

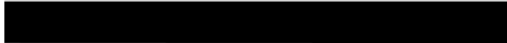
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part; Dismissed in Part	Appeal Number:	2408872
Decision Date:	11/8/2024	Hearing Date:	07/22/2024
Hearing Officer:	Mariah Burns	Record Open to:	09/09/2024

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN for Optum

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

Appeal Decision:	Approved in Part; Denied in Part; Dismissed in Part	Issue:	Prior Authorization, Personal Care Attendant Services
Decision Date:	11/8/2024	Hearing Date:	07/22/2024
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote	Aid Pending:	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 July 1, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on July 12, 2024, and Aid Pending was applied. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

The appeal issue is whether MassHealth acted within the scope of the regulations in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is a MassHealth member under the age of 65 who was assisted at the hearing by a Spanish speaking interpreter, his attorney, and his PCA. MassHealth was represented by a clinical appeals reviewer and registered nurse for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by telephone. The following is a summary of the testimony and evidence presented:

The appellant suffers from diagnoses of osteoarthritis, chronic pain, COPD, asthma, diabetes, and prostate issues.¹ Through a different insurance, the appellant was previously receiving 15 hours and 30 minutes of weekly PCA assistance, for which he is receiving Aid Pending. On May 21, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting 22 daytime hours and 14 nighttime hours totaling 36 hours of PCA assistance per week. On May 2, 2024, MassHealth modified the request and approved the appellant for 14 hours of weekly assistance with dates of service from June 5, 2024, to June 4, 2025.

Modifications were made in the areas of bathing and quick washing, grooming for nails, shaving, and lotion, dressing and undressing, nighttime toileting, meal preparation, laundry, housekeeping, shopping, and medication assistance. After hearing, the parties agreed to the following modifications:

- **Bathing/Quick Washing:** parties agree to a total of 20 minutes per day, 7 days per week for all bathing;
- **Nail Care:** approved at 5 minutes per week;
- **Shaving:** parties agree to 5 minutes, two days per week;
- **Lotion application:** approved at 5 minutes per week;
- **Meal Preparation:** parties agree to 60 minutes per day, seven days per week;
- **Shopping:** approved at 90 minutes per week;
- **Medication Assistance:** approved at 10 minutes per week.

Thus, after hearing, disputes remained over assistance with dressing/undressing, nighttime toileting, laundry, and housekeeping.

Dressing/Undressing

The appellant requested 10 minutes per day, 7 days per week for PCA assistance with dressing and 8 minutes per day, 7 days per week for undressing. MassHealth modified this request to 7 minutes per day for dressing and 5 minutes per day for undressing. The MassHealth representative reported that this modification was made because the appellant's personal care management

¹ This is not an extensive list of the appellant's conditions or symptoms, which can be found at Exhibit 5 at 7-8 and are hereby incorporated by reference.

(PCM) agency reported that the appellant requires only minimum assistance with dressing/undressing, and because the documentation indicates that the appellant can put on his upper body clothing. The appellant agreed that he is able to dress himself on his upper body, but testified that, due to the configuration of his apartment, dizziness, and his use of a walker, he is unable to choose his own clothing. He reported sometimes requiring assistance with pulling up his pants and donning his socks and shoes. The appellant also stated that it can sometimes take longer to get ready in the winter because of wearing more clothes and heavier shoes/boots.

Nighttime Toileting

The appellant requested 3 minutes, 2 times per week for assistance with nighttime toileting. MassHealth denied this request based on that fact that assistance with toileting was not requested during the day, and therefore, it does not appear that he requires the service². At the hearing, the MassHealth representative reported that any nighttime incontinence could be treated in a less costly way through the use of adult diapers. The appellant reported that he has a prostate issue that is particularly difficult to manage at night. He uses a commode due to having difficulty getting into and out of bed at night and has two bottles for urination on his bedside. The appellant testified that he has an accident at least once per week, and that these accidents typically happen before midnight. He requires assistance with helping to clean up his bed and to re-dress himself when he has an accident. The appellant reported that he used to use adult diapers, but he found that they are uncomfortable, do not fit him properly, and he would prefer not to wear them.

Laundry

The appellant requested 90 minutes per week for assistance with laundry. MassHealth originally modified this request to 30 minutes per week due to it being longer than typically required for someone with the appellant's needs. The appellant has laundry in his home. His PCA reported that she does approximately four loads of laundry per week, which include, whites, darks/colors, linens, and special loads in the event the appellant has an incontinence incident. She also explained that she sometimes hangs certain items to dry rather than using the dryer. The appellant argues that the guidelines entitle him to 15 to 30 minutes of assistance per load of laundry. At the hearing, MassHealth agreed to increase the appellant's assistance with laundry to 60 minutes per week. The appellant rejected that offer and requested that the matter be taken under advisement.

Housekeeping

The appellant requested 90 minutes per week for assistance with housekeeping. MassHealth

² The parties agree that, per MassHealth policy if the appellant were approved for any nighttime assistance for the hours of midnight to 6AM, he would be entitled to receive a total of 14 hours, regardless of how much assistance he actually needed.

originally modified this request to 30 minutes per week due to it being longer than typically required for someone with the appellant's needs. The appellant reported requiring the floor to be swept, mopped and vacuumed every day along with the kitchen, bedroom, and bathroom. The appellant's PCA testified that she dusts everyday and takes out the appellant's trash. She reported that in all, she spends 90 minutes a week cleaning the appellant's apartment.

After the hearing, the record was kept open for the appellant to provide supplemental information to aid his requests. On September 9, 2024, the appellant provided a letter from his primary care physician that states the following:

[The appellant] has been a primary care patient of mine for several years...He has been authorized for 8.15 hours of weekly PCA services. This is not adequate. His chronic pain and many medical conditions really require 36 hours per week. He has a long term chronic disability that meets requirements. He should have 22 hours of the day/evening care and 14 hours of night care. His daytime requirements are bathing 3.5 hours, grooming 1.0 hour, dressing and undressing 2.1 hours, assistance with medication .07 hours meal preparation 10.5 hours (sic), laundry 1.5 hours, housekeeping 1.5 hours, shopping 1.5 hours and nighttime toileting 0.7 hours. I strongly recommend that these hours be authorized.

Exhibit 7 at 6.

Findings of Fact

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

1. The appellant is an adult MassHealth member over the age of 65 who suffers from diagnoses of osteoarthritis, chronic pain, COPD, asthma, diabetes, and prostate issues. Exhibit 4, Exhibit 5 at 7-8. Prior to the notice at issue, the appellant received 15 hours and 30 minutes of PCA assistance through an insurance plan other than MassHealth. Testimony.
2. On May 21, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting 22 daytime hours and 14 nighttime hours totaling 36 hours of PCA assistance per week. Testimony, Exhibit 11. On May 2, 2024, MassHealth modified the request and approved the appellant 14 hours of weekly assistance with dates of service from June 5, 2024, to June 4, 2025. Testimony, Exhibit 1, Exhibit 5 at 34.
3. The specific modifications were made in the areas of bathing and quick washing, grooming for nails, shaving, and lotion, dressing and undressing, nighttime toileting, meal preparation, laundry, housekeeping, shopping, and medication assistance. Exhibit 1.

4. After hearing testimony, MassHealth and the appellant agreed to the following PCA assistance:

- **Bathing/Quick Washing:** parties agree to a total of 20 minutes per day, 7 days per week for all bathing;
- **Nail Care:** approved at 5 minutes per week;
- **Shaving:** parties agree to 5 minutes, two days per week;
- **Lotion application:** approved at 5 minutes per week;
- **Meal Preparation:** parties agree to 60 minutes per day, seven days per week;
- **Shopping:** approved at 90 minutes per week;
- **Medication Assistance:** approved at 10 minutes per week.

Testimony.

5. The appellant requested 10 minutes per day, 7 days per week for PCA assistance with dressing and 8 minutes per day, 7 days per week for undressing. Exhibit 5 at 18. The appellant's PCM reported that the appellant requires only minimum assistance for these tasks. *Id.* MassHealth modified this request to 7 minutes per day for dressing and 5 minutes per day for undressing, because the time requested is longer than typically required for someone with the appellant's reported needs. Exhibit 1.

6. The appellant requested 3 minutes, 2 times per week for assistance with nighttime toileting. Exhibit 5 at 20. The appellant did not request any assistance with toileting during the day. *Id.* MassHealth denied this request because the appellant did not demonstrate a documented need for this assistance. Testimony, Exhibit 1. The appellant has a prostate issue that can cause some incontinence in his sleep. Testimony. He uses a commode with two bedside bottles and has an accident at least once per week. *Id.* He requires assistance with cleaning up the accidents. *Id.* These accidents typically occur before midnight. *Id.*

7. The appellant requested 90 minutes per week for assistance with laundry. Exhibit 5 at 29. MassHealth initially modified this request to 30 minutes but, at the hearing, offered to increase the amount to 60 minutes per week. Exhibit 1, Testimony. The appellant has laundry in his home and requires four weekly loads of laundry: whites, darks/colors, linens, and special loads in the event the appellant has an incontinence incident. Testimony.

8. The appellant requested 90 minutes per week for assistance with laundry. Exhibit 5 at 29. MassHealth initially modified this request to 30 minutes but, at the hearing, offered to increase the amount to 60 minutes per week. Exhibit 1, Testimony. The appellant's PCA testified that she thoroughly cleans his apartment every day, including sweeping, mopping and vacuuming and cleaning the kitchen, bedroom, and bathroom. Testimony.

9. The appellant provided a letter from his primary care physician that states the following:

[The appellant] has been a primary care patient of mine for several years...He has been authorized for 8.15 hours of weekly PCA services. This is not adequate. His chronic pain and many medical conditions really require 36 hours per week. He has a long term chronic disability that meets requirements. He should have 22 hours of the day/evening care and 14 hours of night care. His daytime requirements are bathing 3.5 hours, grooming 1.0 hour, dressing and undressing 2.1 hours, assistance with medication .07 hours meal preparation 10.5 hours (sic), laundry 1.5 hours, housekeeping 1.5 hours, shopping 1.5 hours and nighttime toileting 0.7 hours. I strongly recommend that these hours be authorized.

Exhibit 7 at 6.

10. MassHealth policy mandates that any members who qualify for nighttime assistance receive a total of 14 hours for the hours of midnight to 6:00 AM regardless of their needs. Testimony.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.³
- (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.

130 CMR 422.403 (C). Members who wish to renew their PCA services must comply with the following process:

To ensure the continuation of PCA services, PCM agencies must request prior

³ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

authorization from the MassHealth agency at least 21 calendar days before the expiration date of the current prior authorization period. The PCM agency must include in its prior authorization request the documentation described in 130 CMR 422.416(A). The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior authorization request at least 21 calendar days prior to the expiration of the current prior authorization period. If the MassHealth agency does not receive the new prior authorization request at least 21 calendar days before the expiration date, the MassHealth agency may stop payment for PCA services after the expiration date.

130 CMR 422.416(C).

It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...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.

...Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

130 CMR 450.204(A)-(B), (D).

As part of the PCA program, MassHealth does not cover certain activities, including, but not limited to "medical services available from other MassHealth providers...assistance provided in the form

of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members.” 130 CMR 422.412(B), (C) and (F).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” 130 CMR 610.085(A). The purpose of a fair hearing before the Board of Hearings is to allow “dissatisfied applicants, members, or nursing facility residents to have administrative review of certain *actions or inactions on the part of the MassHealth agency* and of determinations by a MassHealth managed care contractor.” 130 CMR 610.001(A)(1) (Emphasis added). To the extent that an appellant argues that the MassHealth regulations are unfair, a fair hearing offers no mechanism for a remedy, and the appellant should seek relief in the courts. See 130 CMR 610.082(C) (“If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency...[and] cannot rule on the legality of such law or regulation and [such a challenge] must be subject to judicial review in accordance with 130 CMR 610.092”).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for assistance with bathing, nail care, shaving, lotion application, meal preparation, shopping, and medication assistance, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant’s approved hours to include the following:

- **Bathing/Quick Washing:** total of 20 minutes per day, 7 days per week for all bathing;
- **Nail Care:** 5 minutes per week;
- **Shaving:** 5 minutes, two days per week;
- **Lotion application:** 5 minutes per week;
- **Meal Preparation:** 60 minutes per day, seven days per week;
- **Shopping:** 90 minutes per week;
- **Medication Assistance:** 10 minutes per week.

Thus, remaining at issue in this case is whether the appellant met his burden of proof in establishing medical necessity for more approved PCA time than MassHealth approved for assistance with dressing/undressing, nighttime toileting, laundry, and housekeeping.

For each of those tasks, I find that the letter from the appellant’s physician provides next to no probative or informative value. The physician’s conclusory statements that the appellant requires a specific amount of time for each task, without explanation as to why or what medical conditions contribute to the appellant’s needs lacks persuasiveness. Therefore, I give it very little, if any, evidentiary weight in my analysis.

Dressing/Undressing

The appellant argues that he is entitled to 10 minutes per day for dressing and 8 minutes per day for undressing, while MassHealth contends that 7 minutes is sufficient for his dressing needs and 5 minutes for his undressing. Much was made at the hearing about the location of the appellant's clothing and whether it could be organizationally optimized. I find this argument unconvincing and irrelevant. The appellant can dress his upper body and sometimes needs help with his pants, socks and shoes. Further, I do not believe or credit that it takes multiple minutes to choose the appellant's clothes for him. There is no compelling evidence in the record that the PCA spends more than 7 minutes of hand on assistance picking out the appellant's clothes, helping him pull up his pants, and putting on his socks and shoes, nor that it takes more than 5 minutes to assist with taking those items off and putting them away. For those reasons, I find that the appellant has not demonstrated, by a preponderance of the evidence, that it is medically necessary for him to receive more time for assistance with dressing and undressing than MassHealth has approved. The appeal with respect to those tasks is denied.

Nighttime Toileting

The appellant asserts that he requires assistance with toileting from the hours of midnight to 6:00 AM due to increased incontinence that can lead to accidents. MassHealth argues that the appellant's lack of request for this assistance during the day/evening hours indicates that he possesses the functional ability to complete this task on his own. MassHealth also contends that the appellant's reported needs could be met through less expensive means. The appellant reports that he largely has accidents when his commode bottles are full, and that those accidents typically take place prior to midnight. For those two reasons alone, the appellant's request should be denied. Adding more commode bottles could be a less expensive option for MassHealth to cover than PCA services, as could the use of adult diapers. The appellant's assertion that he prefers not to use adult diapers is not a sufficient medical reason as to why they are not a feasible option. Further, the fact that these accidents typically take place prior to midnight means that a request for day/evening hours should have been requested, not a request for nighttime hours. MassHealth argues that any request for nighttime assistance with toileting, based on the testimony, is anticipatory, which cannot be covered by the PCA program. The appellant, bearing the burden of proof, provided no evidence to contradict this assertion. For those reasons, I find that the appellant has not demonstrated, by a preponderance of the evidence, his request for assistance with nighttime toileting meets the legal definition of medical necessity. The appeal with respect to that task is denied.

Laundry

The appellant argues that he requires 90 minutes per week of hands-on assistance with laundry to complete 4 loads with his in-unit washer and dryer. MassHealth contends that this can be accomplished in 60 minutes. The appellant argues that "guidelines give 15 to 30 minutes per load

in the home,” but did not provide any evidence of the guidelines to which he refers. I also do not credit that the PCA spends 20 minutes of hands-on assistance for each load, as the testimony reported that two of these four loads are for linens, which do not need as much time to sort, load, and fold as do clothes. The appellant has provided no evidence of any other extenuating circumstances that require him to do more laundry than typical beyond the occasional incontinence, which was taken into consideration with MassHealth’s offer of 60 minutes. For those reasons, I find that the appellant has not demonstrated, by a preponderance of the evidence, that it is medically necessary for him to receive 90 minutes for assistance with laundry. However, I do find that he has demonstrated medical necessity for the 60 minutes offered by MassHealth at the hearing, and I order MassHealth to impose that time. The appeal with respect to those tasks is approved in part and denied in part.

Housekeeping

The appellant argues that he requires 90 minutes per week of assistance with housekeeping. MassHealth contends that this can be accomplished in 60 minutes, as it is the amount typically approved for someone with his needs. The appellant’s PCA reports that she conducts daily sweeping, vacuuming, dusting, taking out the trash, and cleaning the appellant’s kitchen, bathroom, and bedroom. While it is certainly credible that the kitchen is cleaned up from cooking every day, that cleanup time is taken into consideration for assistance with meal preparation. It strains credulity to suggest that the appellant requires his apartment to be thoroughly cleaned every single day. The appellant has provided no evidence of any other extenuating circumstances that require his home to require more time for cleaning than MassHealth has offered. For those reasons, I find that the appellant has not demonstrated, by a preponderance of the evidence, that it is medically necessary for him to receive 90 minutes for assistance with housekeeping. However, I do find that he has demonstrated medical necessity for the 60 minutes offered by MassHealth at the hearing, and I order MassHealth to impose that time. The appeal with respect to those tasks is approved in part and denied in part.

For the foregoing reasons, the appeal is dismissed with respect to bathing, nail care, shaving, lotion application, meal preparation, shopping, and medication assistance. With respect to laundry and housekeeping, the appeal is hereby approved in part and denied in part. With respect to dressing/undressing and nighttime toileting, the appeal is hereby denied.

Order for MassHealth

Modify the appellant’s approved PCA hours to include the following assistance, retroactive to June 5, 2024:

- **Bathing/Quick Washing:** total of 20 minutes per day, 7 days per week for all bathing;
- **Nail Care:** 5 minutes per week;
- **Shaving:** 5 minutes, two days per week;

- **Lotion application:** 5 minutes per week;
- **Meal Preparation:** 60 minutes per day, seven days per week;
- **Shopping:** 90 minutes per week;
- **Medication Assistance:** 10 minutes per week.
- **Laundry:** 60 minutes per week
- **Housekeeping:** 60 minutes per week

Remove Aid Pending.

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.

Mariah Burns
Hearing Officer
Board of Hearings

CC: [REDACTED]

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