

**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>	2400038
<b>Decision Date:</b>	04/12/2024	<b>Hearing Date:</b>	02/16/2024
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearance for Appellant:**




**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

<b>Appeal Decision:</b>	Approved-in-part; Denied-in-part; Dismissed-in-part	<b>Issue:</b>	Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	04/12/2024	<b>Hearing Date:</b>	02/16/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, R.N.	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (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 11/6/2023, 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 4. On 1/2/24, Appellant sent the Board of Hearings (BOH) a timely request for fair hearing but did not indicate the agency action he sought to appeal. See Exh. 2 and 130 CMR 610.015(B). On 1/2/24, BOH dismissed the matter for failure to state grounds for appeal as set forth under 130 CMR 610.032. See Exh. 2. Appellant responded to the dismissal and identified the 11/6/24 notice he sought to appeal. See Exhs. 3-4. Modification of a PA request for services is a valid basis for appeal. See 130 CMR 610.032. The dismissal was vacated and a hearing was scheduled. See Exh. 6.

### 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 represented himself and was accompanied by an advocate.<sup>1</sup> All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is an adult under the age of 65. He has a primary diagnosis of [REDACTED] complicated by blindness and hearing impairment. He currently resides in a homeless shelter at an undisclosed address in Massachusetts. See Exh. 5 p. 8-11. On 10/12/23, MassHealth received an initial prior authorization (PA) request for from Appellant's personal care management (PCM) agency, LifePath, Inc. (LifePath) seeking approval for 69 hours and 15 minutes per-week of PCA services for dates of service beginning 11/4/23 and ending 11/3/24. See id. at 4.

The request was made pursuant to an initial evaluation of Appellant performed by a LifePath registered nurse and occupational therapist. Id. at 10. The PCM evaluation findings indicated that, in addition to his primary diagnosis, Appellant has small fiber neuropathy, complex regional pain syndrome, malaise, nausea, fatigue, dizziness; he is forgetful, has depression, anxiety, PTSD, incontinence, dysautonomia, and requires daily IV fluids via a Hickman line. Id. at 11. He has visiting nurse assistance (VNA) for port care. Appellant cannot walk or stand, and he ambulates by a wheelchair. Id.

On 11/4/2023, MassHealth modified Appellant's PA request by authorizing 56 hours and 30 minutes of PCA assistance per-week. Id. at 4. Specifically, MassHealth modified the request by approving downward the time for the following activities of daily living (ADLs) and Instrumental Activity of Daily Living (IADL): (1) bladder care, (2) other healthcare needs, and (3) medical transportation. See id. At hearing, the parties addressed each modification individually, as follows:

### (1) Bladder Care

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<sup>1</sup> Although Appellant did not request an accommodation on the fair hearing request form; at the outset of hearing, he indicated that he was deaf but able to proceed through use of a captioning service and with the presence of his advocate. It is also noted that Appellant confirmed the address on file is accurate and is through using an address confidentiality program (ACP).

Appellant's PCM agency requested 25 minutes, 8 times per-day, 7 days per-week (25x8x7) for a PCA to provide "maximum" physical assistance with bladder care, including assistance with toilet hygiene and clothing management. Id. at 25. In support of the requested time, the PCM agency noted that Appellant is incontinent and requires physical assistance with all aspects of toileting; that he requires additional time as he must use a handicap accessible bathroom down the hall from his room; and he is unable to tend to hygiene.

MassHealth modified the request by authorizing 15 minutes, 8 times per-day, 7 days per-week. See id. at 4. MassHealth modified the request because time requested was "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. The MassHealth representative noted that documentation shows 7 minutes is required for transfers. After accounting for 7 minutes for transfer, there was little documentation to detail Appellant's incontinence and no documentation about having to change any incontinence pads or pullups. On this basis, MassHealth approved less time per-episode for bladder care than requested.

Appellant testified that the time authorized was inadequate because each bladder care episode involves the PCA transferring him from his wheelchair to the toilet; having to take off pants, Depends, and the "over-underwear," which he wears to allow the Depends to fit properly. Because of his condition, he has leg tremors. Despite efforts to control his legs, they "do their own thing" and he described it as a "fight" to remove his clothing. Once on the toilet, the PCA has to make sure he is thoroughly cleaned so that he does not develop a UTI, and also while ensuring that he does not fall over. Once cleaned, the PCA has to put on his Depends, over-underwear, pants, and often times, socks and shoes. Next, the PCA has to get Appellant back into the wheelchair. Often times, the PCA will have to clean the wheelchair pad before he is transferred back on.

Appellant explained that because of his condition, he experiences constant incontinence of urine throughout the day which he cannot feel. The basis for the 8 bladder care episodes is to periodically clean and eliminate risk for developing a UTI. Therefore, every episode involves this process of changing underwear and pants. Appellant noted that he does not have a roommate and therefore there is no one capable of assisting with this task when the PCA is not present.

Based on Appellant's testimony, MassHealth offered to increase the time to 20 minutes per-episode. Appellant declined stating that even the PCM agency's request was an underestimation and that bladder care, in fact, takes "well-over" 25 minutes of PCA assistance.

## **(2) Other Healthcare Needs/ IV administration**

Appellant's PCM agency requested 15 minutes, once-per-day (15x1x7) for the PCA to assist with IV medication administration.<sup>2</sup> See id. at 29-30. In support of its request, the PCM agency noted that Appellant requires physical assistance with all aspects of IV administration, including retrieving medication supplies, assembling, administering, and disconnecting IV via a CADD pump. See id. at 30.

MassHealth did not approve any time for IV administration on the basis that the requested service does not meet professionally recognized standards of healthcare under 130 CMR 450.204(B). See id. at 4. The MassHealth representative explained that IV administration is a skilled need and beyond the scope of reimbursable PCA services. In support thereof, the representative cited to the "PCA Operating Standards" manual recognized by MassHealth's Office of Long-Term Services & Supports (OLTSS), which states that certain medical services, such as services relating to IV medication administration, must be performed by a skilled nurse and are outside the scope of services a PCA may perform.<sup>3</sup>

Appellant testified that when he lived in [REDACTED], he received more hours and that PCAs and HHAs were able to provide this level of care. Appellant stated that his VNA only comes in once per-week to change central line dressing; however, the dressing must be changed intermittently whenever it falls off, or gets dirty or wet; otherwise, it becomes a safety issue. The VNA agreed to train the PCA to do this because the VNA does not have enough people to send out every time this happens. He also noted that the PCA has to lift medications in the fridge for proper storage.

### **3. Medical Appointment transportation**

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<sup>2</sup> According to the PCM nurse's evaluation, Appellant receives 1L QD of normal saline via a CADD pump IV. Id. at 54.

<sup>3</sup> The MassHealth representative referenced Page 63 of the manual, which states:

(3) The PCM Agency Nurse Evaluator identifies if skilled care services are required for the consumer. Skilled care services are not appropriate services to be completed by a PCA and generally should not be requested. Skilled care services are considered to be high risk and unsafe tasks to be performed by a PCA and therefore, should be performed by a skilled clinician, parent, legal guardian or designee. These services require individuals with training in specialized skills, clinical assessment, and judgment to promote safe and effective care for consumers whose conditions may be complex. The following tasks are examples of skilled care services that are generally performed by trained healthcare professionals: ....Medication administration... Catheterizations k) Peripherally Inserted Central Catheter (PICC) line and central line dressing changes l) Total Parenteral Nutrition (TPN) m) Intravenous (IV) therapy and IV medication administration.

Appellant's PCM agency requested 104 minutes per-week for assistance with medical transportation. Id. at 37. Broken down, the request was for the following visits:

1. 12 PCP visits per-year; 40 minutes per-round trip; 480 minutes per-year
2. HRT: 4 visits per-year at 60 minutes round-trip (240 minutes per-year); and
3. AA ("12-step") meetings 52 times per-year at 90 minutes round trip (4680 per year).

Id. at 53-57.

MassHealth modified the request and authorized 10 minutes per-week for transportation just to transportation to PCP appointments. In support of its position, the MassHealth representative explained that the PCM agency must document a need for direct assistance for transferring the consumer in and out of the home and in/out of the appointment, in addition to the need for transportation. This is because MassHealth offers transportation services that would otherwise be available to the consumer. Here, the PCM agency only requested transportation time and did not request time for accompanying transfers. Id. Additionally, MassHealth requires the PCM agency provide detailed information such as the name of the doctor and clinic, town, mode of transportation, and medical basis for the appointments. MassHealth approved the time for transportation to his PCP given supporting documentation; however, the PCM agency did not provide MassHealth with a clinical basis or diagnosis to demonstrate medical necessity for PCA transportation to the remaining two appointments.

In response, Appellant clarified that the "HRT" request was for Hormone Replacement Therapy. Appellant stated that he requires this therapy, as he is trans. In addition, he has found that testosterone helps improve aspects of his connective tissue disorder as it helps prevent dislocations and improves tachycardia.

Next, Appellant clarified that he attends Narcotics Anonymous (NA, rather than AA) as he is an addict and has been in long-term recovery, and that it benefits mental health. Appellant indicated that due to recent change in shelter location and switch of NA location, the transportation time was closer to 15-20 minutes one-way, or 30-40 minutes round trip, as opposed to 90 minutes round trip that was requested.

Based on the testimony provided, MassHealth agreed to restore the time requested for HRT transportation. MassHealth was unable, however, to adjust the modification to time for transportation for AA/NA due to lack of documentation of medical necessity and given the change in transportation location information. Given these changes, MassHealth indicated that Appellant's PCM agency should update the request for medical transportation via an adjustment. In addition, because AA/NA is deemed a social support service, Appellant would need to have his PCM agency submit documentation showing that it serves as a medical therapy to demonstrate medical necessity for the underlying request.

## Findings of Fact

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

1. Appellant is an adult under the age of 65 and has a primary diagnosis of [REDACTED] [REDACTED] complicated by blindness and hearing impairment; he has additional diagnoses of neuropathy, complex regional pain syndrome, malaise, nausea, fatigue, dizziness; he is forgetful, has depression, anxiety, PTSD, incontinence, dysautonomia, and requires daily IV fluids via a Hickman line.
2. Appellant cannot walk or stand, and he ambulates by a wheelchair; Appellant has a visiting nurse for port care.
3. On 10/12/23, MassHealth received an initial prior authorization (PA) request for from Appellant's personal care management (PCM) agency, LifePath, Inc. (LifePath) seeking approval for 69 hours and 15 minutes per-week of PCA services for dates of service beginning 11/4/23 and ending 11/3/24.
4. On 11/6/2023, MassHealth modified Appellant's PA request by authorizing 56 hours and 30 minutes of PCA assistance per-week, which were based on modifications to the times requested for (1) bladder care, (2) other healthcare needs, and (3) medical transportation.
5. Appellant's PCM agency requested 25 minutes, 8 times per-day, 7 days per-week (25x8x7) for a PCA to provide "maximum" physical assistance with bladder care, including assistance with toilet hygiene and clothing management, noting that Appellant is incontinent and requires physical assistance with all aspects of toileting; that he requires additional time as he must use a handicap accessible bathroom down the hall from his room; and he is unable to tend to hygiene.
6. MassHealth modified the request by authorizing 15 minutes, 8 times per-day, 7 days per-week.
7. Each bladder care episode involves the PCA transferring Appellant from his wheelchair to the toilet; having to take off pants and incontinence products; cleaning Appellant to ensure he does not develop UTI's; donning clothing items and incontinence product; transferring him back into the wheelchair, and cleaning the wheelchair.
8. Appellant has leg tremors which make removing and donning clothing and incontinence items more difficult and time consuming for the PCA.

9. Because of his condition, Appellant has incontinence of urine throughout the day which he cannot feel.
10. Appellant's PCM agency requested 15 minutes, once-per-day (15x1x7) for the PCA to assist with IV medication administration.
11. Appellant requires physical assistance with all aspects of IV administration, including retrieving medication supplies, assembling, administering, and disconnecting IV via a CADD pump.
12. MassHealth did not approve any time for IV administration on the basis that the requested service does not meet professionally recognized standards of healthcare under 130 CMR 450.204(B) as IV administration is a skilled need and beyond the scope of reimbursable PCA services.
13. Appellant's PCM agency requested 104 minutes per-week for assistance with medical transportation, broken down, as follows: 12 PCP visits per-year; 40 minutes per-round trip; 480 minutes per-year ; HRT: 4 visits per-year at 60 minutes round-trip (240 minutes per-year); and AA ("12-step") meetings 52 times per-year at 90 minutes round trip (4680 minutes per year).
14. The requested time only included time requested for transportation and not any time for assistance transferring in/out of home or appointment.
15. MassHealth modified the request and authorized 10 minutes per-week for transportation just to transportation to PCP appointments.
16. The PCM agency did not provide MassHealth with a clinical basis or diagnosis for transportation to attend HRT or AA/NA meetings.
17. At hearing, MassHealth approved the time in full for transportation to attend HRT appointments as requested.
18. The locations used to attend Appellant's NA meetings has changed and was different than noted in the PCM agency request.

## **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:<sup>4</sup> 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). 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).

Medically necessary services must also “be of a quality that meets professionally recognized standards of health care and must be substantiated by the record including evidence of such medical necessity and quality.” 130 CMR 450.204(B).

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 assistance with the ADLs and IADL modified pursuant to its 11/6/23 determination.

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

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<sup>4</sup> 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.

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, 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.

### **1. Bladder Care**

Appellant requested 25 minutes of bladder care, 8 times per-day. MassHealth modified the time to 15 minutes per-day (15x8x7). The evidence demonstrates that the time requested is necessary to adequately support Appellant with bladder care needs. Documentation shows

that as a result of his condition, Appellant requires maximum physical assistance with all aspects of toileting, including transfers, clothing management and hygiene. At hearing, Appellant provided credible testimony indicating that for each bladder care episode, the PCA has to transfer him into the bathroom, remove clothing and incontinence products, which is complicated due to Appellant's leg tremors; ensure he is adequately cleaned to prevent risk of UTI; and finally, to reapply a clean incontinence product, additional clothing management and hygiene tasks. Based on the foregoing, Appellant demonstrated that he requires assistance as requested at 25 minutes, 8 times a day, 7 days a week (25x8x7). Accordingly, this part of the appeal is APPROVED.

## **2. Other Healthcare Needs / IV Administration**

Next, Appellant requested 15 minutes, once-per-day (15x1x7) for the PCA to assist with IV medication administration. See id. at 29-30. MassHealth did not approve any time for IV administration on the basis that the requested service exceeds the responsibility of a PCA under MassHealth regulations and program guidelines. Citing to the "PCA Operating Standards" manual, recognized by MassHealth's Office of Long-Term Services & Supports (OLTSS), MassHealth stated that services involving IV medication administration, and PICC line and central line dressing changes are "skilled care services." See MassHealth "PCA Operating Standards" (Rev. 5-28-15).<sup>5</sup> Under its policies and procedures, skilled care services should be performed by trained healthcare professionals and are not appropriate services to be performed by a PCA. Id. While Appellant undisputedly requires medical assistance to manage his IV, MassHealth will not cover the service if it is not of a "quality that meets professionally recognized standards of health care." 130 CMR 450.204(B). Because the requested service exceeds the scope of reimbursable PCA services, MassHealth did not err in denying Appellant's request.

The appeal is therefore DENIED with respect to Other Healthcare Needs/IV administration.

## **3. Medical Transportation**

Appellant's PCM agency requested 104 minutes per-week for assistance with medical transportation to attend 12 PCP visits per year, 4 hormone replacement therapy (HRT) visits per-year; and 52 AA/NA meetings per-year. Through its initial 11/6/23 determination, MassHealth approved the PCP visits as requested, which amounted to 10 minutes per-week. See Exh. 5 at 4. MassHealth denied the request for AA/NA and HRT visits due to lack of documentation and the absence of any transfer time associated with the transportation time. At hearing, Appellant provided credible testimony regarding the need to attend both HRT appointment and AA/NA meetings. Despite this testimony, the PCM agency made no reference to Appellant's underlying

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<sup>5</sup> This document is publicly available at:

<https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf>

diagnosis or medical history to document that Appellant requires AA/NA not just as a social support, but as a medically necessary therapy. Absent such information, MassHealth did not err in denying the request. It was also noted that due to changes in Appellant's location and the location where he attends his AA/NA meetings, the round-trip time would be shorter than his PCM agency requested. Absent updated and accurate information to detail the nature of the requested service, the appeal must be DENIED, as to the request for medical transportation to AA/NA services. The appeal is DISMISSED insofar as MassHealth agreed to restore the requested time for transportation to HRT appointments.

Appellant may have his PCM agency submit an adjustment to MassHealth requesting time for transportation to the AA/NA meetings with the appropriate medical documentation and correct location information.

## **Order for MassHealth**

In accordance with this Decision and the agreements made during hearing, approve Appellant for requested time for bladder care at 25x8x7; and medical transportation to HRT appointments (as well as previously approved PCP appointment). Ensure that increased time is made retroactive to the start of the PA period.

## **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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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED] -