

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in Part; Approved in Part	<b>Appeal Number:</b>	2306090
<b>Decision Date:</b>	10/11/2023	<b>Hearing Date:</b>	08/24/2023
<b>Hearing Officer:</b>	Thomas Doyle	<b>Record Open to:</b>	

**Appearance for Appellant:**



**Appearance for MassHealth:**

Mary Jo Elliot, R.N.

**Interpreter:**



*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	<b>Issue:</b>	Prior Authorization, PCA Services
<b>Decision Date:</b>	10/11/2023	<b>Hearing Date:</b>	08/24/2023
<b>MassHealth's Rep.:</b>	Mary Jo Elliot, R.N.	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (phone)	<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 July 18, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). The appellant filed this appeal in a timely manner on July 24, 2023. (130 CMR 610.015(B); Ex. 2).<sup>1</sup> Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

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

### Summary of Evidence

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<sup>1</sup> The Fair Hearing Request Form is not dated but it is clear the form was faxed on July 24, 2023.

The appellant appeared with her daughter, who represented the appellant. Both testified at the hearing by telephone. MassHealth was represented by an R.N., who also appeared by phone and testified to the following: appellant is a ■-year-old female; appellant's diagnosis includes COPD, emphysema, heart failure, back and hip pain, anxiety, depression edema both legs to feet, and oxygen dependent. Appellant has neuropathy which causes balance and mobility deficits with increased fall risk. (Ex. 4, p. 12). Currently, there is no aid pending. Appellant's provider, ADLIB, submitted an initial request for 31 hours and 0 minutes per week for day/evening and 2 hours per night. MassHealth modified the request to 28 hours and 15 minutes per week and approved the 2 hours per night.

MassHealth modified Other Healthcare Needs, Oxygen. Appellant requested 5 minutes an episode, 2 episodes a day, 7 days a week to check oxygen setting, tubing and appellant's ears for any cuts. (Ex. 4, p. 28-29). MassHealth modified the time for oxygen to 5 minutes an episode, 1 time a day, 7 days a week. (Testimony). Under Meal Preparation, appellant requested time for snacks at 5 minutes an episode, 7 days a week. (Ex. 4, p. 33). MassHealth modified this time to 0 because MassHealth believed appellant was being provided meals on wheels by Elder Services. After testimony from the appeal representative stating the Meals on Wheels had ended months ago, MassHealth reinstated the requested snack time. As no dispute exists for the time requested for Meal Preparation, Snacks, this part of the appeal is dismissed. Shopping was requested at 60 minutes a week. MassHealth modified this to 30 minutes a week. (Ex. 4, p. 35). After discussion between the parties regarding Elder Services providing homemaking services, the appeal representative agreed to this modification. As no dispute exists for the time requested for Shopping because the appeal representative agreed to the modification by MassHealth, this part of the appeal is dismissed. Housekeeping was requested for 45 minutes a week. MassHealth modified this to 15 minutes a week. (Ex. 4, p. 34). After discussion between the parties regarding Elder Services providing homemaking services, the appeal representative agreed to this modification. As no dispute exists for the time requested for Shopping because the appeal representative agreed to the modification by MassHealth, this part of the appeal is dismissed. Regarding Laundry, appellant requested 60 minutes a week. MassHealth modified this to 30 minutes a week. (Ex. 4, p. 34). The appeal representative stated that even 60 minutes a week was not enough. After further discussion clarifying the duties of the Elder Services homemaker and what she does bi-weekly, the MassHealth representative agreed to the 60 minutes a week for Laundry. (Testimony). As no dispute exists for the time requested for Laundry because the MassHealth representative rescinded the modification and the appeal representative agreed, this part of the appeal is dismissed.

## Findings of Fact

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

1. The appellant is a female MassHealth member in her early-70's who lives in the community. (Testimony; Ex. 4, p. 1, 3).
2. The appellant's medical diagnoses include COPD, emphysema, heart failure, back and hip pain, anxiety, depression edema both legs to feet, oxygen dependent. Appellant has neuropathy which causes balance and mobility deficits with increased fall risk. (Ex. 4, p. 12; Testimony).
3. ADLIB, a PCM agency, submitted a PA evaluation request to MassHealth on the appellant's behalf seeking 31 hours, 0 minutes of PCA assistance per week (day/evening hours), and 2 nighttime hours per night. (Testimony; Ex. 4, p. 3).
4. MassHealth modified the requested time to 28 hours, 15 minutes of day/evening PCA assistance per week and approved 2 nighttime hours every night for services for one year. (Testimony; Ex. 1; Ex. 4, p. 3).
5. There is no aid pending. (Ex. 6).
6. MassHealth modified Other Health Care Needs, Oxygen; Meal Preparation, Snacks; Laundry; Housekeeping and Shopping. (Testimony; Ex. 4).
7. MassHealth rescinded its modifications to Meal Preparation, Snacks and Laundry. The parties agreed to the time requested for Snacks at 5 minutes an episode, 7 days a week. MassHealth reinstated Laundry to 60 minutes a week. (Testimony).
8. MassHealth modified Housekeeping to 15 minutes a week. The appeal representative agreed to this modification. (Testimony).
9. MassHealth modified Shopping to 30 minutes a week. The appeal representative agreed to this modification. (Testimony).

## Analysis and Conclusions of Law

Appellant disagreed with the medically necessary decision of MassHealth in modifying her hours for PCA services. The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

(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 the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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. (**Emphasis added**).

(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. (**Emphasis added**).

#### 422.403: Eligible Members

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(C) 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.

MassHealth reinstated the time requested for Meal Preparation, Snacks and Laundry. The appeal representative agreed to the reinstatement of the time for these tasks. Therefore, the appeal regarding Meal Preparation, Snacks and Laundry is dismissed.

The appeal representative agreed to the modifications made by MassHealth to Housekeeping and Shopping. As there is no longer a dispute to the hours per week allotted to these tasks, the part of the appeal regarding Housekeeping and Shopping is dismissed.

The only remaining issue in dispute is Other Healthcare Needs, Oxygen. Appellant requested 5 minutes an episode, 2 times a day, 7 days a week. Appellant is on oxygen 24 hours a day, 7 days a

week. (Ex. 4, p. 28-29). MassHealth modified the time for this task to 5 minutes an episode, 1 time a day, 7 days a week. The MassHealth representative testified while the PCA can check the oxygen settings, she cannot change the settings. She stated MassHealth considers this to be monitoring and a PCA is not authorized to monitor. She also stated it should not take more than a minute over the course of the day to check oxygen tubing and to observe if there are any cuts on appellant's ears from the tubing. The appeal representative, who is the daughter of appellant and the PCA, testified she has to clean the tubing frequently. She stated on humid days, appellant's nose will run and she needs to clean the tubing due to mucous buildup. On cooler, dryer days appellant has nose bleeds. The MassHealth representative asked the PCA if she has called appellant's doctor or the oxygen company regarding the issues of a running or bloody nose. The PCA stated appellant's doctor told her that appellant has fine veins and capillaries and thin skin. The PCA stated she had not spoken to the oxygen company. The PCA stated appellant wears a nose catheter and the MassHealth representative asked if a mask would be a better option to help with the bleeding and drying out of the nose. The PCA said appellant is claustrophobic so an oxygen mask would not work. The appellant has met her burden in this case. Appellant has shown the extra episode a day "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 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." 130 CMR 450.203 (A) (1)(2).

For the above cited reasons, the appeal is dismissed regarding Meal Preparation, Snacks; Laundry, Housekeeping and Shopping. The appeal is approved regarding Other Healthcare Needs, Oxygen.

## **Order for MassHealth**

Reinstate the requested time for Other Healthcare Needs, Oxygen, to 5 minutes an episode, 2 episodes a day, 7 days a 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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Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]