

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Denied in part; Dismissed in part	<b>Appeal Number:</b>	2406215
<b>Decision Date:</b>	7/1/2024	<b>Hearing Date:</b>	05/21/2024
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*



**Appearance for MassHealth:**

*Via telephone:*

Robin Brown, OTR/L, Optum



*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>	Approved in part; Denied in part; Dismissed in part	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	7/1/2024	<b>Hearing Date:</b>	05/21/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OTR/L	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Remote	<b>Aid Pending:</b>	Yes

### 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 March 25, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on April 16, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 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 telephone and identified herself as a registered licensed occupational therapist and clinical appeals reviewer. The appellant also appeared at hearing via telephone.

The MassHealth representative testified that the documentation submitted shows the appellant is an adult under the age of [REDACTED] with primary diagnoses of heart disease and blindness in the right eye. Relevant medical history also shows the following: bypass in [REDACTED]; poor endurance; extreme weakness/shortness of breath with minimal exertion; status post trauma low back; two back surgeries; chronic back pain; depression; anxiety; and post-traumatic stress disorder (PTSD). She lives with her son who is her PCA. On February 20, 2024, she had a PCA re-evaluation and her personal care management (PCM) agency, [REDACTED] requested 31 hours and 15 minutes per week of PCA hours for dates of service of April 26, 2024 through April 25, 2025. On March 25, 2023, MassHealth informed the appellant that it had modified the request to 12 hours and 45 minutes per week. MassHealth made modifications related to PCA assistance with mobility, bathing, laundry, housekeeping, shopping, and medical transportation.

Based on testimony at hearing, MassHealth fully restored time as requested for PCA assistance with laundry (60 minutes per week) and shopping (60 minutes per week). Therefore, since parties resolved the dispute for those instrumental activities of daily living (IADLs), the appeal is dismissed as to laundry and shopping.

As of April 26, 2024, the appellant is receiving 24 hours and 15 minutes per week of PCA services which are protected during the appeal process through aid pending.

### **Mobility**

The appellant requested 2 minutes, 4 times per day, 7 days per week for PCA assistance with mobility and 2 minutes, 2 times per night for assistance with mobility at night. MassHealth did not approve any time for mobility because the appellant's clinical record showed she has sufficient functional ability to perform this task without assistance. The MassHealth representative noted that the record states she needs assistance "at times," which is not a consistent need and MassHealth does not approve PCA time for anticipatory needs.

The appellant explained that she needs two hip surgeries, has a difficult time walking, and is in pain constantly. Her bedroom is upstairs and the bathroom, living room, and kitchen are downstairs. The PCA needs to help her hand-over-hand to go up and down the stairs. She gets dizzy often, especially when she stands up, and needs help from the PCA. Additionally, she has colitis which causes her to have diarrhea frequently, including at night, and she needs help down the stairs to the bathroom. She goes up and down the stairs about five to six times per day.

The MassHealth representative noted that no time was requested for help on stairs. Additionally, no time was requested for help with toileting, suggesting that she does not need help getting to the bathroom.

### **Bathing**

The appellant requested 25 minutes, 1 time per day, 7 days per week and 5 minutes, 1 time per day, 7 days per week for PCA assistance with bathing. MassHealth approved 25 minutes, 1 time per day, 7 days per week. The MassHealth representative testified that the appellant requires moderate assist with bathing and this was the same amount of time approved last year. She noted that clinical documentation shows the appellant is independent with toileting and eating and needs only a minimal amount of time for dressing. It was not clear to her why, if the appellant has the upper extremity strength/ability to do those other tasks, that she could not wash parts of her body that are easy to reach. Additionally, there were no notes indicating what the additional 5 minutes per day were requested for. She also inquired whether the appellant uses a shower chair, which MassHealth would pay for.

The appellant responded that her hips have changed since last year and everything takes longer. Her dizziness is also worse and it makes it difficult to do anything on her own in the shower. She does not use a shower chair, but the problem is getting in and out of the shower. When asked what the additional 5 minutes were for, the appellant stated that her PCA washes her hands before dinner every evening. She also noted that at the end of the day, the PCA will sometimes help her wash under her breasts.

### **Housekeeping**

The appellant requested 60 minutes per week for housekeeping. MassHealth modified the request to 45 minutes per week because the time requested is longer than ordinarily required for someone with her physical needs. This is the same amount of time she received last year. Additionally, she lives with a family member and MassHealth expects family members to assist with most IADLs.

The appellant testified that it takes longer than 45 minutes to wash floors and clean the kitchen, living, bedroom, and bathroom. She cannot help with any of it because of her dizziness.

The MassHealth representative explained that family members are expected to help clean common areas, such as the kitchen, living room, or shared bathroom. Because she lives with her son, MassHealth could not approve any additional time for housekeeping.

## **Medical Transportation**

The appellant requested 161 minutes per week for transportation to medical appointments. The notes indicate that the appellant no longer drives because of right-eye blindness. MassHealth approved 48 minutes per week. MassHealth did not approve the request for 96 appointments per year to aqua therapy and only approved four of the six requested appointments per year to the orthopedic surgeon. The MassHealth representative explained that documentation suggested orthopedic surgery was in the past, not recently. It is not typical to follow up with an orthopedic surgeon continually year after year.

The appellant testified that the aqua therapy is for her hips and back and MassHealth pays for it. She goes to aqua therapy two times per week and land therapy one time per week at the same place, for a total of three times per week. It is one-on-one with a physical therapist. She has been doing it since [REDACTED] and will continue it for the foreseeable future. She sees the orthopedic surgeon for her back two times per year and a different orthopedic physician four times per year for her hips.

The MassHealth representative stated that she would approve 20 appointments per year for the aqua therapy which is the amount of physical therapy visits per year that MassHealth approves.

## **Findings of Fact**

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

1. The appellant is an adult under the age of [REDACTED] with a primary diagnoses of heart disease and blindness in the right eye (Testimony and Exhibit 4).
2. Relevant medical history shows bypass in [REDACTED] poor endurance; extreme weakness/shortness of breath with minimal exertion; status post trauma low back; two back surgeries; chronic back pain; depression; anxiety; and PTSD (Testimony and Exhibit 4).
3. On February 20, 2024, MassHealth received a prior authorization request for PCA services requesting 31 hours and 15 minutes per week of PCA services for dates of service of April 26, 2024 through April 25, 2025 (Testimony and Exhibit 4).
4. On March 25, 2023, MassHealth informed the appellant that it had modified the request to 12 hours and 45 minutes per week (Testimony and Exhibit 1).
5. MassHealth made modifications related to PCA assistance with mobility, bathing, laundry, housekeeping, shopping, and medical transportation (Testimony and Exhibit 4).

6. At hearing, MassHealth fully restored time as requested for PCA assistance with laundry (60 minutes per week) and shopping (60 minutes per week), which resolved the dispute related to PCA assistance with those tasks (Testimony).
7. The appellant seeks time for PCA assistance with mobility as follows: 2 minutes, 4 times per day, 7 days per week during the day and 2 minutes, 2 times per night for assistance with mobility at night (Testimony and Exhibit 4).
8. MassHealth did not approve any time for mobility (Testimony and Exhibit 4).
9. The appellant needs two hip surgeries, has a difficult time walking, is constantly in pain, and gets dizzy when standing. She needs hand-over-hand assistance going up and down the stairs in her home, which occurs five to six times per day. The bedroom is upstairs and the bathroom, living room, and kitchen are downstairs. (Testimony).
10. The appellant seeks time for PCA assistance with bathing as follows: 25 minutes, 1 time per day, 7 days per week and 5 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
11. MassHealth modified the request to 25 minutes, 1 time per day, 7 days per week for bathing (Testimony and Exhibit 4).
12. There was nothing documenting what the additional 5 minutes per day were requested for (Testimony and Exhibit 4).
13. The appellant seeks time for PCA assistance with housekeeping as follows: 60 minutes per week (Testimony and Exhibit 4).
14. MassHealth modified that request to 45 minutes per week (Testimony and Exhibit 4).
15. The appellant lives with her son who is her PCA and received 45 minutes per week for housekeeping last year (Testimony).
16. The appellant seeks time for PCA assistance with transportation to medical appointments as follows: 161 minutes per week (Testimony and Exhibit 4).
17. MassHealth modified the request to 48 minutes per week (Testimony and Exhibit 4).
18. The appellant sees orthopedist surgeons six times per year and does aqua therapy two times per week (Testimony).

## Analysis and Conclusions of Law

MassHealth covers personal care 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 personal care services 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 following ADLs 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.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 Division. Services that are less

costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 the Division as being instrumental to the health care of the member.

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;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to PCA assistance with laundry and shopping because at hearing, parties were able to resolve the dispute. MassHealth fully restored the time as requested for laundry to 60 minutes to week and for shopping to 60 minutes per week.

As to the appellant’s request for PCA assistance with mobility, the appeal is approved. The appellant requested 2 minutes, 4 times per day, 7 days per week during the day and 2 minutes, 2

times per night for assistance with mobility. MassHealth did not approve any time. The appellant's testimony was credible and demonstrated that she requires assistance with mobility up and down the stairs in her home six times throughout the day and night. While MassHealth stated that time for assistance with stairs was not specifically requested, based on the time and frequency requested as well as her testimony, it is clear that the request is for that need to enable the appellant to move around her home. The appellant has shown that PCA assistance with mobility is medically necessary. The appellant is approved for mobility as requested: 2 minutes, 4 times per day, 7 days per week during the day and 2 minutes, 2 times per night, 7 nights per week.

As to the appellant's request for PCA assistance with bathing, the appeal is denied. The appellant has not demonstrated that hands-on PCA assistance with bathing takes longer than the time approved. It was not clear what the additional five minutes per day was requested for. Based on testimony, other than sometimes having the PCA help wash under her breasts in the evening, she does not require and did not request time for a routine quick wash. Washing hands before dinner is separate from bathing. She stated that the main issue was getting in and out of the shower. She did not demonstrate why 25 minutes was insufficient for the PCA to help her in and out of the shower and to provide some assistance with washing up once in the shower. Additionally, with the addition of a shower chair, the appellant should be able to assist with some aspects of bathing based on her functional ability documented in the clinical record. For these reasons, the appellant has not shown that additional PCA assistance with bathing is medically necessary.

As to the appellant's request for housekeeping, the appeal is denied. The appellant has not demonstrated that PCA assistance with housekeeping takes longer than the time approved. Her son does not fall under the definition of family member (spouse, parent, or legally responsible family member) who is expected to provide assistance with most IADLs; however, MassHealth approved the appellant for 45 minutes per week and she has not shown that additional time is needed to clean her personal spaces. The son would still be expected to clean shared living spaces without being compensated by the PCA program. For these reasons, she has not demonstrated that an additional 15 minutes per week is medically necessary for housekeeping.

As to the appellant's request for transportation to medical appointments, the appeal is approved. The appellant's testimony that she sees orthopedists six times per year and goes to aqua therapy two times per week is credible. She cannot drive due to blindness in her right eye. For these reasons, the appellant is approved for 161 minutes per week for transportation to medical appointments.

For these reasons, the appeal is approved in part, denied in part, and dismissed in part.

## **Order for MassHealth**

Approve 2 minutes, 4 times per day, 7 days per week during the day and 2 minutes, 2 times per night, 7 nights per week for mobility; 161 minutes per week for medical transportation; and implement the agreement made at hearing for laundry and shopping. End aid pending and implement all adjustments effective as of the date 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.

## **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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Alexandra Shube  
Hearing Officer  
Board of Hearings

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