

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part Denied in part	Appeal Number:	2401105
Decision Date:	4/18/2024	Hearing Date:	02/28/2024
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN



*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 Denied in part	Issue:	Prior Authorization - PCA
Decision Date:	4/18/2024	Hearing Date:	02/28/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Son
Hearing Location:	Quincy		

Authority

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

Jurisdiction

Through notice dated January 8, 2024, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed this appeal in a timely manner on January 23, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth acted in accordance with the controlling regulations when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. At the time of hearing, MassHealth submitted a packet of documentation including, *inter alia*, copies of the subject PA request and nurse's evaluation (Exhibit B). Appellant did not file any documentation other than his Fair Hearing Request (Exhibit A).

MassHealth was represented by a nurse reviewer who testified that the subject authorization request revealed the following about Appellant: Appellant is [REDACTED] with primary diagnosis of left below the knee amputation on August 24, 2023 due to vascular occlusion; he was transferred to a skilled nursing facility and discharged early [REDACTED]. Appellant is currently awaiting a prosthesis fitting and ambulation training. At this time, he is wheelchair bound and dependent for propulsion. He has legal blindness due to glaucoma, shortness of breath and osteoarthritis. Appellant lives with adult children and his spouse.

A Prior Authorization (PA) request for a Personal Care Attendant (PCA) initial evaluation was submitted to MassHealth on December 29, 2023, by Lifepath for 66 hours and 15 minutes/week for one year.

MassHealth modified the request on January 8, 2024, to 57 hours and 0 minutes/week for one year for the period January 8, 2024 to January 7, 2025.

MassHealth modified the request by reducing the time requested for assistance with the following: bathing, nail care, bladder care, bowel care, medications, other health care needs, medical transportation, housekeeping and shopping.

After the parties exchanged testimony, they agreed to the following: bladder care 15 minutes, five times per day, seven days per week; and time to assist with medical transportation 12 minutes per week. Appellant did not dispute the following modifications: bathing, nail care, bowel care, medications, and other health care needs.

By the end of the hearing only two modifications remained in dispute: shopping and housekeeping.

Shopping:

Appellant requested 90 minutes per week to assist with shopping. MassHealth modified to 60 minutes on the grounds that Appellant resides with his adult children and spouse who constitute family members who are expected to contribute to performing Instrumental Activities of Daily Living (IADL's) such as shopping. MassHealth cited reliance on 130 CMR 422.410(C)(1).

Appellant was represented by his adult son who acknowledged that he shops for Appellant while shopping for the family. The son testified that Appellant does eat different food and is rather particular, but upon questioning, the son did not indicate that shopping for Appellant required separate trips or trips to shops solely to meet Appellant's particular needs.

Housekeeping:

Appellant requested 90 minutes per week, MassHealth modified to 45 minutes on the grounds that Appellant resides with his adult children and spouse who constitute family members who are expected to contribute to performing Instrumental Activities of Daily Living (IADL's) such as housekeeping. MassHealth cited reliance on 130 CMR 422.410(C)(1).

Appellant's son testified that Appellant's wife has her own health conditions and cannot assist Appellant. The son testified that his mother has had multiple ICU admissions. The son also explained that Appellant cannot assist with the housekeeping because he is blind and wheelchair bound. Appellant is also incontinent of bowel and bladder. Upon questioning, the son described Appellant's personal space on the ground floor of their home. The son stated that Appellant has his own bedroom with a small bathroom and no one other than Appellant uses the bathroom. The bathroom door and the bathroom itself are too small to accommodate the wheelchair, so Appellant has to be transferred from his chair into the bathroom for toileting, washing and bathing. The son testified that because of the incontinence, Appellant's room and bathroom need to be cleaned daily.

Upon questioning from the hearing officer, the MassHealth representative explained that 90 minutes is typically approved for someone who lives independently and requires assistance with cleaning the entire home. 60 minutes is approved for those who require total assistance with cleaning a smaller living space. 45 minutes is approved when other people reside in the home and the PCA is not cleaning shared spaces.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. A Prior Authorization (PA) request for a Personal Care Attendant (PCA) initial evaluation was submitted to MassHealth on December 29, 2023, by Lifepath for 66 hours and 15 minutes/week for one year.
2. Appellant is [REDACTED] with primary diagnosis of left below the knee amputation on August 24, 2023 due to vascular occlusion; he was transferred to a skilled nursing facility and discharged early [REDACTED].

3. Appellant is currently awaiting a prosthesis fitting and ambulation training.
4. Appellant is wheelchair bound and dependent for propulsion.
5. Appellant is legally blind.
6. Appellant has shortness of breath and osteoarthritis.
7. Appellant is incontinent of bowel and bladder.
8. Appellant lives with adult children and his spouse.
9. Appellant's spouse has her own significant health problems and is unable to assist Appellant with ADL's and IADL's.
10. MassHealth modified the PA request on January 8, 2024, to 57 hours and 0 minutes/week for one year for the period January 8, 2024 to January 7, 2025.
11. MassHealth reduced the time requested for assistance with the following: bathing, nail care, bladder care, bowel care, medications, other health care needs, medical transportation, housekeeping and shopping.
12. After the parties exchanged testimony, they agreed to the following: bladder care 15 minutes, five times per day, seven days per week; and time to assist with medical transportation 12 minutes per week.
13. Appellant did not dispute the following modifications: bathing, nail care, bowel care, medications, and other health care needs.
14. By the end of the hearing only two modifications remained in dispute: shopping and housekeeping.
15. Appellant requested 90 minutes per week to assist with shopping; MassHealth modified to 60 minutes on the grounds that Appellant resides with his adult children and spouse who constitute family members who are expected to contribute to performing Instrumental Activities of Daily Living (IADL's) such as shopping.
16. Appellant's adult son shops for Appellant while shopping for the family.
17. Shopping for Appellant does not require separate trips or trips to shops solely to meet Appellant's particular needs.

18. Appellant requested 90 minutes per week to assist with housekeeping; MassHealth modified to 45 minutes on the grounds that Appellant resides with his adult children and spouse who constitute family members who are expected to contribute to performing Instrumental Activities of Daily Living (IADL's) such as housekeeping.
19. Appellant's personal space is on the ground floor of the home.
20. Appellant has his own bedroom with a small bathroom and no one other than Appellant uses the bathroom.
21. The bathroom door and the bathroom itself are too small to accommodate the wheelchair, so Appellant has to be transferred from his chair into the bathroom for toileting, washing and bathing.
22. Appellant's room and bathroom need to be cleaned daily.
23. Relative to housekeeping, MassHealth typically approves 90 minutes for someone who lives independently and requires assistance with cleaning the entire home. 60 minutes is approved for those who require total assistance with cleaning a smaller living space. 45 minutes is approved when other people reside in the home and the PCA is not cleaning shared spaces.

Analysis and Conclusions of Law

MassHealth's modifications to housekeeping and shopping were both based on regulation 130 CMR 422.410(C)(1) which states:

(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.

A "family member" is defined as "the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative" (130 CMR 422.402).

In modifying time for both shopping and housekeeping, MassHealth noted that Appellant lives with his spouse and adult children. According to the above-cited regulations, the presence of

Appellant's adult children has no bearing on the matter of determining time for assistance with IADLs. Appellant's son testified that due to her own significant health issues, Appellant's spouse is not able assist with IADL's. This is consistent with the nursing assessment which states "*Spouse has her own medical conditions and is not able to assist with ADLs or IADLs*" (Exhibit B, page 32). Properly applying the regulation to accurate facts, for the purposes of assigning time to assist with IADL's, Appellant should be viewed as living independently in a small space. Accordingly, 60 minutes per week is warranted.

On the matter of shopping, the son acknowledged that he is doing Appellant's shopping while shopping for the family. There was no indication that the son had to make special trips to meet Appellant's shopping needs. Accordingly, this record provides no basis for increasing time to assist with shopping from 60 minutes to 90 minutes.

Time to assist with housekeeping is APPROVED as to increasing to 60 minutes, DENIED as to 90 minutes. Time to assist with shopping remains at 60 minutes, DENIED as to 90 minutes.

Order for MassHealth

In addition to the agreed-to adjusted times made during the hearing (bladder care 15 minutes, five times per day, seven days per week; and time to assist with medical transportation 12 minutes per week), increase time for assistance with housekeeping from 45 to 60 minutes per week.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your MEC office. If the MEC office gives you any problems with implementing 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.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

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