

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2313651
Decision Date:	4/1/2024	Hearing Date:	1/24/2024
Hearing Officer:	Cynthia Kopka	Record Open to:	2/29/2024

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN, 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 in part	Issue:	PCA services
Decision Date:	4/1/2024	Hearing Date:	1/24/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy (remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated December 11, 2023, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on December 26, 2023. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032. Appellant was entitled to retain her prior level of services pending the outcome of the hearing. 130 CMR 610.036. The hearing record was held open through February 29, 2024 for the submission of additional evidence. Exhibit 5.

Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and provided documents in support, Exhibit 4. Appellant's surrogate and representative appeared at hearing and offered testimony. A summary of testimony and documentation follows. Appellant is in her [REDACTED] with a primary diagnosis of osteoarthritis and other diagnoses and conditions including diabetes, chronic stage 3 kidney disease, anxiety, depression, and forgetfulness. Exhibit 4 at 7, 8. Appellant's spouse is also a PCA consumer.

On November 11, 2023, Boston Council for Independent Living (BCIL), Appellant's Personal Care Management Agency (PCMA), submitted a re-evaluation for PCA services, requesting 73.0 hours of PCA assistance per week. On December 11, 2023, MassHealth modified Appellant's request and approved 62.25 PCA hours per week. The dates of service were from December 20, 2023 through December 19, 2024. Exhibit 1. Appellant was entitled to retain her prior level of services pending the outcome of the hearing, which was 69.5 PCA hours.

MassHealth modified the requested PCA hours for four activities of daily living (ADLs): bathing, dressing, undressing, and bowel care. Exhibit 4 at 3. MassHealth also modified two instrumental activities of daily living (IADLs): meal preparation and laundry. *Id.* At hearing, MassHealth restored the time requested for bowel care based on testimony provided, approving 12 minutes, 2 times per day, 7 days per week as requested. This approval is addressed in the order below.

In the area of bathing, Appellant requested 50 minutes, 1 time per day, 7 days per week for a shower and 15 minutes, 1 time per day, 7 days per week for an evening quick wash. *Id.* at 14. MassHealth modified the request, approving 40 minutes, 1 time per day, 7 days per week for the shower and 10 minutes, 1 time per day, 7 days per week for the quick wash.

The notes indicate that Appellant requires maximum assist with upper and lower dressing, rinsing and drying due to back pain, poor trunk flexion, bilateral leg weakness, limited range of motion, hand tremors, weakness, and fatigue. *Id.* MassHealth noted that the time approved was the same time as approved last year and no notable changes were documented to support the need for increased time.

Appellant's surrogate testified that Appellant has a herniated disc, which gives her a hard time getting into the tub and sitting in the chair. She has had a few falls, the last of which in fall 2023 caused a broken tailbone. This makes it more difficult for Appellant to get into the tub and stabilize in chair. Appellant has bad shoulder pain and cannot wash herself. Appellant's surrogate testified that it takes closer to an hour to bathe. Regarding the quick wash, Appellant has intestinal issues that cause diarrhea. Appellant is working on a medication plan to resolve this issue, but it does not always work. Appellant could have diarrhea up to 7 days a week. Appellant has accidents because she cannot get into the bathroom in time. This takes time to clean up. Appellant also urinates

frequently and has accidents when coughs or sneezes. The increase in time for the quick wash is due to the increase of the volume of the mess. The MassHealth representative testified that time to assist with bowel and bladder care was granted, separately from the quick wash. The quick wash is intended to be an evening sponge bath before bed. Appellant's representative testified that Appellant requires a quick wash due to her obesity causing sweating and any accident that occurs after dinner.

In the area of dressing, Appellant requested assistance with two occurrences of dressing daily: 20 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week. MassHealth approved the first occurrence of dressing as requested but modified the second occurrence to 5 minutes, 1 time per day, 7 days per week.

In the area of undressing, Appellant requested assistance with two occurrences of undressing daily: 15 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week. MassHealth modified both requests, to 10 minutes, 1 time per day, 7 days per week and 3 minutes, 1 time per day, 7 days per week.

Regarding both dressing and undressing, Appellant's representatives testified that Appellant requires a second change of clothes after an incontinent accident. Appellant is incapable of helping and her muscle spasms slows the process down. If Appellant moves her arm too quickly, it will spasm and require a massage before making an adjustment. Appellant's surrogate must be very careful and slow with the process. Appellant argued that the second occurrence of dressing and undressing takes at least half the time of the initial dressing and undressing, usually just the bottom half of the clothes but Appellant occasionally wears dresses, requiring a full change. Appellant wears incontinence briefs but they are not sufficient to fully address the incontinence.

In the area of meal preparation, Appellant requested 90 minutes total daily. MassHealth approved 45 minutes total (or 315 minutes per week). Citing 130 CMR 422.410(B)(2) and 410(C)(2), MassHealth argued that Appellant's spouse is also authorized for PCA services and was approved for 315 minutes per week. The IADLs must be calculated on a shared basis.

Appellant's surrogate testified that Appellant and her spouse eat two entirely different meals with two different diets. Appellant has mouth ulcers and no teeth, so all of her food must be blended. Appellant also has acid reflux and requires plain meals without spice or salt. Appellant's spouse does not like blended food and does not eat the same food. There is no shared meal between the spouses. Appellant eats 6 small meals per day. Appellant's spouses have different PCAs. Appellant eats soups, oatmeal, vegetables, chicken, salmon, all of which requires to be blended. Appellant's surrogate estimated that it takes at least 90 minutes daily to prepare Appellant's food. The MassHealth representative testified that based on Appellant requiring a blended diet, she could approve 55 minutes daily for Appellant's meal preparation, or 385 minutes per week. Appellant's surrogate argued that it takes longer daily.

In the area of laundry, Appellant requested 60 minutes weekly. MassHealth approved 45 minutes, citing 130 CMR 422.410(B)(2) and 410(C)(2). The MassHealth representative testified that Appellant's spouse is also approved for 45 minutes of laundry, a shared task. The laundry is in the home. Appellant's surrogate argued that Appellant's laundry must be separate from her spouse's, given how soiled they are after an incontinent accident. Appellant has accidents in bed, which requires daily sheet changes. Appellant's surrogate estimated that Appellant's laundry alone yields 5 loads per week between soiled clothes, sheets, and blankets. Sixty minutes is reasonable for 5 loads of laundry. The MassHealth representative questioned how Appellant has so many frequent night accidents given that she has PCA assistance at night for two instances of toileting. Appellant's surrogate testified that the assistance for toileting is for typical urination needs but she has nightly spasms that cause her to wet the bed. Appellant uses liners under the sheets to protect the mattress but the sheets will get wet. Appellant does not have chux pads.

The hearing record was held open to allow Appellant to submit medical records supporting the increased need of PCA hours. Exhibit 5. Appellant submitted a letter from her doctor confirming her fall in 2023 that resulted in a broken tailbone. As a result, Appellant cannot relax in her bath chair and has overall worsened pain and mobility. Exhibit 6. The doctor also wrote that Appellant has suspected IBS causing instances of diarrhea upwards of 6 times per day, with inconsistent benefit from medication. *Id.*

Findings of Fact

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

1. On November 11, 2023, Appellant's PCMA submitted a re-evaluation for PCA services, requesting 73.0 hours of PCA assistance per week.
2. On December 11, 2023, MassHealth modified Appellant's request and approved 62.25 PCA hours per week. The dates of service were from December 20, 2023 through December 19, 2024. Exhibit 1.
3. Appellant filed a timely appeal on December 26, 2023 and was entitled to retain her prior level of services (69.5 hours) pending the outcome of the hearing. Exhibit 2.
4. Appellant is in her [REDACTED] with a primary diagnosis of osteoarthritis and other diagnoses and conditions including diabetes, chronic stage 3 kidney disease, anxiety, depression, and forgetfulness. Exhibit 4 at 7, 8.
5. For assistance with bathing, Appellant requested 50 minutes, 1 time per day, 7 days per week for a shower and 15 minutes, 1 time per day, 7 days per week for an evening quick wash. *Id.* at 14.

6. MassHealth modified the request, approving 40 minutes, 1 time per day, 7 days per week for the shower and 10 minutes, 1 time per day, 7 days per week for the quick wash.
7. In the area of dressing, Appellant requested assistance with two occurrences of dressing daily: 20 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week. *Id.* at 18.
8. MassHealth approved the first occurrence of dressing as requested but modified the second occurrence to 5 minutes, 1 time per day, 7 days per week. *Id.*
9. In the area of undressing, Appellant requested assistance with two occurrences of undressing daily: 15 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week. *Id.*
10. MassHealth modified both requests, to 10 minutes, 1 time per day, 7 days per week and 3 minutes, 1 time per day, 7 days per week. *Id.*
11. In the area of meal preparation, Appellant requested 90 minutes total daily.
12. MassHealth approved 45 minutes total (or 315 minutes per week).
13. Appellant's spouse is also authorized for PCA services and was approved for 315 minutes per week.
14. In the area of laundry, Appellant requested 60 minutes weekly.
15. MassHealth approved 45 minutes.
16. Appellant's spouse is also approved for 45 minutes of laundry.
17. Appellant's doctor wrote that in 2023 Appellant fell and broke her tailbone. As a result, Appellant cannot relax in her bath chair and has overall worsened pain and mobility. Exhibit 6.
18. Appellant's doctor wrote that Appellant has suspected IBS causing instances of diarrhea upwards of 6 times per day, with inconsistent benefit from medication. *Id.*

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(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 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.

(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 personal care 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 personal care 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 personal care 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.

Here, it is undisputed that Appellant qualifies for PCA services. The only issues in dispute are MassHealth's modifications of bathing, dressing, undressing, meal preparation, and laundry.

Regarding bathing, this appeal is approved in part. Appellant's doctor's note confirming Appellant's fall and broken tailbone supported Appellant's argument that more time is needed for the daily bath/shower than last year, as she has more difficulty getting into the tub and staying seated comfortably on her shower chair. However, this did not directly support the need for more time for a quick wash. MassHealth approved more time for bowel care than in the year prior, which can address some of the additional time needed to clean following an incontinence episode. For these reasons, this appeal is approved in part to increase the time authorized for assistance with a daily shower/bath to 45 minutes, 1 time per day, 7 days per week. The quick wash time will remain at 10 minutes daily.

Regarding dressing and undressing, this appeal is approved in part. Appellant's argument that she requires half the time it takes to perform a full dressing and undressing for her mid-day change is reasonable. This is also supported by her doctor's note that confirmed the frequency of diarrhea and incontinence, requiring a change of lower body clothes. As such, this appeal is approved to increase the time for the second occurrence of dressing to 10 minutes, 1 time per day, 7 days per week and the second occurrence of undressing to 5 minutes, 1 time per day, 7 days per week.

Regarding meal preparation, this appeal is approved in part to allow 55 minutes daily (385 minutes weekly) for meal preparation, given MassHealth's testimony and that Appellant must consume pureed food given her medical issues. However, Appellant did not establish a credible basis to approve the full 90 minutes requested.

Regarding laundry, this appeal is approved. Appellant's testimony and the doctor's note support the need for greater laundry assistance, given frequent incontinence of clothes and bedding. Though ordinarily a shared task, it is reasonable to keep Appellant's laundry separate from her spouse's given the level of soil.

Order for MassHealth

Restore time for assistance with the following services as discussed at hearing and in this decision for dates of service December 20, 2023 through December 19, 2024:

- Bowel care: 12 minutes, 2 times pr day, 7 days per week;
- Bathing: 45 minutes, 1 time per day, 7 days per week (in addition to 10 minutes, 1 time per day, 7 days per week for quick wash);
- Dressing: 10 minutes, 1 time per day, 7 days per week for mid-day change (in addition to 20 minutes, 1 time per day, 7 days per week for primary change).
- Undressing: 5 minutes, 1 time per day, 7 days per week for mid-day change (in addition to 10 minutes, 1 time per day, 7 days per week for primary change);
- Meal preparation: 385 minutes per week; and
- Laundry: 60 minutes per 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

