

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	APPROVED	<b>Appeal Number:</b>	2409594
<b>Decision Date:</b>	09/12/2024	<b>Hearing Date:</b>	08/02/2024
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, RN



*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	<b>Issue:</b>	Prior Authorization - PCA
<b>Decision Date:</b>	09/12/2024	<b>Hearing Date:</b>	08/02/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated there under.

### Jurisdiction

Through notice dated May 22, 2024, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed for this appeal in a timely manner on June 18, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

### Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

## Summary of Evidence

MassHealth was represented by a registered nurse and clinical appeals reviewer who testified that a written Prior Authorization (PA) request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on May 14, 2024, by the Boston Center for Independent Living on behalf of Appellant seeking 21 hours per week for one year.

The MassHealth representative testified that according to documentation submitted with the request, Appellant is an adult male in his early [REDACTED] who has a primary diagnosis of severe PTSD, OCD, and anxiety.

MassHealth modified the request on May 22, 2024, to 16.25 hours per week for one year with effective dates of service: May 30, 2024, to May 29, 2025. The MassHealth representative testified that 4 modifications were made. Requested time was reduced for assistance with bathing; grooming/haircare; grooming/shaving; and meal preparation. In support of its modifications, MassHealth cited regulations 130 CMR 422.410(A) (3) and (B)(1): Activities of Daily Living (ADLs) and (IADLs); and 130 CMR 450.204(A)(1)(2) and (B): Medical Necessity.

After exchanging testimony, Appellant stated he did not disagree with the modification made to time to assist with grooming/shaving. By the end of the hearing, time to assist with bathing; grooming/haircare; and meal preparation remained in dispute.

### **Bathing:**

Appellant requested 30 minutes, once per day, seven days per week to assist with bathing. MassHealth approved 25 minutes, once per day, seven days per week on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs.

The MassHealth representative cited the comments provided by the nurse evaluator who wrote that time to assist with bathing included "assists with leading into the [bathroom]" (Exhibit B, page 15). The MassHealth representative testified that "leading" is not a covered PCA service when the evaluation also indicates that Appellant is independent with ambulation (Id., page 11).

Appellant testified that he doesn't have a physical disability, but a psychological disability that affects his ability to perform certain physical tasks. With regard to bathing Appellant testified that he is unable to physically touch himself while bathing and has problems being touched in certain areas which requires a slow approach to performing the task. Appellant believes that the 30 minutes requested is probably less time than bathing actually takes. Appellant also confirmed that the PCA is physically helping him bathe for the full 30 minutes.

**Grooming/Haircare:**

Appellant requested 10 minutes, once per day, seven days per week to assist with haircare. Masshealth approved 3 minutes, once per day, seven days per week on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs. The MassHealth representative again noted the evaluator's comments stating that requested time includes time to help with initiating the task, which is not a covered PCA service. MassHealth also noted that Appellant was approved for 2 minutes per day last year to comb his hair.

Appellant testified that he has very thick curly hair and now has dermatitis of the scalp. The dermatitis leads to frequent buildup of oil and flakey skin on his scalp. Appellant testified that in addition to shampooing the hair, the PCA applies moisturizers and massages oil into the scalp. Again, because of his reluctance and concerns with being touched, the PCA proceeds slowly.

**Meal Preparation:**

Appellant requested 90 minutes, once per day, seven days per week to assist with meal preparation. Masshealth approved 60 minutes, once per day, seven days per week on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs and there was no reason provided in the comments to explain why Appellant could not participate in meal preparation.

Appellant testified that because of his conditions, he cannot cut or use knives, he cannot clean or wash food or use an oven. Appellant testified that he can only eat the food. Appellant explained that he wants to be able to eat balanced meals including produce and meats which he is unable to prepare for himself. Appellant further testified that last year he ate less and often skipped meals because of his inability to prepare food. Appellant also relied on his mother to get takeout food delivered to him.

In response, the MassHealth representative agreed to increase the time by 5 minutes per day.

**Findings of Fact**

Based on a preponderance of the evidence, this record supports the following findings:

1. A written Prior Authorization (PA) request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on May 14, 2024, by the Boston Center for Independent Living on behalf of Appellant seeking 21 hours per week for one year.
2. Documentation submitted with the request indicates that Appellant is an adult male in his early [REDACTED] who has a primary diagnosis of severe PTSD, OCD, and anxiety.

3. MassHealth modified the request on May 22, 2024, to 16.25 hours per week for one year with effective dates of service: May 30, 2024, to May 29, 2025.
4. MassHealth made modifications to four areas of requested assistance.
5. Requested time was reduced for assistance with bathing; grooming/haircare; grooming/shaving; and meal preparation.
6. Appellant does not disagree with the modification made to time to assist with grooming/shaving.
7. By the end of the hearing, time to assist with bathing; grooming/haircare; and meal preparation remained in dispute.
8. Appellant requested 30 minutes, once per day, seven days per week to assist with bathing.
9. Masshealth approved 25 minutes, once per day, seven days per week to assist with bathing on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs.
10. MassHealth relied on comments provided by the nurse evaluator who wrote that the time to assist with bathing included "assists with leading into the [bathroom]" (Exhibit B, page 15).
11. According to MassHealth "leading" is not a covered PCA service when the evaluation also indicates that Appellant is independent with ambulation (Id., page 11).
12. Appellant is unable to physically touch himself while bathing and has problems being touched in certain areas which requires a slow approach to performing the task.
13. The PCA is physically helping Appellant bathe for at least 30 minutes per day.
14. Appellant requested 10 minutes, once per day, seven days per week to assist with haircare.
15. Masshealth approved 3 minutes, once per day, seven days per week on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs.
16. Last year, Appellant was approved for 2 minutes per day to assist with combing his hair.
17. MassHealth noted the evaluator's comments stating that requested time includes time to help with "initiating" the task, and asserts that initiating is not a covered PCA service.

18. Appellant has very tight curly hair and now has dermatitis of the scalp.
19. The dermatitis leads to frequent buildup of oil and flakey skin on Appellant's scalp.
20. In addition to shampooing the hair, the PCA applies moisturizers and massages oil into the scalp.
21. Because of Appellant's reluctance and concerns with being touched, the PCA has to proceed slowly with his haircare.
22. Appellant requested 90 minutes, once per day, seven days per week to assist with meal preparation.
23. Masshealth approved 60 minutes, once per day, seven days per week on the grounds that the time requested is longer than ordinarily required for someone with Appellant's physical needs and there was no reason provided in the evaluation comments to explain why Appellant could not participate in meal preparation.
24. Because of Appellant's psychological conditions, he cannot cut or use knives, clean or wash food or use an oven.
25. Appellant wants to be able to eat balanced meals including produce and meats which he is unable to prepare for himself.
26. Last year Appellant ate less, often skipped meals because of his inability to prepare food and relied on his mother to get takeout food delivered to him.
27. At hearing, MassHealth agreed to increase the time to assist with meal preparation by 5 minutes per day.

## **Analysis and Conclusions of Law**

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). Appellant has met his burden.

**Bathing: Modification reversed**

Appellant request 30 minutes per incident and Masshealth approved 25 minutes noting that the comments section noted that the task included time to lead Appellant to the bathroom, yet Appellant is reported to be independent with ambulation. MassHealth's action is based on a lack of understanding of Appellant's limitations and what constitutes "leading". Appellant's limitations are psychological, not physical; therefore, the fact that he can physically walk independently is not particularly relevant if he can't psychologically bring himself to the place where the task is being performed. Nothing in the comments indicates that the "leading" is not physical. Physical hands-on assistance needed to perform an ADL is covered under the PCA program (130 CMR 422.410(A)(3)).

Additionally, MassHealth did not dispute the nurse evaluator's assessment that Appellant requires "maximum" assistance with bathing (Exhibit B, page 14). According to the "Time-For-Tasks Guidelines for the MassHealth PCA Program" (11-16-11 page 5 of 14) time for assistance with bathing for a person requiring maximum assistance is 45 minutes, meaning the requested 30 minutes fits well within the Guidelines.

**Grooming/Haircare: Modification reversed**

Here again MassHealth assumed that assistance with "initiating" is non-physical without identifying any basis to support the assumption. Even if the "initiating" were non-physical, it does not support reducing the request by a full 70% of the requested time.

MassHealth did not dispute the nurse evaluator's assessment that Appellant requires "total dependence" level of assistance with haircare (Exhibit B, page 16). Appellant was also evaluated as needing total dependence assistance with nail care once per week and maximum assist with shaving four times per week. Appellant is independent with oral care and requested no time in this area. MassHealth approved the nail care at 10 minutes once per week, shaving at 5 minutes four times per week. Appellant's requested 10 minutes, once per day, three days per week to assist with haircare combined with the other grooming tasks allowed by MassHealth, falls well below the Guideline's 20-25 minutes per day, of total grooming assistance even taking into consideration no time for oral care ("Time-For-Tasks Guidelines for the MassHealth PCA Program" (11-16-11 page 5 of 14)).

Accordingly, Appellant's requested 10 minutes per day for haircare assistance is both reasonable given the nature and degree of his limitations and consistent with the PCA Guidelines.

**Meal Preparation: Modification reversed**

MassHealth modified time to assist with meal preparation on the grounds that no reason was given in the evaluation as to why Appellant could not participate. Appellant supplied these reasons in detail during the hearing and they were consistent with his diagnosis and the nurse evaluator's determination that Appellant requires "total dependence" level of assistance with preparing all three meals per day. What wasn't supported during the hearing was MassHealth's increase of only 5 minutes per day. MassHealth did not dispute Appellant's testimony on this matter. That testimony supports "total dependence" level of need which does not translate to a mere 5 minute daily increase to prepare three meals.

Additionally, the requested 90 minutes falls within the amount cited in MassHealth's "Time-For-Tasks Guidelines for the MassHealth PCA Program" of 95 minutes (11-16-11 page 12 of 14).

For the foregoing reason, the appeal is APPROVED.

**Order for MassHealth**

Restore time for assistance with bathing; grooming/haircare and meal preparation as requested effective as of the beginning of the authorization period.



## 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 the Enrollment Center gives you any problems with implementing 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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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

CC:

[REDACTED]

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