

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in Part; Denied in Part	<b>Appeal Number:</b>	2400534
<b>Decision Date:</b>	3/12/2024	<b>Hearing Date:</b>	01/29/2024
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**

Pro se,

**Appearance for MassHealth:**

Kelly Rayen, RN, for Optum

**Interpreter:**

, Spanish



*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; Denied in Part	<b>Issue:</b>	Prior Authorization; Personal Care Attendant Services
<b>Decision Date:</b>	3/12/2024	<b>Hearing Date:</b>	01/29/2024
<b>MassHealth's Rep.:</b>		<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	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 December 29, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on January 10, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

### Issue

The appeal issue is whether MassHealth was acting within its discretion in modifying the appellant's prior authorization request for PCA services.

## Summary of Evidence

The appellant is an adult MassHealth member and was assisted at hearing by his PCA. MassHealth was represented by a clinical nurse reviewer for Optum, which manages MassHealth's PCA program. All parties appeared by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from a primary diagnosis of dementia, with medical history including age related debility, frequent Urinary Tract Infection, use of a Foley Catheter, and impaired mobility. On December 11, 2023, MassHealth received an initial prior authorization request submitted by the personal care management agency (PCM) Agespan on the appellant's behalf requesting 49 hours of weekly PCA services. On December 4, 2023, MassHealth modified the request and approved the appellant for 28 hours of weekly services with start date of December 28, 2023<sup>1</sup>.

Modifications were made in the areas of mobility, assistance with stairs, bathing, nail care, bladder care, housekeeping, shopping, and transportation to medical appointments. After hearing, the parties were able to reach agreement related to approved time for all tasks except for assistance with the stairs. The approved time is as follows:

- **Mobility:** approved at 4 minutes, 6 times per day, 7 days per week;
- **Bathing:** additional time for evening cleaning approved at 10 minutes, one time per day, 7 days per week in addition to previously approved 45 minutes daily.
- **Nail care:** approved at 10 minutes per week;
- **Bladder care (Foley Catheter):** appellant agrees to time approved on notice;
- **Housekeeping:** approved at 60 minutes per week;
- **Shopping:** approved at 60 minutes per week;
- **Medical Transport:** parties agree to the following: Urologist – 12 visits approved at 70 minutes total, appellant to provide documentation showing he goes twice per month; PCP – 10 visits approved at 60 minutes total; Total Medical Transport time approved: 28 minutes per week.

Thus, the remaining disagreement was limited to assistance with the stairs. The appellant's representative reported that the appellant takes some stairs to get to the elevator when he goes to his appointments. She estimated that he uses the elevator about two times per week, for appointments and to go outside to get fresh air.

The MassHealth representative reported that the time approved for medical transport is a door-to-door figure, and thus the time to get him down the stairs and into the car is already accounted for in that approved time. This assertion was supported during the hearing when the parties conferred about the calculation of transport time. The MassHealth representative also argued that time for recreation is a noncovered service, and therefore the appellant should not be

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<sup>1</sup> The notice reflected an approved time of 26.75 hours, but the MassHealth representative reported that this was calculated in error and should have reflected 28 hours.

approved for PCA services to go outside for fresh air.

## Findings of Fact

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

1. The appellant is an adult MassHealth member who was not receiving PCA services through MassHealth prior to the issuance of the notice at issue. Testimony, Exhibit 5, Exhibit 4.
2. On December 11, 2023, MassHealth received a prior authorization request submitted by Tempus on the appellant's behalf requesting 49 hours per week in PCA services.
3. On December 29, 2023, MassHealth modified the appellant's prior authorization request to 28 hours of weekly PCA services with a start date of December 28, 2023. The modifications were made in the areas of mobility, assistance with stairs, bathing, nail care, bladder care, housekeeping, shopping, and transportation to medical appointments. Exhibit 1, Exhibit 5 at 2.
4. The appellant filed a timely appeal on January 10, 2024. Exhibit 2.
5. At hearing, the parties agreed to the following modifications of approved PCA services:
  - **Mobility:** approved at 4 minutes, 6 times per day, 7 days per week;
  - **Bathing:** additional time for evening cleaning approved at 10 minutes, one time per day, 7 days per week in addition to previously approved 45 minutes daily.
  - **Nail care:** approved at 10 minutes per week;
  - **Bladder care (Foley Catheter):** appellant agrees to time approved on notice;
  - **Housekeeping:** approved at 60 minutes per week;
  - **Shopping:** approved at 60 minutes per week;
  - **Medical Transport:** parties agree to the following: Urologist – 12 visits approved at 70 minutes total; PCP – 10 visits approved at 60 minutes total; Total Medical Transport time approved: 28 minutes per week.
6. The appellant requested assistance with using the stairs for 7 minutes, 2 times per day, 3 days per week. Exhibit 5 at 14. The appellant uses stairs to access the elevator to go to his medical appointments and to go outside on the weekend. Testimony.
7. MassHealth approved no time for assistance with the stairs on the grounds that the request was a) duplicative of assistance already provided, and b) a recreational service uncovered by the PCA program. Exhibit 1 at 2, Testimony.

## Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.<sup>2</sup>
- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records

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<sup>2</sup> ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

including evidence of such medical necessity and quality.

130 CMR 450.204(A)-(B).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.”

As the MassHealth representative and the appellant agreed as to the approved hours for mobility, bathing, nail care, bladder care, housekeeping, shopping, and transportation to medical appointments, the appeal with respect to those tasks has resolved and is hereby DISMISSED pursuant to 130 CMR 610.035(8). MassHealth is ordered to modify the appellant’s approved hours to include the following:

- **Mobility:** approved at 4 minutes, 6 times per day, 7 days per week;
- **Bathing:** additional time for evening cleaning approved at 10 minutes, one time per day, 7 days per week in addition to previously approved 45 minutes daily.
- **Nail care:** approved at 10 minutes per week;
- **Bladder care (Foley Catheter):** appellant agrees to time approved on notice;
- **Housekeeping:** approved at 60 minutes per week;
- **Shopping:** approved at 60 minutes per week;
- **Medical Transport:** parties agree to the following: Urologist – 12 visits approved at 70 minutes total; PCP – 10 visits approved at 60 minutes total; Total Medical Transport time approved: 28 minutes per week.

Thus, at issue in this case is whether the appellant met his burden of proof in establishing medical necessity for more approved PCA time than MassHealth approved for assistance with using the stairs, a task which follows under the category of mobility. For the reasons described, *infra*, I find that he has not.

The definition for mobility can be found at 130 CMR 422.410(A)(1) and involves “physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment.” The MassHealth PCA program does not cover, as part of the PCA program, “social services, including, but not limited to...recreational services.” 130 CMR 422.412(A). In this case, the appellant’s representative reported that the appellant uses the elevator but must use stairs in order to access it. The only instances in which evidence was provided that the appellant leaves his apartment is to attend medical appointments or to go outside for fresh air. As assistance for getting to and from his medical appointments is already accounted for and covered, and recreational services are not covered by the PCA program, I find that the appellant has not provided sufficient evidence that his request for PCA assistance with

using the stairs is medically necessary and covered by the PCA program. MassHealth therefore did not err in denying the appellant's prior authorization request for PCA assistance with using the stairs.

For the foregoing reasons, pursuant to 130 CMR 610.035 the appeal is DISMISSED with respect to mobility, bathing, nail care, bladder care, housekeeping, shopping, and transportation to medical appointments. With respect to assistance with the stairs, the appeal is hereby DENIED.

## **Order for MassHealth**

Modify the appellant's approved PCA services to reflect the agreed-upon time described *supra* at 5 retroactive to the start date of December 28, 2023.

## **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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Mariah Burns  
Hearing Officer  
Board of Hearings

cc:

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