

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part, Denied in part	Appeal Number:	2407745
Decision Date:	8/5/2024	Hearing Date:	06/26/2024
Hearing Officer:	Emily Sabo		

Appearance for Appellant:



Appearances for Tufts Health Plan (Point 32 Health):

John Shinn, Esq., Sherin and Lodgen, LLP;
Vickie Pereira, Clinical Manager; Pratikasha Patel, Medical Director; Nicole Dally, Program Manager



*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:	Senior Care Organization (SCO); Prior Authorization— Personal Care Attendant (PCA) Services
Decision Date:	8/5/2024	Hearing Date:	06/26/2024
Tufts Reps.:	John Shinn, Esq., Vickie Pereira, Pratikasha Patel, Nicole Dally	Appellant's Rep.:	Daughter/surrogate
Hearing Location:	Quincy Harbor South (Telephone)	Aid Pending:	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 May 6, 2024, Tufts Health Plan Senior Care Options, a MassHealth Senior Care Organization (SCO) and MassHealth's agent, denied the Appellant's level one appeal of a modification of a prior authorization request for personal care attendant (PCA) services. Exhibit 1.¹ The Appellant filed this external appeal with the Board of Hearings in a timely manner on May 13, 2024. 130 CMR 610.015 and Exhibit 2. Denial of a level one internal appeal by a managed care organization is a valid ground for appeal to the Board of Hearings. 130 CMR 610.032(B).

¹ An SCO is defined at 130 CMR 501.001 as "an organization that participates in MassHealth under a contract with the MassHealth agency and the Centers for Medicare & Medicaid Services to provide a comprehensive network of medical, health care, and social service providers that integrates all components of care, either directly or through subcontracts. SCOs are responsible for providing enrollees with the full continuum of Medicare- and MassHealth-covered services."

Action Taken by Tufts Health Plan

Tufts Health Plan (Tufts), MassHealth's agent, reduced the Appellant's allotted PCA service hours from 60.5 to 40 hours per week, effective May 10, 2004.

Issue

Whether Tufts was acting within its discretion in its decision to reduce the Appellant's allotted PCA service hours.

Summary of Evidence

The hearing was held by telephone. The Appellant was represented by her daughter, who verified the Appellant's identity. The parties' testimony and the record evidence are summarized as follows:

The Appellant is [REDACTED] years old. The Appellant's medical history includes blindness, Parkinson's disease, spinal stenosis, tremors, [REDACTED] low blood pressure, and bowel incontinence. The Appellant experienced sudden onset blindness in 2021. The Appellant previously had colon cancer that was treated by radiation, chemotherapy, and a colon resection. Due to the Appellant's total vision loss and low blood pressure, the Appellant is at high risk for falls. The Appellant also has a pacemaker.

The Appellant lives at home with her son. The Appellant's bedroom and bathroom are on the first floor of the home. The Appellant's representative explained that the Appellant has lived in the home for many decades, and due to her familiarity with the environment is able to move through the home by feeling the furniture and other objects.² The Appellant's representative testified that due to her vision loss, the Appellant can become anxious and disoriented, particularly in new environments and if objects are not where she expects them to be. The Appellant's representative testified that for these reasons, the Appellant and her family want the Appellant to continue to live out her life in her own home.

Tufts testified that on April 8, 2024, a functional assessment of the Appellant was conducted, which supported a reduction of PCA services from 60.5 hours to 40 hours per week (33 daytime and 7 nighttime hours).³ The Tufts clinical manager, Tufts nurse care manager, Appellant,

² The record also refers to the Appellant "surface walking" or "furniture surfing."

³ The materials submitted by Tufts indicate that 60.5 hours per week were requested and denied but did not specify what time was requested for what specific activities of daily living. The time indicated as "requested" in the submission equals the 40 hours a week that were approved. Exhibit 6 at 32-39. At the hearing, Tufts also testified

Appellant's daughter, and PCA⁴ were present for the assessment. Tufts testified that during the assessment, the Appellant did not require the physical assistance of the PCA, and that the Appellant was able to slowly move from sitting on the couch to standing without assistance.⁵ The evaluation stated that the PCA provided supervision and emotional support to the Appellant by sitting next to the Appellant and speaking with the Appellant in the Appellant's primary language. Exhibit 6 at 26. The Tufts representative testified that she understood that the Appellant was having a "good day" during the assessment, and that the reduction to 40 hours per week was generous to account for that variability. The Tufts representative testified that the Appellant had been allocated PCA hours for instrumental activities of daily living, even though she lives with a family member, and that Tufts increased the allotted time for laundry from 45 minutes to 60 minutes, and for medical transportation from zero to 30 minutes. The Tufts representative explained that PCA services by regulation are really to be used for hand-on assistance and are not about the PCA watching or monitoring the member. The Tufts representative stated that options for long-term care in a nursing facility and adult foster care had been discussed with the Appellant and the Appellant's representative.

The Appellant's representative testified that she was concerned that the assessment does not consider other days in which the Appellant experiences bowel incontinence and a need for greater services. The Appellant's representative testified that because of the Appellant's history of colon cancer, including her colon resection, the Appellant cannot feel or register having had a bowel movement. The Appellant wears Depends and heavy pads, but due to the Appellant's blindness, the Appellant is not able to see it and clean herself. The Appellant testified that the Appellant has days in which she needs to be pushed in her walker to the bathroom. The Appellant's representative testified that, in addition to PCA services, she and her siblings care for the Appellant, but they also work full-time, and are concerned for the Appellant's well-being, particularly if the Appellant soils herself while alone. The Appellant's representative stated that the Appellant's condition has gotten worse, not better. The Appellant's representative testified that when the Appellant experiences episodes of bowel incontinence, they may last 3-4 days at a time. The Appellant relayed an episode two weeks prior to the hearing in which the Appellant had needed to be changed six times before noon. The Appellant's representative testified that the Appellant soils herself down her legs, such that her clothing needs to be changed and washed, and that the bathroom rugs or other affected surfaces need to be cleaned. The Appellant's representative testified that the Appellant has worked hard her entire life, and that the Appellant's family want her to be safe in her home for the remainder of her life.

The Appellant's representative testified that the Appellant cannot pick out her own clothes. The

to the time requested in 2023 for the categories modified in comparison to the 2024 request, but the differences in those times do not equal 20.5 hours.

⁴ Exhibit 6 at 14 refers to [REDACTED] as the servicing provider and at 25 refers to [REDACTED] Elderly Services as the servicing provider.

⁵ Notes indicate that the Appellant moves by "furniture surfing as hallways narrow and use of assistance device could pose a larger fall risk. [Appellant uses] a walker outdoors." Exhibit 6 at 26.

Appellant's representative testified that the Appellant has three meals a day, though dinner is usually a lighter meal, and that the Appellant also has snacks such as a piece of fruit or pie during the day. The Appellant's representative testified that if the Appellant opens the fridge to access food, she cannot see anything and panics.

Tuft's representative testified that modifications were made in the activities of mobility/transfers, medications, dressing, toileting, and feeding. Tufts submitted the following chart:

Activity	Impairment level and recommended minutes per activity	Actual time minutes	PCA in	Frequency (times per day)	Days Per Week	Requested Minutes Per Week
Mobility/Transfers	Moderate (5-7 minutes)	5		6	7	210
Medication Administration	Maximum (15-20 minutes)	20		1	1	20
Dressing or Undressing	Maximum (20-30 minutes)	10		2	7	140
Toileting	Maximum (20-30 minutes)	7		6	7	294
Feeding	Moderate (15-20 minutes)	7		3	7	147
Bathing ⁶	Maximum (30-45 minutes)	30		1	7	210

Exhibit 6 at 32-39. As discussed in footnote 3, the total times for requested minutes per week are what Tufts approved.

The Comments section for Mobility/Transfers states: "Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson's and tremors limiting her range of motion [ROM]. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there. M[ember] has a cane but surface walks throughout the home, d/t hallucinations she attempts to grab onto walls that are not there." *Id* at 32.

The Comments section for Medication Administration states: "Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson's and tremors limiting her ROM. [M]ember unable to manage medication safely

⁶ I have included the allotment for bathing as the Appellant's representative discussed the Appellant's need for PCA services to clean/wash after episodes of incontinence.

d/t legally blind, dgt fills planner for three weeks and PCA administers medication to member d/t forgetfulness and vision loss. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there.” *Id.* at 33.

The Comments section for Dressing or Undressing states: “Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson’s and tremors limiting her ROM. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there.” *Id.* at 34.

The Comments section for Toileting states: “Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson’s and tremors limiting her ROM. [M]ember utilizes pads/pull up, unable to safely complete this. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there.” *Id.* at 35.

The Comments section for Feeding states: “Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson’s and tremors limiting her ROM, which causes her to spill things frequently and miss her mouth while she eats. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there.” *Id.* at 35.

The Comments section for Bathing states: “Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson’s and tremors limiting her ROM. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there.” *Id.* at 34.

Findings of Fact

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

1. The Appellant is [REDACTED] years old. Testimony.
2. The Appellant’s medical history includes blindness, Parkinson’s disease, spinal stenosis, tremors, [REDACTED], low blood pressure, and bowel incontinence. The Appellant experienced sudden onset blindness in 2021. The Appellant previously had colon cancer that was treated by radiation, chemotherapy, and a colon resection. Due to the Appellant’s total vision loss and low blood pressure, the Appellant is at high risk for falls. The Appellant also has a pacemaker. Testimony, Exhibits 5 & 6.
3. The Appellant lives at home. The Appellant’s bedroom and bathroom are on the first floor of the home. The Appellant has lived in the home for many decades, and due to her familiarity

with the environment is able to move through the home by feeling the furniture and other objects.

4. On April 8, 2024, the Appellant was assessed for PCA services and was authorized to receive 40 hours per week, effective May 10, 2024. This was a reduction from the requested 60.5 hours per week. Testimony, Exhibits 1 & 6.
5. As relevant here, Tufts approved PCA services in the following activities of daily living:

Activity	Impairment level and recommended minutes per activity	Actual time in minutes	Frequency (times per day)	Days Per Week	Requested Minutes Per Week
Mobility/Transfers	Moderate (5-7 minutes)	5	6	7	210
Medication Administration	Maximum (15-20 minutes)	20	1	1	20
Dressing or Undressing	Maximum (20-30 minutes)	10	2	7	140
Toileting	Maximum (20-30 minutes)	7	6	7	294
Feeding	Moderate (15-20 minutes)	7	3	7	147
Bathing	Maximum (30-45 minutes)	30	1	7	210

The Comments section for Mobility/Transfers states: “Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson’s and tremors limiting her ROM. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there. M[ember] has a cane but surface walks throughout the home, d/t hallucinations she attempts to grab onto walls that are not there.”

The Comments section for Medication Administration states: “Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson’s and tremors limiting her ROM. [M]ember unable to manage medication safely d/t legally blind, dgt fills planner for three weeks and PCA administers medication to member d/t forgetfulness and vision loss. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there.”

The Comments section for Dressing or Undressing states: "Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson's and tremors limiting her ROM. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there."

The Comments section for Toileting states: "Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson's and tremors limiting her ROM. [M]ember utilizes pads/pull up, unable to safely complete this. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there."

The Comments section for Feeding states: "Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson's and tremors limiting her ROM, which causes her to spill things frequently and miss her mouth while she eats. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there."

The Comments section for Bathing states: "Member has total vision loss/legally blind causing unsteady fair/high fall risk/poor safety awareness/functional limitations. Member also has Parkinson's and tremors limiting her ROM. Member has a diagnosis of [REDACTED] which causes her to hallucinate and see things that are not there." Exhibit 6.

6. The Appellant experiences bowel incontinence and because of her medical history, the Appellant cannot always feel or register having had a bowel movement. The Appellant wears Depends and heavy pads, but due to the Appellant's blindness, the Appellant is not able to see it and clean herself. The Appellant's episodes of bowel incontinence may last 3-4 days at a time. During one such recent incident, the Appellant had needed to be changed six times before noon. Testimony.

Analysis and Conclusions of Law

Pursuant to regulation 130 CMR 508.008: *Senior Care Organizations*:

(A) Enrollment Requirements. In order to voluntarily enroll in a senior care organization, a MassHealth Standard member must meet all of the following criteria:

- (1) be 65 years of age or older;
- (2) live in a designated service area of a senior care organization;
- (3) not be diagnosed as having end-stage renal disease;
- (4) not be subject to a six-month deductible period under 130 CMR 520.028: Eligibility for a Deductible;

- (5) not be a resident of an intermediate care facility for individuals with intellectual disabilities (ICF/ID); and
- (6) not be an inpatient in a chronic or rehabilitation hospital.

(B) Selection Procedure. The MassHealth agency will notify members of the availability of a senior care organization (SCO) in their service area and of the procedures for enrollment. An eligible member may voluntarily enroll in any SCO in the member's service area. A service area is the specific geographical area of Massachusetts in which a SCO agrees to serve its contract with the MassHealth agency and the Centers for Medicare & Medicaid Services. Service area listings may be obtained from the MassHealth agency or its designee. The list of senior care organizations (SCOs) that the MassHealth agency will make available to members will include those SCOs that contract with the MassHealth agency and provide services within the member's service area.

(C) Obtaining Services When Enrolled in a SCO. When a member chooses to enroll in a senior care organization (SCO) in accordance with the requirements under 130 CMR 508.008, the SCO will deliver the member's primary care and will authorize, arrange, integrate, and coordinate the provision of all covered services for the member. Upon enrollment, each SCO is required to provide evidence of its coverage, including a complete list of participating providers, the range of available covered services, what to do for emergency conditions and urgent care needs, and how to obtain access to covered services such as specialty, behavioral health, and long-term-care services.

(D) Disenrollment from a Senior Care Organization. A member may disenroll from a SCO at any time by submitting a notice of disenrollment to the MassHealth agency or its designee. Disenrollment notices received by the MassHealth agency or its designee by the 20th day of the month will be effective the first day of the following month.

(E) Discharge or Transfer. The MassHealth agency may discharge or transfer a member from a SCO where the SCO demonstrates to the MassHealth agency's satisfaction a pattern of noncompliant or disruptive behavior by the member or for other good cause. In each case, the MassHealth agency will state the good cause basis for discharge or transfer in a notice to the member.

(F) Other Programs. While voluntarily enrolled in a senior care organization (SCO) under 130 CMR 508.008, a member may not concurrently participate in

- (1) any program described in 130 CMR 519.007: *Individuals Who Would be Institutionalized*, except the Home- and Community-based Services Waiver-frail Elder described in 130 CMR 519.007(B): *Home- and Community-based Services Waiver-frail Elder*;
- (2) any Medicare demonstration program or Medicare Advantage plan, except for Medicare Advantage Special Needs Plan for Dual Eligibles contracted as a SCO; or

(3) an ICO described in 130 CMR 508.007.

(G) Copayments. Members who are enrolled in a SCO must make copayments in accordance with the SCO's MassHealth copayment policy. Those SCO copayment policies must

- (1) be approved by MassHealth;
- (2) exclude the persons and services listed in 130 CMR 506.014: *Copayments Required by MassHealth* and 520.037: *Copayment and Cost Sharing Requirement Exclusions*;
- (3) not exceed the MassHealth copayment amounts set forth in 130 CMR 506.015: *Copayment and Cost Sharing Requirement Exclusions* and 520.038: *Services Subject to Copayments*; and
- (4) include the copayment maximums set forth in 130 CMR 506.018: *Maximum Cost Sharing* and 520.040: *Maximum Cost Sharing*. (See also 130 CMR 450.130: *Copayments Required by the MassHealth Agency*.)

130 CMR 508.008.

MassHealth regulation 130 CMR 508.010: *Right to a Fair Hearing*, states as follows:

Members are entitled to a fair hearing under 130 CMR 610.000: *MassHealth: Fair Hearing Rules* to appeal:

(A) the MassHealth agency's determination that the MassHealth member is required to enroll with a MassHealth managed care provider under 130 CMR 508.001;

(B) a determination by the MassHealth behavioral health contractor, by one of the MCOs, Accountable Care Partnership Plans, or SCOs as further described in 130 CMR 610.032(B), if the member has exhausted all remedies available through the contractor's internal appeals process;

(C) the MassHealth agency's disenrollment of a member under 130 CMR 508.003(D)(1), (D)(2)(a), or (D)(2)(b), or discharge of a member from a SCO under 130 CMR 508.008(E); or

(D) the MassHealth agency's determination that the requirements for a member transfer under 130 CMR 508.003(C)(3) have not been met.

140 CMR 508.010 (emphasis added).

As MassHealth's agent, Tufts is required to follow MassHealth laws and regulations pertaining to a member's care. Under the regulations pertaining to MassHealth SCOs, above, Tufts is empowered to authorize, arrange, integrate, and coordinate the provision of all covered services for the Appellant.

MassHealth regulations about PCA services are found at 130 CMR 422.000 *et seq.* Regulation 130 CMR 422.402 defines a PCA as a person who is hired by the member or surrogate to provide PCA

services, which are further defined as assistance with the activities of daily living and instrumental activities of daily living 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;
- (2) the member's disability is permanent or chronic in nature;
- (3) the member 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; and
- (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

130 CMR 422.403(C).

Regulation 130 CMR 422.410 describes the activities of daily living and instrumental activities of daily living:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

130 CMR 422.410(A).

Pursuant to 130 CMR 450.204(A), 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 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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.

(130 CMR 450.204(A)(

Next, pursuant to 130 CMR 422.412: *Noncovered Services*:

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; or
- (H) PCA services provided to a member without the use of EVV as requires by the MassHealth agency.

130 CMR 422.412.

The Appellant has the burden “to demonstrate the invalidity of the administrative determination.” Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228, 231 (2007). *See also*, Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

Mobility/Transfers

Tufts approved 210 minutes per week for PCA services for Mobility/Transfers. After reviewing the evidence, I find that the Appellant has not met her burden to show the invalidity of Tufts’ determination. The 5 minutes per transfer allotted falls within her reported impairment level and recommended minutes per activity of moderate (5-7 minutes) and the Appellant did not provide testimony that this time is insufficient. Exhibit 6 at 32. Therefore, the appeal is denied regarding time for mobility/transfers.

Medication Administration

Tufts approved 20 minutes per week for PCA services for Medication Administration. After reviewing the evidence, I find that the Appellant has not met her burden to show the invalidity of Tufts’ determination. The 20 minutes allotted falls within her reported impairment level and recommended minutes per activity of maximum (15-20 minutes), and the Appellant did not provide testimony that this time is insufficient. Therefore, the appeal is denied regarding time for medications.

Dressing or Undressing

Tufts approved 140 minutes per week for dressing or undressing, which it based on 10 minutes, twice a day, 7 days a week. After reviewing the evidence, I find that the Appellant has met her burden to show the invalidity of Tufts’ determination. The appellant’s reported impairment level and recommended minutes per activity indicate, that the Appellant is maximally impaired and that 20-30 minutes per activity is recommended. Exhibit 6 at 34. I also credit the Appellant’s representative’s testimony that when the Appellant experiences incontinence, she also will need

assistance changing her clothes. Accordingly, I approve 30 minutes for dressing or undressing, twice daily, 7 days a week, for a total of 420 minutes per week.

Toileting

Tufts approved 294 minutes per week for PCA services for Toileting, which is based on 7 minutes, 6 times a day, 7 days a week. After reviewing the evidence, I find that the Appellant has met her burden to show the invalidity of Tufts' determination. The appellant's reported impairment level and recommended minutes per activity indicate that the Appellant is maximally impaired and that 20-30 minutes per activity is recommended. Exhibit 6 at 35. I credit the Appellant representative's testimony regarding the Appellant's incontinence and history of colon cancer. Accordingly, I approve 20 minutes, 6 times per day, 7 days per week, for a total of 840 minutes per week.

Feeding

Tufts approved 147 minutes per week for PCA services for Feeding, which is based on 7 minutes, 3 times per day, 7 days a week. After reviewing the evidence, I find that the Appellant has met her burden to show the invalidity of Tufts' determination. The appellant's reported impairment level and recommended minutes per activity indicate that the Appellant is moderately impaired and that 15-20 minutes per activity is recommended. Accordingly, I approve 15 minutes, 3 times a day, 7 days a week for a total of 315 minutes per week.

Bathing

Tufts approved 210 minutes per week for PCA services for Bathing, which is based on 30 minutes, once a day, 7 days a week. Under 130 CMR 422.410(A)(3), bathing or grooming is defined as "physically assisting a member with bathing, *personal hygiene*, or grooming." (Emphasis added). After reviewing the evidence, I find that the Appellant has met her burden to show the invalidity of Tufts' determination. The appellant's reported impairment level and recommended minutes per activity indicate that the Appellant is maximally impaired and that 30-45 minutes per activity is recommended. I credit the Appellant's representative's testimony about the Appellant's incontinence and need for personal hygiene. Accordingly, I approve an additional 15 minutes, once per day, 4 days per week for a quick wash, for a combined total of 270 minutes per week.

Order for Tufts Health Plan

Regarding the modifications subject to the notice dated May 6, 2024, Tufts shall implement the following allotments, for the period of May 10, 2024 to May 9, 2025:

- 1) Dressing or Undressing: 420 minutes per week shall be allotted by Tufts to the Appellant.

- 2) Toileting: 840 minutes per week shall be allotted by Tufts to the Appellant.
- 3) Feeding: 315 minutes per week shall be allotted by Tufts to the Appellant.
- 4) Bathing: 270 minutes per week shall be allotted by Tufts to the Appellant.

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.

Emily Sabo
Hearing Officer
Board of Hearings

[REDACTED]

cc: MassHealth Representative: Tufts Health Plan, Attn: Nicole Dally, Program Manager,
Appeals & Grievance, 1 Wellness Way, Canton, MA 02021

[REDACTED]