHealth covers PCA assistance. MassHealth's denial of PCA assistance with the appellant's treadmill is upheld and the appeal is denied as to this issue.

The appellant's provider requested 19 minutes time for task for PCA assistance with both bladder care and bowel care. MassHealth approved the requested 19 minutes for PCA assistance with bowel care, but modified the time requested for assistance with bladder care to 15 minutes time for task. Presumably it would take longer for the PCA to assist with the task of bowel care in light of the increased hygiene needs. Time spent waiting for the appellant to complete using the toilet, and time spent standing by in case the appellant needed assistance, are not included in the time for task calculation. Only time for actual hands on assistance with a task is used in the time for task calculation. 15 minutes to assist the appellant with getting to the bathroom, hygiene, and clothing management is more than sufficient. The appellant uses incontinence products and assistance with changing an incontinence product would take even less time. MassHealth's modification of time requested for PCA assistance with bladder care is upheld and the appeal is denied as to this issue.

## **Order for MassHealth**

Rescind aid pending and proceed with the modifications set forth in the notice dated June 15,



2023.

## **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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Patricia Mullen  
Hearing Officer  
Board of Hearings

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