

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part; Dismissed in part	<b>Appeal Number:</b>	2306119
<b>Decision Date:</b>	8/11/2023	<b>Hearing Date:</b>	08/07/2023
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*

Pro se

**Appearance for MassHealth:**

*Via telephone:*

Donna Burns, 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>	Approved in part; Denied in part; Dismissed in part	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	8/11/2023	<b>Hearing Date:</b>	08/07/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South 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 July 6, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on July 24, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 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

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. She testified that the documentation submitted showed that the appellant is an adult male under the age of 65 who has primary diagnoses of congenital cavus and back pain. The appellant lives at home with his children and spouse, who does not work and does not have a disability.

The appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services requesting 42 hours and 30 minutes of day/evening hours per week and no nighttime hours for the dates of service of [REDACTED] 2023 through [REDACTED] 2024. On July 6, 2023, MassHealth modified the request to 34 hours and 45 minutes of day/evening hours per week and no nighttime hours. The appellant previously received 30 hours per week through last year's prior authorization. At hearing, the parties were able to resolve the dispute related to PCA assistance with medication. Parties agreed to 3 minutes, 2 times per day, 7 days per a week for medication assistance and 10 minutes per week for filling the medication box. PCA assistance with meal preparation, laundry, and transportation to medical appointments remained at issue.

The appellant explained that he has a genetic condition affecting his feet. He is using a cane right now but it is not helping much and he is looking into a walker. He has back pain, can't fold clothes, can't shower on his own, is dependent for meals, and slips a lot. In his last fall, he broke his front teeth. His condition deteriorates every year. Most members of his family have this and can't walk after the ages of 35 to 38.

### **Meal Preparation**

The appellant requested 15 minutes per day for breakfast and 35 minutes per day for dinner for PCA assistance with meal preparation. MassHealth did not approve any time for meal preparation because he lives with a legally responsible family member. His spouse lives in the home with him and does not work. When a member lives with family members, the family member is expected to provide assistance with most instrumental activities of daily living (IADLs), which include meal preparation.

The appellant responded that he and his wife have four kids and his wife takes care of the kids and has to drive them to two different schools in the morning. All four kids are in school during the day, but she is always busy and does not have time to cook for him. She cooks for the children, but those meals are different than his.

The MassHealth representative stated that the regulations are clear on this matter and meal preparation is the responsibility of his spouse. He has not received PCA assistance with meal preparation in the past. She added that the regulation does not consider the number of children

one has and it is common in families with young children for the adults to have different meals than the kids.

### **Laundry**

The appellant requested 60 minutes per week for PCA assistance with laundry. MassHealth did not approve any time for laundry because he lives with a legally responsible family member. His spouse lives in the home with him and does not work. When a member lives with family members, the family member is expected to provide assistance with most IADLs, which include laundry.

The appellant explained that he has accidents and soils his clothing and bed linens multiple times per week. The soiled linens and clothing smell so bad that they take those items to the laundromat instead of doing them in the machines at home. The PCA usually makes trips to the laundromat two times per week. Because of his incontinence, his clothing and linens must be done separately from the rest of the family.

### **Medical Transportation**

The appellant requested 69 minutes per week for transportation to medical appointments. MassHealth approved 47 minutes per week.

The MassHealth representative explained that it modified the number of round-trip drives to physical therapy from the requested 42 visits per year to 20 visits per year, which is the maximum number of physical therapy visits per year that a member can obtain without prior authorization.

The appellant testified that he goes to physical therapy one time per week, sometimes once every two weeks, which he has been doing for the past three to four years. He stated that some of the visits are paid for by MassHealth and others, by Medicare.

## **Findings of Fact**

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

1. The appellant is an adult male under the age of 65 who has primary diagnoses of congenital cavus and back pain. (Testimony and Exhibit 4).
2. The appellant lives at home with his children and spouse, who does not work and does not have a disability. (Testimony and Exhibit 4).
3. MassHealth received a prior authorization request on behalf of the appellant requesting 42 hours and 30 minutes of day/evening hours per week and no nighttime hours for the dates

of service of [REDACTED] 2023 through [REDACTED] 2024. (Testimony and Exhibit 4).

4. MassHealth modified the request to 34 hours and 45 minutes of day/evening hours per week and no nighttime hours. (Testimony and Exhibits 1 and 4).
5. At hearing, the parties were able to resolve the dispute related to PCA assistance with medication. Parties agreed to 3 minutes, 2 times per day, 7 days per a week for medication assistance and 10 minutes per week for filling the medication box. (Testimony).
6. The appellant seeks time for PCA assistance with meal preparation as follows: 15 minutes per day for breakfast and 35 minutes per day for dinner. (Testimony and Exhibit 4).
7. MassHealth did not approve any time for meal preparation. (Testimony and Exhibit 4).
8. The appellant seeks time for PCA assistance with laundry as follows: 60 minutes per week. (Testimony and Exhibit 4).
9. The appellant has accidents requiring his sheets and clothing to be washed separately from the rest of the family. (Testimony and Exhibit 4).
10. MassHealth did not approve any time for laundry. (Testimony and Exhibit 4).
11. The appellant seeks time for PCA assistance with medical transportation as follows: 69 minutes per week. (Testimony and Exhibit 4).
12. MassHealth approved 47 minutes per week for assistance with medical transportation. (Testimony and Exhibit 4).
13. MassHealth modified the number of round-trip drives to physical therapy from the requested 42 visits per year to 20 visits per year. (Testimony and Exhibit 4).
14. 20 physical therapy visits per year is the maximum number that a member can obtain without prior authorization. (Testimony).

## Analysis and Conclusions of Law

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 or grooming;
  - (d) dressing or undressing;
  - (e) range-of-motion exercises;
  - (f) eating; and
  - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the 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 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 the Division. Services that are less

costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 Division 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.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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 or 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to PCA assistance with medications because at hearing the parties were able to resolve the disputes related to it. Parties agreed to 3 minutes, 2 times per day, 7 days per week for physical assistance with medications and 10 minutes once a week for filling the medication box.

Regarding the appellant's request for PCA assistance with meal preparation, the appeal is denied. When someone is living with a family member, the regulation requires family members to provide assistance with most IADLs, including meal preparation. (130 CMR 422.410(C)). The appellant, who does not have any special dietary needs, lives with his spouse who does not work and does not have any disabilities. She is expected to assist with meal preparation. For these reasons, the appellant has not shown that any further PCA assistance with meal preparation is medically necessary.

Regarding the appellant's request for PCA assistance with laundry, the appeal is approved in part and denied in part. MassHealth did not approve any time because laundry is the responsibility of a family member, such as a spouse. At hearing, the appellant explained that he has accidents that require his sheets and clothing to be washed separately from the rest of the household. This occurs about twice per week and, even though the appellant has laundry in the home, the soiled linens and clothing smell so bad that the PCA brings the appellant's laundry to the laundromat. The regulation requires family members to provide "**routine** laundry" and "household management" assistance. The appellant's need for laundry services solely related to his medical conditions exceeds the laundry services anticipated through "household management" or "routine laundry." Therefore, the appellant is approved for 30 minutes per week for PCA assistance with laundry. Based on his testimony, his medical conditions result in the need for laundry assistance of 30 minutes per week in excess of the routine laundry assistance that is expected of his spouse to provide as part of household management.

Regarding the appellant's request for PCA assistance with transportation to physical therapy appointments, the appeal is denied. The appellant requested round trip transportation to 42 physical therapy appointments per year; however, pursuant to regulation 130 CMR 432.417(B), MassHealth requires prior authorization for more than 20 physical therapy visits per year. For that reason, MassHealth was correct in approving PCA assistance with transportation to 20 physical therapy visits per year, the maximum allowed without a prior authorization.<sup>1</sup>

For these reasons, the appeal is approved in part, denied in part, and dismissed in part.

## **Order for MassHealth**

Approve the appellant for 30 minutes per week for PCA assistance with laundry and implement the agreement made at hearing for assistance with medications.

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<sup>1</sup> If, at a later date, the appellant's physical therapist obtains a MassHealth prior authorization for additional physical therapy visits, the appellant can submit for an adjustment through his PCM agency for more time for assistance with transportation to those visits.

## **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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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

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