

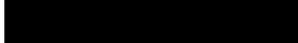
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Approved in part; Denied in part	<b>Appeal Number:</b>	2400401
<b>Decision Date:</b>	04/05/2024	<b>Hearing Date:</b>	02/02/2024
<b>Hearing Officer:</b>	Emily Sabo		

**Appearances for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, Optum

**Interpreter:**



*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>	Dismissed in part; Approved in part; Denied in part	<b>Issue:</b>	Prior Authorization Request; Personal Care Attendant Services
<b>Decision Date:</b>	04/05/2024	<b>Hearing Date:</b>	02/02/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South (Telephone)	<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 December 26, 2023, MassHealth modified the Appellant's prior authorization request for personal care attendant (PCA) services from the requested 30 hours, 15 minutes of PCA assistance per week, to 27 hours, 30 minutes of PCA assistance per week (Exhibit 1). The Appellant filed this appeal with the Board of Hearings in a timely manner on January 8, 2024 (130 CMR 610.015; Exhibit 2). Modification of a prior authorization request is valid grounds for appeal to the Board of Hearings (130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

Was MassHealth correct, pursuant to 130 CMR 422.410(A), (B), and (C), and 130 CMR 450.204(A), to modify the Appellant's prior authorization request for PCA services from the requested 30

hours, 15 minutes of PCA assistance per week, to 27 hours, 30 minutes of PCA assistance per week?

## Summary of Evidence

The hearing was conducted by telephone. The Appellant appeared at the hearing and was represented by his son, who testified through an interpreter and verified the Appellant's identity. The MassHealth representative, who is a Registered Nurse and clinical appeals reviewer, testified that the Appellant is a [REDACTED] man who lives in the community and is a MassHealth Standard member. The Appellant's medical history involves a broken C4 in the spinal column, an injury from the surgical repair, and weakness, numbness, and limited mobility in the left side of his body. Exhibit 5 at 10. The Appellant's left hand is completely contracted. *Id.* The Appellant's medical history and diagnosis indicate that he has "frequent falls" and is a "very high fall risk." *Id.*

The MassHealth representative testified that on December 7, 2023, AdLib, a personal care management services agency, submitted an evaluation request to MassHealth on the Appellant's behalf for 30 hours, 15 minutes of PCA assistance per week. The MassHealth representative testified that by notice dated December 26, 2023, MassHealth modified the request to allow for 27 hours and 30 minutes of PCA assistance per week. The time period for this prior authorization request is December 26, 2023, through December 25, 2024. Exhibits 1 & 5.

The MassHealth representative testified that MassHealth modified the request in one activity of daily living (eating) and four instrumental activities of daily living (laundry, shopping, housekeeping, and medical transportation) as follows:

- **Eating**
  - o 210 total minutes requested weekly modified to 105 minutes weekly
  - o AdLib requested 10 minutes three times a day for assistance with eating
  - o MassHealth granted 5 minutes three times a day for assistance with eating
- **Laundry**
  - o 60 minutes requested weekly modified to 30 minutes weekly
- **Shopping**
  - o 60 minutes requested weekly modified to 45 minutes weekly
- **Housekeeping**
  - o 60 minutes requested weekly modified to 45 minutes weekly
- **Medical Transportation**
  - o 6 minutes requested weekly modified to 5 minutes weekly

During the hearing, after the presentation of testimony, the MassHealth representative agreed to restore the requested 60 minutes weekly for shopping and the Appellant's representative agreed to the modification of 6 minutes to 5 minutes weekly for medical transportation.

Regarding eating, the MassHealth representative testified that because the Appellant was independent for grooming tasks, she did not understand why assistance was needed for eating. The Appellant's representative testified that his father is paralyzed and needs more services, and that AdLib told him that he could request more PCA hours for his father at the hearing.<sup>1</sup> The Appellant's representative testified that while the Appellant's left side is worse, the Appellant's right side is also weak with limited mobility. The Appellant's representative testified that the Appellant is missing teeth and at risk of choking on his food. The Appellant's representative explained that the Appellant is able to eat dry noodles with a fork, but that the Appellant needs hands-on assistance when eating rice or soup because the Appellant's hand is too shaky to be able to hold a spoon without spilling the rice or liquid. The Appellant's representative testified that the Appellant requires 15 to 30 minutes of assistance with each meal.

Regarding laundry, the Appellant's representative testified that the Appellant needs at least 60 minutes of assistance weekly because the Appellant suffers from constipation and takes a stool softener and he has accidents and bowel movements in his underwear necessitating more frequent laundry. The Appellant's representative testified that the Appellant wears pull-ups at night but complains that they are too itchy and uncomfortable to wear during the day. The MassHealth representative testified that there was no documentation of the Appellant's incontinence but testified that MassHealth would be willing to increase the PCA time for laundry to 45 minutes weekly.<sup>2</sup>

Regarding housekeeping, the MassHealth representative testified that the PCA is only responsible for the consumer's space, not the entire home. The Appellant's representative testified that he brought his father to live with him and his wife, but that at his own place, the Appellant received more PCA hours. The Appellant's representative testified that due to incontinence issues, it is necessary to clean the carpet regularly and that due to the Appellant's shakiness, the Appellant spills beverages that need to be cleaned up. The Appellant's representative testified that housekeeping for the Appellant's space requires 2-3 hours per week.

## Findings of Fact

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

1. The Appellant is a [REDACTED] man who lives in the community, with his son and daughter-in-law, and is a MassHealth Standard member (Testimony, Exhibit 4).

---

<sup>1</sup> As discussed at hearing, if the Appellant's representative believes that the Appellant requires more PCA services, he should contact AdLib to ask for an adjustment in the Appellant's PCA hours. MassHealth does not have the authority to increase the PCA hours beyond what was requested by AdLib.

<sup>2</sup> Records submitted by the Appellant refer to a medical history of constipation and abdominal bloating. Exhibit 6.

2. The Appellant's medical history involves a broken C4 in the spinal column, an injury from the surgical repair, and weakness, numbness, and limited mobility in the left side of his body. The Appellant's left hand is completely contracted. The Appellant's medical history and diagnosis indicate that he has "frequent falls" and is a "very high fall risk" (Testimony, Exhibit 5).
3. On December 7, 2023, AdLib submitted a request for MassHealth on the Appellant's behalf for 30 hours, 15 minutes of PCA assistance per week (Testimony, Exhibits 1 & 5).
4. By notice dated December 26, 2023, MassHealth modified the request to allow for 27 hours, 30 minutes of PCA assistance per week (Testimony, Exhibits 1 & 5).
5. The time period for this prior authorization request is December 26, 2023, to December 25, 2024 (Testimony, Exhibit 1).
6. AdLib requested, on the Appellant's behalf, PCA assistance with the Appellant's eating for 210 minutes weekly (Testimony, Exhibit 5).
7. MassHealth modified the requested time for eating to 105 minutes weekly (Testimony, Exhibit 5).
8. AdLib requested, on the Appellant's behalf, PCA assistance with the Appellant's laundry for 60 minutes weekly (Testimony, Exhibit 5).
9. MassHealth modified the requested time for laundry to 30 minutes weekly (Testimony, Exhibit 5).
10. AdLib requested, on the Appellant's behalf, PCA assistance with the Appellant's housekeeping for 60 minutes weekly (Testimony, Exhibit 5).
11. MassHealth modified the requested time for housekeeping to 45 minutes weekly (Testimony, Exhibit 5).
12. AdLib requested, on the Appellant's behalf, PCA assistance with the Appellant's shopping for 60 minutes weekly (Testimony, Exhibit 5).
13. MassHealth modified the requested time for shopping to 45 minutes weekly (Testimony, Exhibit 5).
14. AdLib requested, on the Appellant's behalf, PCA assistance with the Appellant's medical transportation for 6 minutes weekly (Testimony, Exhibit 5).
15. MassHealth modified the requested time for medical transportation to 5 minutes weekly

(Testimony, Exhibit 5).

16. At the hearing, MassHealth agreed to increase the time for laundry to 45 minutes weekly and for shopping to 60 minutes weekly. At the hearing, the Appellant representative agreed to MassHealth's modification of medical transportation to 5 minutes weekly (Testimony).
17. The Appellant has limited coordination, and his hands shake (Testimony).
18. The Appellant experiences constipation and incontinence due to a stool softener (Testimony, Exhibit 6).

## **Analysis and Conclusions of Law**

MassHealth regulations about PCA services are found at 130 CMR 422.000 et seq. Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA services, which are further defined as assistance with the activities of daily living and instrumental activities of daily living as described in 130 CMR 422.410.

Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when: (1) they are prescribed by a physician; (2) the member's disability is permanent or chronic in nature; (3) the member requires physical assistance with two or more of the following activities of daily living 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; and (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned activities of daily living.

Instrumental activities of daily living are those activities described in 130 CMR 422.410(B) 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 personal care services. MassHealth pays for PCA time in physically assisting members to perform the aforementioned instrumental activities of daily living. 130 CMR 422.402.

Pursuant to 130 CMR 450.204(A), 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

130 CMR 450.204(A).

At the hearing, MassHealth agreed to restore the 60 minutes requested weekly for shopping, and the Appellant's representative agreed to MassHealth's modification to 5 minutes weekly for medical transportation. Therefore, these matters are no longer in dispute before the Board of Hearings, and the appeal is DISMISSED IN PART regarding those categories. 130 CMR 610.035(A)(8).

There are three areas of modification which remain in dispute and require resolution: eating, laundry, and housekeeping.

#### Eating

The MassHealth regulations describe eating as "physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs." 130 CMR 422.410(A)(6). The record indicates that the Appellant has a chronic disabling condition which manifests as "pain, decreased strength, gross motor coordination deficits, fine motor coordination deficits," and impacts his balance, grasping, coordination, reaching, and ability to reposition self. Exhibit 5 at 6. I credit the Appellant's representative's testimony that the Appellant's hands shake, such that he requires hands-on assistance, especially with certain foods, such as rice and soup. Accordingly, based on this testimony and the Appellant's current medical condition, I find the request for 210 minutes for eating to be justified and medically appropriate, and I will APPROVE the requested time for this activity.

#### Laundry

I credit the Appellant's representative's testimony that the Appellant experiences incontinence due to a stool softener, such that his underwear and clothing must be washed more frequently. *See also* Exhibit 6. I find that the changing and washing of the Appellant's underwear and clothing is done to "prevent the worsening of, [or] alleviate" the illness and infirmity of the Appellant in accordance with 130 CMR 450.204(A)(1). Accordingly, based on this testimony, I find the request for sixty minutes for laundry to be justified and medically appropriate, and I will APPROVE the requested time for this activity.

## Housekeeping

The MassHealth regulations at 130 CMR 422.410(C) provide:

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM agency must assume the following.

- (1) When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.
- (2) When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

130 CMR 422.410(C).

Based on the testimony presented at hearing, the Appellant is living with family members. The Appellant, who has the burden, did not present sufficient evidence to establish that MassHealth erred in modifying the time allotted for the Appellant's individual housekeeping needs to 45 minutes weekly. Therefore, this portion of the appeal is DENIED.

## **Order for MassHealth**

Adjust notice of December 7, 2023, to authorize 210 minutes of PCA assistance weekly for eating, 60 minutes weekly for laundry, 60 minutes weekly for shopping, 45 minutes weekly for housekeeping, and 5 minutes weekly for medical transportation, for the prior authorization period of December 26, 2023, to December 25, 2024.

Send notice to Appellant of implementation only; do not include appeal rights.

## **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.

---

Emily Sabo  
Hearing Officer  
Board of Hearings

cc:

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

Appellant Representative: [REDACTED]