

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2313291
Decision Date:	03/15/2024	Hearing Date:	01/18/2024
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:

Pro se



Appearance for MassHealth:

Kelly Rayen, R.N., Clinical Reviewer, 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

Appeal Decision:	Approved	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	03/15/2024	Hearing Date:	01/18/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	<i>Pro se</i> ; Friend/Advocate
Hearing Location:	Board of Hearings (Virtual – Video Conference)	Aid Pending:	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 12/12/23, MassHealth informed Appellant that it modified his prior authorization (PA) request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant filed a timely appeal 12/18/23, See 130 CMR 610.015(B); Exhibit 2. Modification of a PA request for services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

The issue on appeal is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by himself and by a friend/advocate. All parties appeared remotely by video conference.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is [REDACTED] and has a primary diagnosis of Tetraplegia with neurogenic bladder and bowel. See Exh. 6, pp. 6-10. His past relevant medical history includes spinal cord tumor, subsequent laminoplasty and resection of intradural glioma, and sepsis. See Exh. 6, pp. 9-10; 53-56.

On 12/12/23, MassHealth received an initial PA request for PCA services from Appellant's personal care management (PCM) agency, [REDACTED] (BCIL) seeking approval for 50 hours and 45 minutes per-week for dates of service beginning 12/12/2023 and ending 12/11/2024. See id. at 4.

The PA request was based on an 12/7/23 in-person initial evaluation of Appellant by a BCIL registered nurse (RN) and occupational therapist (OT). Id. at 9. Documentation within the PA request, including the OT/R.N. evaluations and relevant medical records, show that Appellant, who is [REDACTED] ambulates in a manual wheelchair. See Exh. 6, p. 6-10. He has bilateral lower extremity sensory loss, decreased strength, impaired sitting balance, and gross and fine motor deficits. Id. According to the OT functional status report, Appellant's disability has impaired his ability to stand, reposition himself, and grasp; and has further impaired his sitting tolerance and range of motion. Id. at 6-7. As such, the OT evaluator determined that Appellant requires assistance with activities of daily living (ADLs) including transfers, bathing, toileting, dressing, eating, passive range of motion, and other healthcare needs; and that he requires PCA assistance with all instrumental activities of daily living (IADLs). Id. at 6-7.

Through a letter dated 12/12/23, MassHealth notified Appellant that it modified his PA request by authorizing a total of 45 hours of PCA services per-week. See Exh. 1. Specifically, MassHealth modified the PA request by adjusting downward the time authorized for the following ADLs/IADLs: (1) bathing, (2) dressing and undressing, and (3) meal preparation. Id. The basis for its determination, as cited in the 12/12/23 notice, was because the times requested for the modified ADLs and IADL were "longer than ordinarily required for someone with [Appellant's] physical needs," pursuant to 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1). Id.

At hearing, the parties addressed each modification individually, as follows:

(1) Bathing

First, Appellant's PCM agency requested 45 minutes per-day, 7 days per-week (45x1x7) for the PCA to provide "minimum" physical assistance with showering activities, including routine transfers. See Exh. 16, p. 16-17. In support of the request, the PCM agency noted that the PCA assists by transferring Appellant into the shower using a "slide board," assists in gathering supplies, washing, rinsing, drying, and skin care. Id. The PCM agency explained that Appellant is able to contribute by washing his upper body, upper legs, and peri area; but requires assistance washing lower legs and bottom due to decreased right-sided ability for gross grasp, no active range of motion in bilateral lower extremities, decreased strength, and fatigue. Id.

MassHealth modified the request for bathing by approving 30 minutes daily (30x1x7). Exh. 1. The representative explained that the modification was based, in part, on documentation showing that Appellant only requires minimum assistance, has an adaptive shower chair, and can contribute with washing is upper body. Because MassHealth only pays for "hands-on" assistance and does not reimburse for PCA time spent waiting or supervising, 30 minutes should be sufficient to transfer Appellant on and off the shower chair and assist in washing areas he is unable to reach.

Appellant and his representative testified that 30 minutes was "woefully inadequate" for the PCA to perform all the tasks associated with showering. Appellant explained that he relies on the PCA to wash all areas that he cannot reach, including his entire backside, bottom, and areas where moisture can easily get trapped and are prone to skin breakdown. Appellant testified that he currently has a wound on his coccyx related to excess moisture. Appellant testified that odor is a big problem he faces due to being incontinent of bladder and bowel. He requires extra time to not only wash these areas, but to ensure they are completely dried before getting dressed. Additionally, he has a straight catheter for urine output and requires additional care so that the sterile field is not broken.

Appellant indicated that although he can wash his face and upper body, he still relies on the PCA to help due to limitations of his right hand, which he described as "mangled." This makes it difficult to hold two items at once, manipulate items like applying soap and shampoo to his body, and causes him to frequently drop shower supplies. Accordingly, the PCA still assists in the process by helping him retrieve and disburse soap and rinsing him off.

Furthermore, Appellant described that the PCA assists to ensure his safety and stability in the shower. He does not have full sensation below the level of his injury. He relies on the PCA, not only to turn on and off the water, but also to monitor the water temperature to ensure he does not get burned. Safety is a large element when being transferred in/out of the shower and takes time. When getting into the shower, the PCA helps him first disrobe and then transfers him via the slide board onto the shower chair. While in the shower, the PCA has to monitor his physical stability. He has limited lower trunk and core control and has fallen in the shower previously when

reaching or leaning forward. This also makes getting out of the shower especially difficult because he has to be lifted out of the shower when his body is wet. He has low endurance and depending on the level of fatigue, this can add even more time to the process. Once out of the shower, he is dried and transferred back to bed, where the PCA finishes drying any areas that remain partially wet, and which is critical to preventing skin breakdown.

In response, MassHealth noted that it does not pay for “anticipatory” care, such as supervising in the event a member could fall. The representative also noted that MassHealth approved the full time that was requested under the separate task of “transfers” under mobility. Based on Appellant’s testimony, MassHealth offered to increase the modified time to 40 minutes. Appellant declined stating that even the PCM agency’s request for 45 minutes was an underestimation of the actual PCA hands-on time required during showering.

A review of the PA request shows that for the individual task of “transfers”, the PCM agency requested, and MassHealth approved, 15 minutes 2x per-day (15x2x7) to assist getting Appellant “in/[out of bed] with a lift assist sup sitting.” Exh. 6, p. 13. The PCM’s description did not reference time for transfers relating to bathing or showering.¹

(2) Dressing / Undressing

Appellant’s PCM agency requested 23 minutes per-day (23x1x7) for dressing and 15 minutes per-day (15x1x7) for undressing. See Exh. 6, p. 20. The PCM evaluation findings show that Appellant requires moderate physical assistance with upper extremity dressing/undressing, and maximum assistance with lower extremity dressing/undressing and donning/removing footwear. Id. In addition, the PCM agency noted that Appellant requires help gathering clothes and that Appellant is able to assist by “rolling for lb over bottom” Id.

MassHealth modified both requests downward, approving 15 minutes (15x1x7) for dressing and 10 minutes (10x1x7) for undressing. The representative testified that based on the documentation, the authorized time should be sufficient to allow the PCA to gather clothes and perform lower body dressing, as Appellant has ability to dress and undress his upper body.

Appellant and his representative testified that getting dressed and undressed is a time-consuming process. Although he has upper body function, his range of motion to pull a shirt over his head and chest is difficult and his arms tighten. In order to put on pants, someone needs to lift him up. He cannot reach far enough to get his socks or shoes on independently. He wears soft booties for nighttime and these also a component of the time it takes for the PCA to not only retrieve clothes but put clothes away or in a hamper.

¹ When asked to describe his morning routine, Appellant explained that after waking up, he is transferred out of bed and into his wheelchair; then he is brought to the bathroom to start his bowel program; next, he is transferred via the slide board to the shower chair; and then transferred to his bed, where he finishes drying, and subsequently gets dressed.

In addition, he is dressed several times per-day depending on his bladder. Although he has a strait catheter, it is common for urine to soak through. Unless he is changed, he will end up sitting in urine which will soak through his pants to the wheelchair cushion.

In response, MassHealth offered to increase the time for dressing to 20 minutes; however, Appellant declined stating that it was still inadequate, and in reality, it takes the PCA closer to 30 minutes to get him dressed.

(3) Meal Preparation & Clean Up

Appellant's PCM agency requested a total of 95 minutes per-day for assistance with meal preparation (95x1x7) broken down as 20 minutes requested for breakfast, 30 minutes for lunch, and 45 minutes for dinner. See Exh. 6, p. 30. The PCM agency found that Appellant requires "total dependence" on the PCA to "prepare and clean up after all meals" due to Appellant's impairments including decreased active range of motion, decreased gross and fine motor coordination, and decreased strength and endurance. Id. The PCM agency also noted that Appellant does not attend programs or receive services that provide meals outside the home. Id.

MassHealth modified the request approving a total of 75 minutes for meal preparation, noting that Appellant had upper body function that could allow him to assist in some meal preparation tasks.

In response, Appellant and his representative testified that he lacks the ability to meaningfully contribute to meal preparation for several reasons. First, because he is in a wheelchair, he cannot stand up or reach forward enough to access most of the cabinets and shelves where food and kitchen supplies are kept. Additionally, countertops are too high for him to use for preparing food, and any portion of meal preparation that he could contribute would have to be done sitting at the table. Appellant also reiterated that he has impaired functional ability in his right hand. This makes it difficult to hold two items at once or manipulate certain objects. He therefore cannot assist in chopping food or cleaning dishes.

In describing a typical meal, Appellant stated that breakfast, for example, might consist of pancakes, bacon, eggs, and/or fruit. He then described how he cannot cook using the stove as this would present a safety hazard; he would rely on the PCA to prepare the meal, cook, and wash all the dishes and cookware, and takes the PCA at least 20 minutes as requested for breakfast. Appellant testified that he lives with his [REDACTED] grandmother who is unable to help with meal preparation as she has health and functional limitations of her own.

Findings of Fact

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

1. Appellant is over the age of 21 and a primary diagnosis of Tetraplegia with neurogenic bladder and bowel and a past relevant medical history includes spinal cord tumor, subsequent laminoplasty and resection of intradural glioma, and sepsis.
2. On 12/12/23 MassHealth received an initial PA request for PCA services from Appellant's PCM agency seeking approval for 50 hours and 45 minutes per-week for dates of service beginning 12/12/2023 and ending 12/11/2024.
3. Appellant is [REDACTED] and [REDACTED]. and ambulates by a manual wheelchair; he has bilateral lower extremity sensory loss, decreased strength, impaired sitting balance, and gross and fine motor deficits.
4. Appellant requires assistance with ADLs including transfers, bathing, toileting, dressing, eating, passive range of motion, and other healthcare needs; and requires assistance with all IADLs.
5. Through a letter dated, 12/12/23, MassHealth notified Appellant that it modified his PA request by authorizing a total of 45 hours of PCA services per-week; by adjusting downward the time approved for (1) bathing, (2) dressing and undressing, and (3) meal preparation, on this basis that the times requested for these tasks were "longer than ordinarily required for someone with [Appellant's] physical needs," pursuant to 130 CMR 422.410(A)(3) and 130 CMR 450.204(A)(1).

Bathing

6. Appellant requested 45 minutes per-day, 7 days per-week (45x1x7) for the PCA to provide "minimum" physical assistance with showering activities, including transferring Appellant into the shower using a "slide board," gathering supplies, washing, rinsing, drying, and skin care.
7. MassHealth modified the request for bathing by approving 30 minutes daily (30x1x7).
8. Appellant requires assistance with washing lower legs, entire backside, and bottom due to decreased right-sided gross motor grasping function, no active range of motion in bilateral lower extremities, decreased strength, and fatigue.
9. Appellant requires extra time washing and drying areas that are prone to excess moisture and that are affected by incontinence.
10. Appellant does not have full sensation below the level of his injury and relies on the PCA to monitor the water temperature during his shower to prevent burn.

11. While in the shower, the PCA has to monitor his physical stability as Appellant has limited trunk and core control and has previously sustained falls in the shower by reaching or leaning forward.
12. The PCA has to lift Appellant when transferring him from the shower chair to slide board, which is more difficult after showering when his body is wet.

Dressing/Undressing

13. Appellant's PCM agency requested 23 minutes per-day (23x1x7) for dressing and 15 minutes per-day (15x1x7) for undressing.
14. MassHealth modified both requests downward, approving 15 minutes (15x1x7) for dressing and 10 minutes (10x1x7) for undressing.
15. Appellant requires moderate physical assistance with upper extremity dressing/undressing, and maximum assistance with lower extremity dressing/undressing and donning/removing footwear.
16. Although he has upper body function, his range of motion to pull a shirt over his head and chest is difficult and his arms tighten. In order to put on pants, someone needs to lift him up.
17. He cannot reach far enough to get his socks or shoes on independently.
18. Appellant relies entirely on the PCA to assist in gathering clothes and putting away dirty clothes.
19. Appellant is dressed/undressed multiple times per day due to episodes of incontinence.

Meal Preparation

20. Appellant's PCM agency requested a total of 95 minutes per-day for assistance with meal preparation (95x1x7) broken down as 20 minutes requested for breakfast, 30 minutes for lunch, and 45 minutes for dinner.
21. Appellant requires "total dependence" on the PCA to "prepare and clean up after all meals" due to Appellant's impairments including decreased active range of motion, decreased gross and fine motor coordination, and decreased strength and endurance.
22. Appellant does not attend programs or receive services that provide meals outside the

home.

23. MassHealth modified the request approving a total of 75 minutes for meal preparation,
24. Appellant ambulates via wheelchair and cannot stand up or reach far enough forward to gather/put away food and kitchenware items which are kept in cabinets, on countertops, or shelves beyond his reach.
25. Appellant has impaired grasping ability of his right hand and cannot hold two items at once or easily manipulate certain objects, thereby preventing him from chopping food or cleaning dishes.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:² First, the services must be “prescribed by a physician or nurse practitioner who is responsible for the member’s...care.” 130 CMR 422.403(C)(1). Additionally, the “member’s disability [must be] permanent or chronic in nature and impair the member’s functional ability to perform [at least two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4).

As to the latter requirement, MassHealth determines medical necessity³ of PCA services through its prior authorization (PA) process. See 130 CMR 422.416. The PCM agency is responsible for providing MassHealth with an initial or updated evaluation, completed PA request form, and any documentation that supports the member’s need for the requested PCA services. See id. MassHealth will either approve, modify, or deny, a member’s request for PCA services, and notify the member accordingly. See 130 CMR 422.417.

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. The sole issue on appeal is whether MassHealth allotted sufficient time for Appellant to receive

² PCA services are defined as “physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member’s authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410.” See 130 CMR 422.002.

³ 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. See 130 CMR 450.204(A).

assistance with the ADLs of bathing, dressing, and undressing, and the IADL of meal preparation.

MassHealth cover's PCA assistance for the following ADLs:

(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.

See 130 CMR 422.410.

In addition, MassHealth reimburses for PCA assistance with IADLs, which are tasks that are "instrumental to the care of the member's health and are performed by a PCA, such as **meal preparation and clean-up**, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services." See 130 CMR 422.402 (emphasis added); see also 130 CMR 422.410(B).

With respect to both ADLs and IADLs, MassHealth will cover the "activity time performed by a PCA in providing assistance with the [tasks]." See 130 CMR 422.411. MassHealth does not, however, pay for "assistance provided in the form of cueing, prompting, supervision, guiding, or coaching." See 130 CMR 422.412(C). When determining the amount of physical assistance necessary for an IADL, MassHealth requires the PCM agency to assume that if there is an

available family member, i.e. legally responsible relative,⁴ living with the member, that person will assist the member with most “routine” IADLs. See 130 CMR 422.410(C) MassHealth will also consider individual circumstances when determining the amount of assistance required. Id.

Bathing

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that the request for 45 minutes per-day (45x1x7) for bathing is necessary and consistent with the regulatory standards above. MassHealth modified the request and authorized 30 minutes for a daily shower, which Appellant described as “woefully inadequate” to meet his care needs.

The totality of evidence demonstrates that Appellant requires PCA assistance at all phases of the showering process, including disrobing and being transferred onto the shower chair via a slide board. Appellant, who is [REDACTED] credibly testified that being transferred into the shower takes significant effort and must be performed carefully. He requires full PCA assistance with washing lower leg extremities, including his feet and entire backside. Additional time must be spent to ensure adequate washing around his catheter and in crevices due to risk of skin breakdown and incontinence. Both documentary evidence and testimony presented at hearing indicate that Appellant has impaired right-handed grasping ability. Thus, even when washing parts of his body that he can access, he still requires PCA involvement with certain tasks such as holding and dispensing shampoo and soap. The PCA also has to lift him out of the shower and back onto the slide board, which is more difficult when he is wet. Lastly, the PCA has to ensure Appellant is thoroughly dried to prevent skin breakdown. Considering all factors together, Appellant successfully demonstrated that MassHealth’s approval of 30 minutes does not give the PCA adequate time to perform all necessary steps to shower, dry, and transfer⁵ Appellant. The appeal is APPROVED as to bathing at 45x1x7.

Dressing/Undressing

Appellant demonstrated that MassHealth’s modifications to dressing and undressing at 15 and 10 minutes, respectively, is insufficient to meet his care needs. The PCM agency requested 23 minutes per-day (23x1x7) for dressing, and 15 minutes per-day (15x1x7) for undressing. The requested level of assistance is supported by the evidence in the record. The PCM evaluation findings show that Appellant requires moderate physical assistance with upper extremity

⁴ A “family member,” as defined in MassHealth’s PCA regulations, means “the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.” 130 CMR 422.401.

⁵ As MassHealth noted at hearing, Appellant’s request for “transfers” under the ADL category of “mobility” was approved in full as requested. The request, however, only sought coverage for the transfer into and out of bed, and not the time the PCM agency noted was required to assist Appellant in and out of the shower. See two transfers in and out of bed and did not include time for transferring in/out of the shower. See Exh. 6, pp. 13-14. Therefore, the time allotted for bathing should encompass the time it takes the PCA to get Appellant in and out of the shower.

dressing/undressing, and maximum assistance with lower extremity dressing/undressing, including donning and removing footwear. *Id.* These findings were corroborated by Appellant and his representative, who credibly testified that dressing/undressing requires PCA assistance at all phases and is a lengthy process. Appellant needs the PCA to gather and put away all clothing items. Although Appellant retains some upper body function, his ability to participate in dressing/undressing his upper body is limited due to impaired range of motion and tightness in his arms. He needs to be lifted to pull up pants. Factoring in his size, Appellant described that this is not an effortless process and can easily lead to fatigue. All factors, when considered together, warrant authorization of the full amount of time requested. The appeal is APPROVED with respect to Appellant's request for dressing at 23x1x7 and undressing at 15x1x7. See Exh. 6, p. 21.

Meal Preparation

In the present case, Appellant's PCM agency requested a combined total of 95 minutes-per day for the PCA to perform preparation and clean-up tasks for all meals. See Exh. 6, p. 30. MassHealth modified the request to 75 minutes. As documented in the PA request, Appellant requires "total dependence" on the PCA to "prepare and clean up after all meals" related to Appellant's decreased active range of motion, decreased gross and fine motor coordination, and decreased strength and endurance. See Exh. 6, p. 30. These findings were corroborated by Appellant and his representative, who credibly testified that 75 minutes per-day is inadequate for the PCA to perform all necessary steps involved in meal preparation and clean-up. Although Appellant retains some upper body function, he described how being in a wheelchair limits his ability to retrieve certain food/kitchen items that are kept on shelves, countertops, and cabinets beyond his reach. For safety reasons, he cannot use the oven or stove to cook food. He has limited grasp ability in his right hand and cannot chop food or use both hands at once. For these same reasons, Appellant relies entirely on the PCA to perform all clean-up tasks. In consideration of Appellant's functional limitations and "individual circumstances," Appellant successfully demonstrated that he requires the full amount of time requested for this IADL. See 130 CMR 422.410(C)(3).⁶ This appeal is APPROVED with respect to Appellant's request meal preparation at 95x1x7. See Exh. 6, p. 30.

Order for MassHealth

Rescind notice dated 12/12/23. For the PA period beginning 12/12/2023 and ending 12/11/2024, approve Appellant's PA request in-full at 50 hours and 45 minutes per-week, including the time requested for bathing (45x1x7); dressing (23x1x7); undressing (15x1x7); and meal preparation (95x1x7).⁷

⁶ Appellant does not have any available live-in family members to assist with this IADL as contemplated in § 422.410(C)(1) (reflecting MassHealth's presumption that a live-in family member will contribute to household tasks that encompass the needs of the member). Appellant's grandmother is not considered a "family member" within the PCA regulatory definition, as there is no evidence that she is legally responsible for Appellant.

⁷ Changes are to be made retroactive to the start of the PA period.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]