

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part; Approved in part	<b>Appeal Number:</b>	2405933
<b>Decision Date:</b>	7/12/2024	<b>Hearing Date:</b>	05/16/2024
<b>Hearing Officer:</b>	Thomas Doyle	<b>Record Open to:</b>	

**Appearance for Appellant:**



**Appearance for MassHealth:**

Donna Burns, RN

**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; Denied in part; Approved in part	<b>Issue:</b>	Prior Authorization – PCA Services
<b>Decision Date:</b>	7/12/2024	<b>Hearing Date:</b>	05/16/2024
<b>MassHealth's Rep.:</b>	Donna Burns, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South 2/TEAMS (video)	<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 April 1, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Ex. 1). The appellant filed this appeal in a timely manner on April 15, 2024. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

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

## Summary of Evidence

The MassHealth representative appeared via video and identified herself as a registered nurse and clinical appeals reviewer. The appellant appeared in person in the Quincy offices of the Board of Hearings. With him was his PCA/friend. The hearing commenced, all were sworn and documents were marked as evidence. The MassHealth representative testified that the documents submitted show that the appellant has a primary diagnosis of spinal cord injury, quadriplegia, dysphagia, neurogenic bowel and bladder and spasticity. The appellant's personal care management (PCM) agency, Boston Center for Independent Living, submitted a prior authorization request for PCA services requesting 157 hours and 40 minutes a week. MassHealth modified the request to 127 hours and 45 minutes a week. There were 11 modifications made by MassHealth. (Testimony).

Under Bathing, hair washing, appellant requested 10 minutes a day. MassHealth modified this to 5 minutes. (Testimony; Ex. 4, p. 15). Under Bathing, special transfer, appellant requested 15 minutes an episode, 4 episodes a day, 7 days a week. (Id.). MassHealth modified this to 2 episodes a day. (Testimony). After testimony and discussion by the parties, MassHealth approved the requested time for special transfer (Testimony) and this part of the appeal is dismissed. Under Grooming, there were 4 modifications. For oral care, appellant requested 15 minutes an episode, 2 episodes a day, 7 days a week. (Ex. 4, p. 17). MassHealth modified this to 5 minutes an episode. (Testimony). After appellant's testimony, the MassHealth nurse offered 10 minutes an episode based on appellant's testimony. (Testimony). Appellant stated he disagreed with the time offered by MassHealth for oral care. (Testimony). For hair care, appellant requested 5 minutes an episode, 2 episodes a day, 7 days a week. (Ex. 4, p. 17). MassHealth modified this to just 1 episode a day. (Testimony). The MassHealth nurse stated last year appellant had 2 minutes an episode, 1 episode a day, 7 days a week. (Testimony). Appellant disagreed with MassHealth's modification. (Testimony). Shaving was requested under Grooming at 30 minutes daily. (Ex. 4, p. 17). MassHealth modified this request to 5 minutes daily. (Testimony). Under the Other category of Grooming, appellant requested 15 minutes a day for the application of lotions and deodorants. (Ex. 4, p. 17). MassHealth modified this to 7 minutes a day. (Testimony). After testimony from appellant, the MassHealth nurse offered to increase the time to 10 minutes an episode. (Testimony). Appellant declined the offer. (Testimony). Under Toileting, for bladder care, emptying foley bag, appellant requested 5 minutes an episode, 7 episodes a day, 7 days a week. (Ex. 4, p. 21). MassHealth modified this request to 5 episodes a day. (Testimony). After testimony from appellant, the MassHealth nurse reinstated and approved the requested time of 5 minutes an episode, 7 episodes a day, 7 days a week. (Testimony). Therefore, this part of the appeal is dismissed. Also under Toileting, appellant requested time for special transfers at 15 minutes an episode, 4 episodes a day, 7 days a week. (Ex. 4, p. 21). MassHealth had modified this to 2 episodes a day but the MassHealth nurse testified she would reinstate the requested hours and approve 4 episodes a day. Therefore, this part of the appeal is dismissed. Bowel care was requested for 90 minutes a day. (Ex. 4, p. 21). MassHealth modified this to 45 minutes a day. (Testimony). The MassHealth nurse noted appellant was approved for 60 minutes a day last year

and offered appellant the 60 minutes a day this year. (Testimony). Appellant disagreed with the 60 minutes. (Testimony). Under Other Healthcare Needs, appellant requested time for Oxygen/BiPap/Cpap/Vent at 20 minutes an episode, 2 episodes a day, 7 days a week. After testimony and discussion, the parties agreed on 10 minutes an episode, 2 episodes a day, 7 days a week. Therefore, this part of the appeal is dismissed. Another modification under Other Healthcare Needs was the last Other listed in Exhibit 4, page 25. The parties agreed this related to setting up a laptop and other equipment needed by appellant and assistance with environmental controls. (Testimony; Ex. 4, pp. 25-26). Appellant requested 15 minutes an episode, 2 episodes a day, 7 days a week and this request was placed twice. (Ex. 4, p. 25). The MassHealth nurse stated she was confused by the way this was requested and noted appellant was approved last year for 25 minutes daily. She offered appellant 25 minutes daily. Then, after listening to appellant's testimony she offered 30 minutes an episode, 1 episode a day, 7 days a week. (Testimony). Appellant rejected both offers and stood by what was requested by his PCM agency. (Testimony).

Appellant testified on his own behalf and his arguments are noted below.

## **Findings of Fact**

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

1. Appellant is a male MassHealth member in his mid-30's who lives in the community. (Testimony; Ex. 8).
2. Appellant has a primary diagnosis of spinal cord injury, quadriplegia, dysphagia, neurogenic bowel and bladder and spasticity. (Testimony; Ex. 4, p. 8).
3. Appellant's personal care management (PCM) agency, Boston Center for Independent Living, submitted a prior authorization request for PCA services requesting 157 hours and 40 minutes a week. MassHealth modified the request to 127 hours and 45 minutes a week. (Testimony; Ex. 4, p. 2).
4. Under Bathing, special transfer, appellant requested 15 minutes an episode, 4 episodes a day, 7 days a week. (Ex. 4, p. 15). MassHealth modified it to 2 episodes a day. (Testimony). After testimony and discussion by the parties, MassHealth approved the requested time for special transfer and this part of the appeal is dismissed. (Testimony)
5. Under Toileting, bladder care, emptying foley bag, appellant requested 5 minutes an episode, 7 episodes a day, 7 days a week. (Ex. 4, p. 21). MassHealth modified this request to 5 episodes a day. (Testimony). After testimony from appellant, the MassHealth nurse reinstated and approved the requested time of 5 minutes an episode, 7 episodes a day, 7 days a week. (Testimony). Therefore, this part of the appeal is dismissed.

6. Under Toileting, appellant requested time for special transfers at 15 minutes an episode, 4 episodes a day, 7 days a week. (Ex. 4, p. 21). MassHealth modified this to 2 episodes a day but the MassHealth nurse testified she would reinstate the requested hours and approve 4 episodes a day. (Testimony). Therefore, this part of the appeal is dismissed.
7. Under Other Healthcare Needs, appellant requested time for Oxygen/BiPap/Cpap/Vent at 20 minutes an episode, 2 episodes a day, 7 days a week. After testimony and discussion, the parties agreed to 10 minutes an episode, 2 episodes a day, 7 days a week. (Testimony). Therefore, this part of the appeal is dismissed.
8. Under Bathing, hair washing, appellant requested 10 minutes a day. MassHealth modified this to 5 minutes. (Testimony; Ex. 4, p. 15).
9. Under Grooming, oral care, appellant requested 15 minutes an episode, 2 episodes a day, 7 days a week. (Ex. 4, p. 17). MassHealth modified this to 5 minutes an episode. (Testimony). After appellant's testimony, the MassHealth nurse offered 10 minutes an episode. (Testimony). Appellant stated he disagreed with the time offered by MassHealth for oral care. (Testimony).
10. Under Grooming, hair care, appellant requested 5 minutes an episode, 2 episodes a day, 7 days a week. (Ex. 4, p. 17). MassHealth modified this to just 1 episode a day. (Testimony). The MassHealth nurse stated last year appellant had 2 minutes an episode, 1 episode a day, 7 days a week. (Testimony). Appellant disagreed with MassHealth's modification. (Testimony).
11. Under Grooming, shaving, appellant requested 30 minutes daily. (Ex. 4, p. 17). MassHealth modified this request to 5 minutes daily. (Testimony).
12. Under Grooming, Other, appellant requested 15 minutes a day for the application of lotions and deodorants. (Ex. 4, p. 17). MassHealth modified this to 7 minutes a day. (Testimony). After testimony from appellant, the MassHealth nurse offered to increase the time to 10 minutes an episode. (Testimony). Appellant declined the offer. (Testimony).
13. Under Toileting, bowel care, appellant requested 90 minutes a day. (Ex. 4, p. 21). MassHealth modified this to 45 minutes a day. (Testimony). The MassHealth nurse noted appellant was approved for 60 minutes a day last year and offered appellant the 60 minutes a day this year. (Testimony). Appellant disagreed with the 60 minutes. (Testimony).
14. Under Other Healthcare Needs, the last Other listed in Exhibit 4 page 25, the parties agreed this covered PCA assistance with setting up a laptop and other equipment needed by appellant and PCA assistance with environmental controls. (Testimony; Ex. 4, pp. 25-26). Appellant requested 15 minutes an episode, 2 episodes a day, 7 days a week and this request was placed twice. (Ex. 4, p. 25). MassHealth modified this requested time to 0. The MassHealth nurse stated

she was confused by the way this was requested but saw that appellant was approved last year for 25 minutes daily for this task. Then, after listening to appellant's testimony she offered 30 minutes an episode, 1 episode a day, 7 days a week. (Testimony). Appellant rejected both offers and stood by the request made by his PCM agency. (Testimony).

## Analysis and Conclusions of Law

At issue in this appeal is MassHealth's modification of appellant's prior authorization request for PCA services on the basis of medical necessity. The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(A) 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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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/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. (**Emphasis added**).

(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 PCA services; and
  - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member. (**Emphasis added**).

#### 422.403: Eligible Members

...

(C) MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (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 ADLs and IADLs without physical assistance.
- (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.

MassHealth reinstated the time requested for Bathing, special transfer; Toileting, bladder care

(emptying foley bag); and Toileting, special transfers. The appeal representative agreed to the reinstatement of the time requested for these tasks. Therefore, the appeal regarding these tasks is dismissed.

Under Other Healthcare Needs, the parties agreed to time for Oxygen/BiPap/CPap/Vent at 10 minutes an episode, 2 episodes a day, 7 days a week. As there is no longer a dispute about the time allotted for this task, the part of the appeal regarding this task is dismissed.

Bathing, hair washing:

Appellant requested 10 minutes a day for assistance with hair washing. MassHealth modified this to 5 minutes a day. MassHealth stated the time requested was more than ordinarily required and the 5 minutes is the time allocated last year to appellant for this task. Appellant stated the time for task scale for someone with total dependence indicates 25 minutes for assist with hair washing. He noted his PCM agency only requested 10 minutes for this task. The MassHealth nurse stated the time for task scale is only a guideline and she testified she could see appellant had short hair via the video link. Appellant has not shown a medical necessity for time greater than 5 minutes for a PCA to assist him with washing his hair. Appellant has short hair, and it is not unreasonable that it should only take 5 minutes to shampoo and rinse his hair. The part of the appeal requesting time at 10 minutes a day is denied because appellant has not met his burden.

Grooming, oral care:

Appellant requested 15 minutes an episode, 2 episodes a day, 7 days a week. MassHealth modified this to 5 minutes an episode, 2 episodes a day, 7 days a week. MassHealth noted appellant was given 2 minutes an episode last year. After appellant's testimony, MassHealth offered 10 minutes a day for this task. I find that the appellant has met his burden to show the invalidity of MassHealth's determination, and approve the appeal of this modification, in part. Appellant testified that his oral health is important not only to have healthy teeth, but also because he is dependent on his mouth for other things, such as moving his wheelchair. I find that 5 minutes is not enough time for the appellant for oral care based upon the testimony. This finding is supported by MassHealth's offer to increase the time to 10 minutes. (Testimony). Accordingly, I find that the appellant has met the burden to show the invalidity of the original modification, 5 minutes, but has proved by a preponderance of evidence the necessity for 10 minutes for oral care on this record. Therefore, I approve the appeal of this modification, in part, and order that appellant receive 10 minutes, 2 times a day, 7 days a week for oral care.

Grooming, hair care:

Appellant requested 5 minutes an episode, 2 episodes a day, 7 days a week. MassHealth modified this to 5 minutes an episode, 1 episode a day, 7 days a week. MassHealth noted the time received by appellant last year was 2 minutes an episode, 1 episode a day, 7 days a week. MassHealth noted this time is for combing appellant's hair after showering. In his testimony, appellant stated he needed 2 episodes a day for the application of minoxidil to his scalp. However, in his letter to his doctor, he states he needs PCA help with this medication "once per day for five minutes, 7 days



per week.” (Ex. 7, p. 5). MassHealth stated the application of minoxidil is cosmetic and not a medical necessity. Appellant disagreed and stated it is a medical necessity. Again, in his letter to his doctor, the doctor wrote to appellant “that minoxidil is not a strict medical necessity, it is more a cosmetic intervention.” Ex. 7, p. 5). Appellant has not met his burden on this task and his request for 2 episodes a day is denied.

Grooming, shaving:

Appellant requested 30 minutes a day for shaving. MassHealth modified this to 5 minutes a day. MassHealth stated the requested time was longer than ordinarily required. The nurse stated this task involves shaving appellant’s face. She stated 10 minutes is the maximum time given for shaving for people that are dependent and she stated this is what appellant was approved for in 2020. The nurse’s testimony was unclear if she was offering 10 minutes a day for appellant. Appellant testified he consistently has a beard and moustache. He stated he has neuropathic pain on the left side of his neck that occasionally moves down his left arm and therefore, the PCA needs to shave him slowly or he will experience pain. He stated he shaves every day. I find that the appellant has met his burden to show the invalidity of MassHealth’s determination and approve the appeal of this modification. I find that 5 minutes is not enough time for the appellant to be shaved based upon his testimony. This finding is supported by MassHealth’s past approval for 10 minutes for this task. Accordingly, I find that the appellant has met the burden to show the invalidity of the original modification, 5 minutes, but has proved by a preponderance of evidence the necessity for 10 minutes for shaving on this record. Therefore, I approve the appeal of this modification and order that appellant receive 10 minutes a day for shaving.

Grooming, Other:

Appellant requested 15 minutes daily for applying lotions and deodorant. MassHealth modified this to 7 minutes daily. MassHealth stated they generally only give 5 minutes for this task and appellant was given 5 minutes last year. Appellant stated his PCA does daily skin checks all over his body to check for pressure sores. The PCA also applies topical moisturizer all over his body to prevent break down of skin and dry skin. He stated he is prone to pressure sores. He testified his skin does not properly remain moisturized due to his spinal injury. After listening to appellant’s testimony, the MassHealth nurse offered to increase the time for this task to 10 minutes daily. She also stated PCA’s performing skin assessments is not a covered service per the regulations. Appellant declined the offer to increase the time for this task to 10 minutes daily. I find that the appellant has met his burden to show the invalidity of MassHealth’s determination and approve the appeal of this modification. Appellant testified that due to his spinal injury, his skin does not properly stay moisturized and he needs topical moisturizer applied all over his body to prevent the breakdown of his skin and also prevent dry skin. I find that 7 minutes is insufficient time for appellant to have deodorant and lotions applied to his body based upon his testimony. This finding is supported by MassHealth’s offer to increase the time for this task to 10 minutes daily. Accordingly, I find that the appellant has met his burden to show the invalidity of the original modification, 7 minutes, but has proved by a preponderance of evidence the necessity for 10 minutes for the application of deodorant and lotions to his body on this record.

Therefore, I approve the appeal of this modification and order that appellant receive 10 minutes a day for the application of deodorant and lotions.

Toileting, bowel care:

Appellant requested 90 minutes a day for this task. MassHealth modified the request to 45 minutes a day. The MassHealth nurse stated this included digital stimulation, hygiene and clothing. She stated appellant was granted 60 minutes last year and offered to increase the time this year to 60 minutes daily. Appellant declined the offer of 60 minutes. Appellant stated he had difficulty with his gastrointestinal health and he needed the requested time. I find appellant's testimony credible and he has shown, by preponderance of the evidence, for the necessity for 60 minutes daily for bowel care. Therefore, I approve the appeal of this modification and order that appellant receive 60 minutes a day for bowel care.

Other Healthcare Needs, Other:

This task refers to last "Other" listed in Exhibit 4 page 25. The parties agreed this covered PCA assistance with setting up a laptop and other equipment needed by appellant and PCA assistance with environmental controls. Appellant requested 15 minutes an episode, 2 episodes a day, 7 days a week and this request was placed twice. MassHealth denied this request in its entirety. The MassHealth nurse stated she was confused by the way this was requested but she noted appellant was approved last year for 25 minutes daily and she offered the 25 minutes daily. Then, after listening to appellant's testimony she offered 30 minutes an episode, 1 episode a day, 7 days a week. Appellant rejected both offers and stood by what was requested by his PCM agency. Appellant stated his understanding was one request was for packing supplies and the other request was for environmental controls. He stated equipment was packed to leave home and set up when he went to his volunteer positions at two different places. The MassHealth nurse stated that PCA time does not cover social services in the area of advocacy. She stood by her offer of 30 minutes an episode, 1 episode a day, 7 days a week. MassHealth does not cover any of the following as part of the PCA program or the transitional living program: (A) social services including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies. (130 CMR 422.412 (A)). However, with testimony and discussion of the parties, it is clear appellant has a medical necessity for PCA assistance with his equipment and environmental controls. MassHealth's offer of 30 minutes an episode, 1 episode a day, 7 days a week is reasonable and supported by the evidence. Therefore, I approve the appeal of this modification and order that appellant receive 30 minutes an episode, 1 episode a day, 7 days a week a day for Other Healthcare Needs, Other, PCA assist with packing and environmental controls.

## **Order for MassHealth**

- 1 Bathing, special transfer: As MassHealth agreed to appellant's request at hearing, approve

this task at 15 minutes an episode, 4 episodes a day, 7 days a week.

2. Toileting, bladder care: As MassHealth agreed to appellant's request at hearing, approve this task at 5 minutes an episode, 5 episodes a day, 7 days a week.
3. Toileting, special transfer: As MassHealth agreed to appellant's request at hearing, approve this task at 15 minutes an episode, 4 episodes a day, 7 days a week.
4. Other Healthcare Needs, Oxygen/Bipap/Cpap/Vent: At hearing, parties agreed to time for this task, therefore approve appellant for 10 minutes an episode, 2 episodes a day, 7 days a week.
5. Grooming, oral care: Approve appellant for 10 minutes an episode, 2 episodes a day, 7 days a week.
6. Grooming, shaving: Approve appellant for 10 minutes a day.
7. Grooming, Other, lotions and deodorant: Approve appellant for 10 minutes a day.
8. Toileting, bowel care: Approve appellant for 60 minutes a day.
9. Other Healthcare Needs, Other (PCA assistance with packing and environmental controls: Approve appellant for 30 minutes an episode, 1 episodes a day, 7 days a week.

Appellant request for time for Bathing, hair wash and Grooming, hair care were both denied.

## **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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Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:

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