

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



**Appeal Decision:** Approved in part;  
Dismissed in part

**Appeal Number:** 2402130

**Decision Date:** 04/18/2024

**Hearing Date:** 03/22/2024

**Hearing Officer:** Rebecca Brochstein,  
BOH Deputy Director

Appearances for Appellant:



Appearances for MassHealth:

Kelly Rayen, R.N.



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in part; Dismissed in part	<b>Issue:</b>	Prior Approval (PCA Services)
<b>Decision Date:</b>	04/18/2024	<b>Hearing Date:</b>	03/22/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, R.N.	<b>Appellant's Rep.:</b>	Pro se, with advocate
<b>Hearing Location:</b>	Board of Hearings (Telephonic)	<b>Aid Pending:</b>	Yes

### Authority

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

### Jurisdiction

Through a notice dated February 9, 2024, MassHealth modified the appellant's request for prior authorization for Personal Care Attendant (PCA) services by denying some of the time requested (Exhibit 1). The appellant filed this appeal in a timely manner on February 12, 2024, seeking approval of the denied time (130 CMR 610.015(B) and Exhibit 2). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

## Summary of Evidence

The MassHealth representative, a registered nurse, appeared at the hearing telephonically. She testified that the appellant is in his [REDACTED] and has a primary diagnosis of arthrogryposis with severe scoliosis. He has no functional use of his bilateral upper or lower extremities and uses a power wheelchair in a reclined position. On January 18, 2024, the appellant's provider, Boston Center for Independent Living, submitted a prior authorization (PA) request and re-evaluation for PCA services. The provider requested PCA services in the amount of 123.5 hours per week for the prior authorization period of March 3, 2024, to March 2, 2025. On February 9, 2024, MassHealth modified the request in several respects and approved 109.5 hours per week. The appellant filed a timely appeal on February 12, 2024. The appellant has aid pending protection in the amount of 122.75 hours per week.

The MassHealth representative testified that there were seven areas of modification to the PA request. At hearing, five of these modifications were resolved as follows:

Mobility: Appellant's request was for ten minutes, ten times per day, and MassHealth modified to five minutes, ten times per day. Appellant accepted MassHealth's offer to adjust this to seven minutes, ten times per day.

Oral care: MassHealth approved in full the request for ten minutes, twice per day.

Skin care: MassHealth approved in full the request for ten minutes, twice per day.

Opening window and adjusting temperature: Appellant's request was for two minutes, four times per day, and MassHealth denied this in full. Appellant accepted MassHealth's offer to partially restore this time to one minute, four times per day.

Application of warm packs and cream: MassHealth approved in full the request for ten minutes, twice per day.

The two areas of modification that remain in dispute are medication assistance and nasal care. For each of these areas, the MassHealth representative testified to the basis for MassHealth's modification, and the appellant and his representative responded in turn.

Medications: The appellant requested PCA assistance with medications in the amount of 20 minutes, twice per day. MassHealth modified the request to allow ten minutes, twice per day. The MassHealth representative testified that documentation shows the appellant takes five oral medications twice a day, plus a nasal spray, ear drops, and eye drops. She stated that MassHealth modified the request because the time requested is longer than ordinarily required for someone with the appellant's needs. She added that the time authorized is only for hands-on assistance and does not include waiting time.

The appellant testified to his daily medication regimen, first noting that he needs eye drops three

times per day (morning, late afternoon, and before bed) because of allergies and dry eye. He stated that the PCA first cleans his eyes, then applies the eye drops, and then wipes his eyes afterward; he testified that this process takes about five minutes each time (for 15 minutes per day). The appellant confirmed that he takes five oral medications twice per day, stating that the full process (which includes feeding him the water) takes ten minutes each time. He stated that he needs ear drops once per day and that this is done in the shower so his ears can be “flushed out.” He stated that it takes about a minute to administer the ear drops and about five minutes to complete the flush afterwards. The appellant did not offer specific testimony regarding the nasal spray, but the evaluation states that the spray is administered as “2 sprays nasal QD.” See Exhibit 4 at 7.

Nasal care: The appellant requested time for nasal care (clearing his nose) in the amount of two minutes, ten times per day. MassHealth modified this request to allow one minute, ten times per day. The evaluation notes that the appellant has a chronic runny nose and that the PCA “must help consumer blow nose and wipe throughout the day and overnight. Overnight care includes wiping eyes.” See Exhibit 4 at 25. The MassHealth representative stated that MassHealth modified this request because the time requested is longer than ordinarily required for someone with the appellant’s needs. She noted that the appellant requested and was approved for one minute, ten times per day, in last year’s evaluation.

The appellant testified that the PCA assists him with nasal care throughout the day, every 20-30 minutes. He stated that it takes two minutes each time because the PCA has to get a tissue, wipe under his nose, roll it up and clean inside his nose so he does not have anything “hanging.” He stated that he has “runny nose syndrome” caused by his use of BiPap. He stated that his need for nasal care has not increased since last year, but that he has always needed two minutes per episode for the PCA to perform this task.

### **Findings of Fact**

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

1. The appellant is a MassHealth member in his [REDACTED] with a primary diagnosis of arthrogryposis with severe scoliosis. He has no functional use of his bilateral upper or lower extremities and uses a power wheelchair in a reclined position.
2. On January 18, 2024, the appellant’s PCA provider submitted a prior authorization request and re-evaluation for PCA services. The provider requested PCA services in the amount of 123.5 hours per week for the PA period of March 3, 2024, to March 2, 2025.
3. On February 9, 2024, MassHealth modified the request in several respects and approved 109.5 PCA hours per week.
4. On February 12, 2024, the appellant filed a timely appeal. The appellant has aid pending protection in the amount of 122.75 PCA hours per week.

5. At hearing on March 22, 2024, the parties resolved five of the modifications (related to mobility, oral care, skin care, opening window/adjusting temperature, and application of warm packs and cream). The modifications for medications and nasal care remained in dispute.
6. The appellant requested PCA assistance with medications in the amount of 20 minutes, twice per day.
  - a. MassHealth modified the request to allow ten minutes, twice per day. MassHealth determined that the time requested is longer than ordinarily required for someone with the appellant's needs.
  - b. The appellant takes five oral medications twice a day. The full process, including feeding him the water for each pill, takes about ten minutes each time (a total of 20 minutes per day).
  - c. The appellant needs eye drops three times per day (morning, late afternoon, and before bed) because of allergies and dry eye. The PCA first cleans his eyes, then applies the eye drops, and then wipes his eyes. The process takes about five minutes each time (a total of 15 minutes per day).
  - d. The appellant requires ear drops once per day. It takes a minute to administer the ear drops and about five minutes to flush out his ears in the shower afterwards (a total of six minutes per day).
  - e. The appellant receives nasal spray on a daily basis.
7. The appellant requested PCA assistance with nasal care (clearing his nose) in the amount of two minutes, ten times per day.
  - a. MassHealth modified the request to allow one minute, ten times per day. MassHealth determined that the time requested is longer than ordinarily required for someone with the appellant's needs.
  - b. The appellant has a chronic runny nose and requires PCA assistance with nasal care (helping him blow and wipe his nose) throughout the day and night, every 20-30 minutes. The overnight care also includes wiping his eyes. For each episode the PCA gets a tissue, wipes under his nose, and then rolls the tissue up to clean inside his nostrils. The full process takes two minutes each time.

## **Analysis and Conclusions of Law**

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), 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 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 MassHealth as being instrumental to the health care of the member.

(C) 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

In this case, MassHealth modified the appellant's PA request for PCA services by denying or reducing the time requested for several activities. After resolution of most of these modifications at hearing, the areas of medications and nasal care remain in dispute.

Medications: MassHealth modified the appellant's request for PCA assistance with medications from 20 minutes twice a day (a total of 40 minutes per day) to ten minutes, twice a day (20 minutes per day), on the basis that the time requested is longer than ordinarily required for someone with the appellant's condition. The record shows that the appellant takes five oral medications twice per day, plus eye drops (three times per day), ear drops, and nasal spray. The appellant testified credibly that given his physical limitations, the full process of setting up the medications and giving him each of the five pills, with water, takes a total of ten minutes each time (for 20 minutes per day). In addition, the appellant gave credible testimony that he needs eye drops three times per

day, and that this process (which includes cleaning his eyes before and after), takes about five minutes each time, for a total of 15 minutes per day. Further, he testified credibly that administering his ear drops in the shower, combined with flushing out his ears, takes a total of six minutes each day. Even without considering the time needed for his nasal spray, the appellant has demonstrated the need for 41 minutes per day for PCA assistance with medications. The request for a total of 40 minutes per day is therefore reasonable.

Nasal Care: MassHealth modified the request for PCA assistance with nasal care from two minutes, ten times per day (20 minutes total per day), to one minute, ten times per day (ten minutes per day), on the basis that the time requested is longer than ordinarily required for someone with the appellant's needs. The appellant suffers from a chronic runny nose and is unable to use his arms or hands to attend to his own nasal care, which is needed frequently throughout the day and night—likely more often than the ten episodes that were requested. He testified credibly that the process of clearing his nose (by blowing and manual cleaning on both sides) takes the PCA two minutes to complete. The record supports the request for 20 minutes of PCA time for this task each day.

For the reasons set forth above, the appellant has demonstrated the medical necessity of the full PCA time requested for both medication assistance and nasal care. This appeal is approved in part (as to these two issues) and dismissed in part (as to the issues resolved at hearing).

### **Order for MassHealth**

In addition to the changes agreed to at hearing, approve the appellant for the full time requested for both medications and nasal care. Remove aid pending protection and implement the time authorized under the current PA for the remainder of the PA period.

### **Implementation of this Decision**

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Optum

