

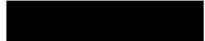
# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2406784
<b>Decision Date:</b>	8/20/2024	<b>Hearing Date:</b>	07/01/2024
<b>Hearing Officer:</b>	Rebecca Brochstein, BOH Deputy Director		

**Appearances for Appellant:**

 Appellant

**Appearances for MassHealth:**

Robin Brown, OTR/L

**Interpreter:**

Russian



*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	<b>Issue:</b>	Prior Approval (PCA Services)
<b>Decision Date:</b>	8/20/2024	<b>Hearing Date:</b>	07/01/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OTR/L	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Board of Hearings (Telephonic)	<b>Aid Pending:</b>	No

### 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 March 28, 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 April 26, 2024, seeking approval of the denied time (130 CMR 610.015(B) and Exhibit 2). A hearing was originally scheduled for May 28, 2024, but was rescheduled to July 1, 2024 at the appellant's request (Exhibits 3-5). 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 licensed occupational therapist, appeared at the hearing telephonically. She testified that the appellant is a woman in her early 60s with a medical history that includes obesity; osteoarthritis of the back, knees, and right wrist; 'bone on bone' in her left knee; edema; GERD; chronic pain; hyperlipidemia; insomnia; urinary incontinence; impaired bend/reach; poor endurance; history of right wrist fracture; and history of falls with injury. On February 20, 2024, [REDACTED] submitted an initial prior authorization (PA) request for personal care attendant (PCA) services on the appellant's behalf, seeking 16 hours and 15 minutes of PCA services per week. The dates of service for the PA request were March 28, 2024, to March 27, 2025.

The medical history narrative by the PCA agency states as follows:

In home evaluation on 1/9/24, consumer and RN present. Consumer is [a female in her early 60s who] resides in a 2 story townhouse apartment with her adult son. Consumer presents today able to ambulate within the home with AD (rollator walker), gait is stiff and slow. Consumer is able to touch her head. Consumer is only able to bend enough to touch knees from seated position due to large stomach girth and OA pain. Consumer is observed able to complete furniture, bed and toilet transfers. Unable to complete shower transfer. Bathroom and bedroom are on 2<sup>nd</sup> floor. Consumer reports daily incontinence s/t diuretic use and slow mobility. Consumer denies any recent hospitalizations, last fall 8/23- fax [sic] right wrist, PT is anticipated for right hand but is not yet scheduled. Consumer is unable to open rx bottles. All meals need to be dental soft, consumer is edentulous. Consumer would benefit from the PCA program as she has at least 2 unmet daily needs. (Exhibit 6 at 12)

On March 28, 2024, MassHealth modified the request and allowed 12 hours and 45 minutes per week. MassHealth modified two aspects of the request. At hearing, the MassHealth representative testified to each of the modifications at issue and the appellant, appearing telephonically, testified on her own behalf through a Russian interpreter.

**Bathing:** The MassHealth representative testified that the agency requested PCA time for bathing in two parts. The first was a request for 15 minutes per day, seven days per week, for a full shower; MassHealth approved this portion of the request in full. The second request was for a quick evening wash due to urinary incontinence; this request was for ten minutes per day, seven days per week. The evaluation includes the following comments relative to bathing:

Mod assist with [showering] tasks including safe transfers in/out, LB/back wash/rinse and towel dry due to impaired bend/reach, poor endurance, chronic pain and generalized weakness. Anticipate that after PT for right hand consumer will be able to wash hair and UB. Consumer will still be unable to wash/dry LB and will still need PA with transfers. Quick evening wash for comfort and hygiene and to maintain skin integrity s/t obesity and urinary incontinence. (Exhibit 6 at 19)

MassHealth modified the quick wash request to allow five minutes per day on the basis that the requested time is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that the appellant has some functional ability to help with this task. She also noted that the appellant is independent with toileting, which supports the conclusion that she would be able to assist with the quick wash.

The appellant testified that she is "speechless" that MassHealth would think five minutes is sufficient to help her with her evening wash, maintaining that even the ten minutes that were requested is not enough. She testified that the quick wash is completed in the bathtub/shower. She testified that the process requires a transfer in and out of the bathtub, which is difficult because she cannot use her right hand to grasp the grab bar. She stated that she is able to transfer into the tub by holding on to the sink with her left hand, but that she cannot use her right hand to help her get out. She testified that she is right-handed and that it is difficult for her to clean herself and attend to her hygiene while in the shower. She noted that her right hand was not functional even before she broke it last year.

In response, the MassHealth representative testified that the quick wash is meant to be done at the sink and to address only a small area of the body for comfort and hygiene. She stated that it is not meant to be "a full bath."

**Meal preparation and clean-up:** The MassHealth representative testified that the appellant requested PCA assistance with meal preparation in the amount of 30 minutes per day for lunch and 40 minutes per day for dinner, for a total of 70 minutes per day. MassHealth modified the request to allow 45 minutes per day for all meal preparation. The MassHealth representative testified that the reason for the modification is the time requested is longer than ordinarily required for an individual with the appellant's physical needs. The evaluation includes the following narrative relative to the appellant's needs around meal preparation:

Max assist for prep and clean up of the 2 large meals of the day due to impaired bend/reach, impaired item transport, poor endurance, chronic pain and generalized weakness. Time allowance to puree all foods that are not dental soft s/t edentulous. Meals prepared separately- weight management and dental soft diet. (Exhibit 6 at 32)

The MassHealth representative testified that the appellant is currently able to use her left hand for meal preparation and should also be able to use her right hand after physical therapy. She maintained that the appellant should use the seat of her rollator to transport her meals from the kitchen to her eating area. She stated that MassHealth approved some time for meal preparation because the appellant has no teeth and requires foods that are not already soft to be pureed. The MassHealth representative indicated that the time was modified in part because the appellant lives with her adult son. She maintained that even if the appellant eats different foods for weight management purposes, this is not a medical reason to justify time for meal preparation; she argued that conditions such as kidney failure or severe diabetes might justify additional time for meal preparation, but that the appellant's condition does not rise to this level. She contended that

it is more of a “shopping issue” for the appellant.

The appellant testified that she cannot use her right hand to cut, slice, or peel, and that even if her meals are prepared for her, she still needs assistance cutting the food on her plate. She stated that her food must be soft or pureed in a blender. She testified that she is able to place food into the blender using her left hand but needs help getting the pureed food out of the blender and transferring it onto a plate. The appellant stated that her son can prepare some foods for her breakfast ahead of time, such as peeling hardboiled eggs, but that he is not always with her to help.

The appellant added that she had not yet started physical therapy for her hand, as she had some issues getting it approved. She emphasized that she had problems with severe osteoarthritis in this hand even before breaking it in 2023. She added that she has problems with her left knee, swelling in her knee, and other medical issues.

### **Findings of Fact**

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

1. The appellant is a woman in her early 60s with a medical history that includes obesity; osteoarthritis of the back, knees, and right wrist; ‘bone on bone’ in her left knee; edema; GERD; chronic pain; hyperlipidemia; insomnia; urinary incontinence; impaired bend/reach; poor endurance; history of right wrist fracture; and history of falls with injury.
2. On February 20, 2024, the appellant’s PCA agency submitted an initial evaluation and prior approval request for PCA services.
3. The provider agency requested PCA services in the amount of 16 hours and 15 minutes of PCA services per week.
4. On March 28, 2024, MassHealth modified the request and allowed 12 hours and 45 minutes of PCA services per week. The dates of service were March 28, 2024, to March 27, 2025.
5. MassHealth modified the requests for bathing (quick wash) and meal preparation.
6. The appellant requested PCA time for bathing in the amount of 15 minutes per day for a full shower, plus ten minutes per day for a quick wash in the evening.
  - a. MassHealth approved the 15 minutes per day requested for a full shower.
  - b. MassHealth modified the time requested for a quick wash from ten to five minutes per day.

- c. The quick wash is intended for comfort and hygiene and to maintain skin integrity secondary to obesity and urinary incontinence.
  - d. The appellant requires moderate assistance with showering tasks, including safe transfers in and out, lower body/back rinse and towel dry due to impaired ability to bend and reach, poor endurance, chronic pain, and generalized weakness. With physical therapy on her right hand the appellant is projected to be able to wash her hair and upper body, but will still be unable to wash and dry her lower body and will still need physical assistance with transfers.
  - e. The appellant's quick wash is done in her shower, which requires a transfer in and out of the bathtub.
7. The appellant requested PCA assistance with meal preparation and clean-up in the amount of 30 minutes per day for lunch and 40 minutes per day for dinner, for a total of 70 minutes per day.
- a. MassHealth modified the request to allow 45 minutes per day for all meal preparation.
  - b. The appellant requires maximum assistance for preparation and cleanup for lunch and dinner due to impaired ability to bend and reach, impaired ability to transport items, poor endurance, chronic pain, and generalized weakness.
  - c. The appellant is edentulous and requires foods that are either soft or pureed.
  - d. The appellant lives with her adult son but her meals are prepared separately due to her weight-management and dental-soft diet. He prepares some foods for her ahead of time (such as peeling hardboiled eggs for breakfast) but is not always available to do so.
  - e. The appellant is able to place foods into the blender with her left hand but is unable to transfer the blended food out of the blender.

### **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 request for PCA services in two areas. As set forth below, the appellant provided persuasive evidence to demonstrate her need for the requested time in both areas.

### **Bathing (quick wash)**

The first modification was a reduction in the time requested for evening quick wash from ten to five minutes per day. The quick wash is meant to address her "comfort and hygiene" needs relating to urinary incontinence. MassHealth maintained that the appellant has sufficient functional ability to participate in the quick wash (as evidenced by her independence with toileting) and that she does not require more than five minutes of PCA time to assist her with completing this wash at the sink. The appellant argued that five minutes is not sufficient given her physical impairments and the fact that the quick wash is done in the shower.

The appellant has provided persuasive evidence that she requires the ten minutes as requested for a quick wash. The record indicates that she requires assistance with transferring in and out of the bathtub, lower body washing, and toweling dry. Though MassHealth emphasized she is likely to have better use of her right hand with physical therapy, the evaluation states that even after physical therapy she "will still be unable to wash and dry her lower body and will still need physical assistance with transfers." All of these tasks are part of the evening quick wash, which is focused on the lower body. Additionally, it is not unreasonable for the quick wash to be completed in the shower, which can offer more thorough and efficient cleaning. Given the appellant's documented



and ongoing need for assistance with lower body care, the evidence supports the request for ten minutes per day for the evening quick wash.

### **Meal preparation and clean-up**

MassHealth modified the appellant's request for PCA time for meal preparation and clean-up (lunch and dinner) from a total of 70 minutes to 45 minutes per day. The basis of the modification was MassHealth's determination that the appellant has the functional ability to perform some of these tasks—specifically, to handle food with her left hand (and eventually her right, after physical therapy) and to transport food on her rollator. Additionally, MassHealth considered that the appellant's adult son, who lives with her, can help her with some meal preparation. The appellant argued that she is unable to manage any meal preparation, that she will continue to have issues with her right hand, and that she eats different foods from her son because of her diet and dental issues.

The record persuasively demonstrates the appellant's need for the full time requested for meal preparation and clean-up. The evaluation states – and the appellant confirmed through testimony – that she requires maximum assist with this task due to her functional impairments, pain, and weakness. The appellant has limited use of her hands, and there is evidence that she will continue to be compromised in this area even after she has physical therapy on her right hand. Further, because she does not have teeth, all of her foods must be naturally soft or pureed, which takes additional preparation time. Though MassHealth correctly points out that the appellant lives with a family member, the evidence is convincing that the appellant's meals must be prepared separately both because she is edentulous and because she is on a weight-management diet.<sup>1</sup>

This appeal is approved.

### **Order for MassHealth**

Approve the appellant's prior authorization request for PCA services in full for the PA period of March 28, 2024, to March 27, 2025.

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<sup>1</sup> Under 130 CMR 422.410(C)(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." However, the appellant's adult son is not considered a "family member" for this purpose. See 130 CMR 422.402 (defining "family member" as "the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.") Nevertheless, the appellant indicated at hearing that her son does often help with breakfast preparation (which was not part of the PA request).

## **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  
Deputy Director  
Board of Hearings

cc: Optum