

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part, Denied in part	<b>Appeal Number:</b>	2306748
<b>Decision Date:</b>	10/20/2023	<b>Hearing Date:</b>	9/14/2023
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearance for Appellant:**

Pro se

**Appearance for MassHealth:**

Robin Brown, Optum

Laura Rose, Optum

**Interpreter:**

N/A



*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	<b>Issue:</b>	PCA Hours
<b>Decision Date:</b>	10/20/2023	<b>Hearing Date:</b>	9/14/2023
<b>MassHealth's Rep.:</b>	Robin Brown, Laura Rose, Optum	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote (Tel)	<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 31, 2023, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant requested assistance with various Activities of Daily Living (ADLs) (See 130 CMR 422.410(A) and Exhibit 1) and the time requested was longer than ordinarily required for someone with the Appellant's physical needs (See 130 CMR 422.410(A)(1), 130 CMR 422.410(A)(3), 130 CMR 450.204(A)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on August 9, 2023 (see 130 CMR 610.015(B)). A decision regarding the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(1), 130 CMR 422.410(A)(3), 130 CMR 450.204(A)(1) in modifying the Appellant's prior authorization

request for personal care services.

## Summary of Evidence

The Appellant is a MassHealth member under the age of 65 whose primary diagnoses includes High Blood Pressure, Diabetes and Liver Cirrhosis. (Exhibit 5, pg. 11) Secondary diagnoses include neuropathy in the hands and feet as well as significant physical injuries due to a motorcycle collision. (Testimony, Exhibit 5, pg. 11) In [REDACTED] 2022, the Appellant suffered a significant motorcycle collision which resulted in multiple broken bones in the feet and ankles, a broken back, broken collar bone, broken wing bone and multiple broken ribs. (Testimony, Exhibit 5, pg. 11) On July 30 2023, MassHealth, represented by Optum, made 4 Modifications to the Appellant's prior authorization request for PCA services. (Exhibit 5, p. 3 and Testimony). Specifically, MassHealth modified the following: 1) ADL – Mobility, from 3 minutes, 3 times a day, 7 days a week to mobility, 2 minutes, 3 times a day, 7 days a week (Exhibit 5 p. 14, Testimony) 2) ADL – Mobility, Transfers, from 3 minutes, 3 times a day, 7 days a week to mobility transfers, 2 minutes, 3 times a day, 7 days a week (Exhibit 5. p. 14, Testimony) 3) ADL – Bathing, from 20 minutes 1 time a day, 7 days a week to bathing, 15 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 17, Testimony) 4) ADL – Toileting – Nighttime, bladder care, from 5 minutes, 2 episodes a night to nighttime, bladder care, to 0 minutes, 0 episodes a night (Exhibit 5, pg. 23, Testimony)

Regarding 1) ADL – Mobility, from 3 minutes, 3 times a day, 7 days a week to Mobility, 2 minutes, 3 times a day, 7 days a week, MassHealth testified the request exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant testified regarding his extensive injuries caused by the motorcycle collision from [REDACTED] 2022. The Appellant testified due to his injuries he is a fall risk and other physical ailments were in a downward spiral due to his injuries. (Testimony) The Appellant stated he has difficulty with sitting up or rolling on to one side. (Testimony) He further testified that his cirrhosis of the liver negatively affects his ability to perform any physical therapy. (Testimony) In response to questions, the Appellant testified that he approximately 6 feet, 2 inches tall and weighs approximately 238 pounds. (Testimony) No compromise was reached between the parties on this issue (Mobility) and it is addressed in the Analysis and Conclusions of Law section below.

Regarding 2) ADL – Mobility – Transfers, from 3 minutes, 3 times a day, 7 days a week to Mobility – Transfers, 2 minutes, 3 times a day, 7 days a week, MassHealth testified the request exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant referred to his prior testimony regarding his extensive injuries caused by the motorcycle collision from [REDACTED] 2022. (Testimony) No compromise was reached between the parties on this issue (Mobility – Transfers) and it is addressed in the Analysis and Conclusions of Law section below.

Regarding 3) ADL – Bathing, from 20 minutes 1 time a day, 7 days a week to Bathing, 15

minutes, 1 time a day, 7 days a week, MassHealth testified the request exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant testified that he requires a chair in the tub because he cannot stand. (Testimony) The Appellant described the tub as a claw-footed tub which is difficult for him to enter. (Testimony) MassHealth noted that documentation indicated that the Appellant requires minimal assistance and that there existed chairs designed for use with claw-footed tubs. No compromise was reached between the parties on this issue (Bathing) and it is addressed in the Analysis and Conclusions of Law section below.

4) ADL – Toileting – Nighttime, bladder care, from 2 nighttime hours to cover 5 minutes, 2 episodes a night to Toileting – Nighttime, bladder care, 0 nighttime hours, to cover 0 minutes, 0 episodes a night, MassHealth testified that the Appellant could utilize a urinal as a less costly solution to nighttime PCA services for aid in urinating during the overnight hours. (Testimony). MassHealth then paraphrased 130 CMR 450.204(A)(2) stating that a service is “medically necessary” if 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. (Testimony) The Appellant, in response to questions, admitted that he had used a urinal in the past, and did not want to go back to utilizing one. (Testimony) No compromise was reached between the parties on this issue (Toileting - Nighttime) and it is addressed in the Analysis and Conclusions of Law section below.

## Findings of Fact

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

1. The Appellant is a MassHealth member under the age of 65 whose primary diagnoses includes High Blood Pressure, Diabetes and Liver Cirrhosis. (Exhibit 5, pg. 11) Secondary diagnoses include neuropathy in the hands and feet as well as significant physical injuries due to a motorcycle collision. (Testimony, Exhibit 5, pg. 11)
2. In [REDACTED] 2022, the Appellant suffered a significant motorcycle collision which resulted in multiple broken bones in the feet and ankles, a broken back, broken collar bone, broken wing bone and multiple broken ribs. (Testimony, Exhibit 5, pg. 11)
3. On July 30, 2023, MassHealth made 4 Modifications to the Appellant's prior authorization request for PCA services. (Exhibit 5, p. 3 and Testimony).
4. The first Modification was 1) ADL – Mobility, from 3 minutes, 3 times a day, 7 days a week to Mobility, 2 minutes, 3 times a day, 7 days a week (Exhibit 5 p. 14, Testimony)
5. The second Modification was 2) ADL – Mobility – Transfers, from 3 minutes, 3 times a

day, 7 days a week to Mobility – Transfers, 2 minutes, 3 times a day, 7 days a week (Exhibit 5. p. 14, Testimony)

6. The third Modification was 3) ADL – Bathing, from 20 minutes 1 time a day, 7 days a week to Bathing, 15 minutes, 1 time a day, 7 days a week (Exhibit 5, pg. 17, Testimony)
7. The fourth Modification was 4) ADL – Toileting – Nighttime, bladder care, from 5 minutes, 2 episodes a night to Toileting – Nighttime, bladder care, to 0 minutes, 0 episodes a night (Exhibit 5, pg. 23, Testimony)
8. The parties were unable to reach a compromise on any of the 4 Modifications to the Appellant's prior authorization request.

## **Analysis and Conclusions of Law**

Personal Care Assistant 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.

(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.

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). See also 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).

Regarding 1) ADL – Mobility, from 3 minutes, 3 times a day, 7 days a week to Mobility, 2 minutes, 3 times a day, 7 days a week, MassHealth testified the request exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant testified regarding his extensive injuries caused by the motorcycle collision from [REDACTED] 2022. The Appellant testified due to his injuries he is a fall risk and other physical ailments were in a downward spiral due to his injuries. (Testimony) The Appellant stated he has difficulty with sitting up or rolling on to one side. (Testimony) He further testified that his cirrhosis of the liver negatively affects his ability to perform any physical therapy. (Testimony) In response to questions, the Appellant testified that he approximately 6 feet, 2 inches tall and weighs approximately 238 pounds. (Testimony) I find that the Appellant has met his burden to show the invalidity of MassHealth's determination related to Mobility. The Appellant's testimony related to the issues related to his extensive injuries from the [REDACTED] 2022 motorcycle and the difficulties it causes him is persuasive. Furthermore, the Appellant's height and weight support the need for additional time for Mobility. The Appellant has demonstrated by a preponderance of evidence that the Appellant requires additional time for this task beyond the time allotted by MassHealth. Therefore, regarding Mobility, this appeal is APPROVED. MassHealth (Optum) shall allot 3 minutes, 3 times a day, 7 days a week to Mobility.

Regarding 2) ADL – Mobility – Transfers, from 3 minutes, 3 times a day, 7 days a week to Mobility – Transfers, 2 minutes, 3 times a day, 7 days a week, MassHealth testified the request exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant referred to his prior testimony regarding his extensive injuries caused by the motorcycle collision from [REDACTED] 2022. (Testimony) I find that the Appellant has met his burden to show the invalidity of MassHealth's determination related to Mobility. The Appellant's testimony related to the issues related to his extensive injuries from the [REDACTED] 2022 motorcycle and the difficulties it causes him is persuasive. Furthermore, the Appellant's height and weight support the need for additional time for Mobility – Transfers. The Appellant has demonstrated by a preponderance of evidence that the Appellant requires additional time for this task beyond the time allotted by MassHealth. Therefore, regarding Mobility – Transfers, this appeal is APPROVED. MassHealth (Optum) shall allot 3 minutes, 3 times a day, 7 days a week to Mobility.

Regarding 3) ADL – Bathing, from 20 minutes 1 time a day, 7 days a week to bathing, 15

minutes, 1 time a day, 7 days a week, MassHealth testified the request exceeded time ordinarily required for someone with the Appellant's physical needs for physical assistance. (Testimony) The Appellant testified that he requires a chair in the tub because he cannot stand. (Testimony) The Appellant described the tub as a claw-footed tub which is difficult for him to enter. (Testimony) I find that the Appellant has met his burden to show the invalidity of MassHealth's determination related to Bathing. The Appellant's testimony related to the issues related to his extensive injuries from the [REDACTED] 2022 motorcycle and the difficulties it causes him is persuasive. Furthermore, the Appellant's height and weight support the need for additional time for Bathing. Moreover, the claw-footed tub provides additional challenges to the Appellant and his safety. The Appellant has demonstrated by a preponderance of evidence that the Appellant requires additional time for this task beyond the time allotted by MassHealth. Therefore, regarding Bathing, this appeal is APPROVED. MassHealth (Optum) shall allot 20 minutes, 1 time a day, 7 days a week to Bathing.

4) ADL – Toileting – Nighttime, bladder care, from 2 nighttime hours to cover 5 minutes, 2 episodes a night to bladder care, 0 nighttime hours, to cover 0 minutes, 0 episodes a night, MassHealth testified that the Appellant could utilize a urinal as a less costly solution to nighttime PCA services for aid in urinating during the overnight hours. (Testimony). MassHealth then paraphrased 130 CMR 450.204(A)(2) stating that a service is "medically necessary" if 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. (Testimony) The Appellant, in response to questions, admitted that he had used a urinal in the past, and did not want to go back to utilizing one. (Testimony) I find that the Appellant has not met his burden to show the invalidity of MassHealth's determination. The Appellant did not meet his burden, by a preponderance of evidence, to show that MassHealth's administrative determination that a urinal, as a less costly alternative to nighttime PCA hours, is invalid. Therefore, the appeal related to the fourth modification, the ADL of Toileting – Nighttime, bladder care, is DENIED.

## **Order for MassHealth**

Approve the following PCA hours:

- 1) Mobility: 3 minutes, 3 times a day, 7 days a week
- 2) Mobility, Transfers: 3 minutes, 3 times a day, 7 days a week
- 3) Bathing: 20 minutes, 1 time 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.

---

Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

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