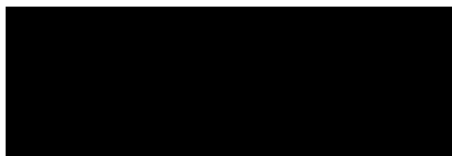


# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part; Dismissed in part	<b>Appeal Numbers:</b>	2306547 & 2307183
<b>Decision Date:</b>	10/17/2017	<b>Hearing Date:</b>	09/15/2023
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via Videoconference:*

Pro se



**Appearance for MassHealth:**

*Via Videoconference:*

Mary-Jo Elliott, 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>	10/17/2017	<b>Hearing Date:</b>	09/15/2023
<b>MassHealth's Rep.:</b>	Mary-Jo Elliott, RN	<b>Appellant's Rep.:</b>	Pro se [REDACTED]
<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 20, 2023, MassHealth approved the prior authorization request for a 30-day extension of personal care attendant (PCA) services (Exhibit 1a; appeal #2306547). Through a notice dated August 9, 2023, MassHealth modified the appellant's prior authorization request for PCA services (Exhibit 1b; appeal #2307183). For the purposes of this decision and with the agreement of both parties involved, these two appeals, which were heard together, are combined. The appellant filed these appeals in a timely manner on July 31, 2023 and August 18, 2023, respectively (see 130 CMR 610.015(B) and Exhibits 2a and 2b). 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 video conference 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 diagnosis of a C3 spinal cord injury. The appellant lives independently. Relevant medical history shows that the appellant is tetraplegic from the neck down; some sensation in bilateral hands; no fine or gross motor function in either hand; unable to weight bear; hoist lift for all transfers from hospital bed to chair; has a suprapubic catheter; history of urinary tract infection neurogenic bladder and bowel (with one hospitalization this year for a UTI); experiences muscle spasms in his whole body; complains of bilateral throbbing pain in shoulder and crushing hand pain; type 1 insulin dependent diabetic; struggles with depression; and worsening condition due to atrophy of lower extremities/muscles.

The MassHealth representative explained that on July 20, 2023, MassHealth informed the appellant that it was approving a request to extend the current prior authorization for PCA services for an additional 30 days, through August 25, 2023. MassHealth approved 63 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per night, as requested. The MassHealth representative explained that this was done administratively at the request of the appellant's personal care management (PCM) agency because the PCM agency needed additional time to complete an evaluation and submit its new prior authorization request and did not want the appellant to have any lapse in coverage.

The appellant and his attorney appeared via video conference. The appellant explained that he appealed this notice because the 63 hours and 45 minutes that was approved in July 2022 (and was extended for 30 days pursuant to the July 20, 2023 notice) was not enough time. He tried to appeal that decision at the time of its approval but did not do so timely and was unable to address his concerns at a hearing at that time. He appealed this July 20, 2023 notice looking for more hours for the month of July 2023, in addition to back hours for the previous prior authorization period.

The MassHealth representative explained that the PCM agency did not ask for any adjustments and MassHealth approved the extension as requested. During an extension like this, MassHealth has to base its approval on what was previously requested and approved. It is an administrative extension to avoid any gap in coverage while the PCM agency prepares a new prior authorization request and it does not involve any additional review.

On or around July 27, 2023, the appellant's PCM agency submitted a prior authorization request for PCA services requesting 89 hours and 30 minutes of day/evening hours per week and 2 nighttime hours per night for the dates of service of August 26, 2023 through August 25, 2024. On August 9, 2023, MassHealth modified the request to 74 hours and 15 minutes of day/evening hours per week and 2 nighttime hours per night. MassHealth modified the time requested for the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): bathing; grooming: hair; grooming: other – applying lotions and barrier creams; dressing; undressing; eating; toileting; assistance with medications – insulin; assistance with medications – glucose checks; meal preparation; and medical transportation.<sup>1</sup> Based on testimony at hearing, the MassHealth representative fully restored the time as requested for all modifications except medical transportation.

### **Medical Transportation**

The appellant requested 191 minutes per week for transportation to medical appointments. MassHealth approved 60 minutes per week.

The MassHealth representative stated that, per the comments in the request, the appellant uses PT-1 but requires the PCA to accompany him to appointments to assist with mobility and repositioning and to help manage his chair, other items, and ADLs during trips as needed. The comments also state the appellant is tetraplegic and needs assistance with activities and care needs that arise during transportation and while out of the home. The appellant has many medical appointments, including physical therapy and occupational therapy two times per week. The MassHealth representative explained that generally, time is approved for transferring the appellant to and from the car and into the appointment and/or home. Travel time is not approved because the PCA is not doing the driving. She explained that time for PCA assistance with his care needs, such as mobility, repositioning, and other ADLs, have already been approved throughout the day, regardless of where the services are being provided. She inquired whether there is something happening in the PT-1 van that is different than already approved and provided by the PCA.

The appellant explained that often, the buildings for his appointments are not handicapped accessible and the PCA has to physically transfer him. During the rides, the PCA is holding him up in his chair. He is in his wheelchair in the van and strapped in, but the PCA is responsible for keeping him from bouncing around. He has suffered whiplash several times during PT-1 and Ride transports. The transportation time is very hands-on, with the PCA almost acting like an extra

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<sup>1</sup> The PCM agency requested 3 minutes, 2 times per day, 3 days per week for oral care, which MassHealth approved. The PCM agency did not request any time for bowel care. While parties all agreed that the appellant needs daily PCA assistance with oral care and bowel care, MassHealth cannot approve more time than what was requested. The MassHealth representative explained that the appellant should seek an adjustment through his PCM agency for these, and any other ADLs or IADLs, that were not correctly requested in the prior authorization request.

seatbelt.

## 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 a primary diagnosis of a C3 spinal cord injury and is tetraplegic from the neck down (Testimony and Exhibit 4b).
2. The appellant lives at home independently (Testimony and Exhibit 4b).
3. MassHealth received a request from the PCM agency for a 30-day extension of his PCA hours of 63 hours and 45 minutes of day/evening hours per week and 2 nighttime hours per night through August 25, 2023 because the PCM agency needed additional time to complete an evaluation and submit a new prior authorization request (Testimony and Exhibit 4a).
4. On July 20, 2023, MassHealth fully approved the request for an extension, as requested by the PCM agency (Testimony and Exhibit 1a).
5. MassHealth received a prior authorization request on behalf of the appellant requesting 89 hours and 30 minutes of day/evening hours per week and 2 nighttime hours per night for the dates of service of August 26, 2023 through August 25, 2024 (Testimony and Exhibit 4b).
6. On August 9, 2023, MassHealth modified the request to 74 hours and 15 minutes of day/evening hours per week and 2 nighttime hours per night (Testimony and Exhibit 4b).
7. Based on testimony at hearing, the MassHealth representative fully restored the time as requested for the following ADLs and IADLs: bathing; grooming: hair; grooming: other – applying lotions and barrier creams; dressing; undressing; eating; toileting; assistance with medications – insulin; assistance with medications – glucose checks; and meal preparation (Testimony).
8. The only modification remaining at issue was time for PCA assistance with medical transportation, for which the appellant seeks 191 minutes per week (Testimony and Exhibit 4b).
9. MassHealth modified the request for medical transportation to 60 minutes per week (Testimony and Exhibit 4b).
10. The appellant utilizes PT-1 for transportation and the PCA accompanies him to assist with transfers, mobility, repositioning and to help manage his wheelchair, items, and ADLs during

trip as needed (Testimony and Exhibit 4b).

11. Some of the buildings where the appellant has appointments are not handicapped accessible and his PCA has to physically transfer him. Additionally, the PCA holds him up in his chair during the drives to prevent him from bouncing around and experiencing whiplash (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.

To the extent that the appellant challenges the 30-day extension approval notice dated July 20, 2023, this issue is not an appealable action and the appeal is dismissed. (See 130 CMR 610.032). Furthermore, the time to dispute the PCA time approved in the 2022-2023 prior authorization period was in July 2022 when he received the notice, not over a year later. (See 130 CMR 610.015(B)). But, as the appellant acknowledged at hearing, he did not timely appeal that notice.



The appeal is also dismissed as to PCA assistance with the following ADLs and IADLs because at hearing, MassHealth fully restored the time as requested, resolving the disputes: bathing; grooming: hair; grooming: other – applying lotions and barrier creams; dressing; undressing; eating; toileting; assistance with medications – insulin; assistance with medications – glucose checks; and meal preparation.

Regarding the appellant's request for PCA assistance with medical transportation, the appeal is approved in part and denied in part. The appellant requested 191 minutes per week for transportation to medical appointments; however, some of that time is for mobility, repositioning, and other ADLs for which PCA assistance has already been approved, regardless of where the PCA is performing those tasks. Additionally, the PCA is not driving as the appellant uses PT-1. But the appellant credibly explained that the PCA does more than routine repositionings during rides to and from medical appointments. It is a very hands-on process, with the PCA holding the appellant up in his chair during rides and preventing him from bouncing around and getting whiplash. Based on his testimony, the appellant has shown that his medical condition necessitates the PCA providing some additional hands-on assistance that is not otherwise accounted for in the PCA time already approved. For this reason, the appellant is approved for 100 minutes per week of transportation.

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

## **Order for MassHealth**

Approve the appellant for 100 minutes per week for PCA assistance with medical transportation and implement the approvals made at hearing for PCA assistance with bathing; grooming: hair; grooming: other – applying lotions and barrier creams; dressing; undressing; eating; toileting; assistance with medications – insulin; assistance with medications – glucose checks; and meal preparation.

## **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

