

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part; Dismissed in Part	<b>Appeal Number:</b>	2409737
<b>Decision Date:</b>	9/17/2024	<b>Hearing Date:</b>	08/05/2024
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Kelly Rayen, RN for Optum



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in Part; Denied in Part; Dismissed in Part	<b>Issue:</b>	Prior Authorization; Personal Care Attendant Services
<b>Decision Date:</b>	9/17/2024	<b>Hearing Date:</b>	08/05/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 February 23, 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 on June 17, 2024, which was deemed timely by the Board of Hearings. *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 its discretion 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. MassHealth was represented by a clinical appeals reviewer and nurse for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by video conference. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffered from a serious accident in November of 2023 that caused a spinal cord injury to his C7 vertebrae, leaving him with tetraplegia, atrial fibrillation, and several fractures. He remains bed and chair bound, and often experiences postural hypotension when in an upright position causing him to faint. He has no feeling from the nipples down, and has limited mobility and function of his shoulders, arms, and hands.<sup>1</sup> On February 22, 2024, MassHealth received a prior authorization request on the appellant's behalf for initial implementation of services, requesting 96 hours of PCA assistance per week. On February 23, 2024, MassHealth modified the request and approved the appellant 82 hours of weekly assistance with dates of service from February 23, 2024, to February 22, 2025.

Modifications were made in the areas of passive range of motion (PROM), shaving, lotion application, bowel care, assistance with neti pot, shopping, and some requested medical transportation. After hearing, the parties agreed to the following modifications:

- **PROM:** approved for 10 minutes, 2 times per day, 7 days per week per extremity;
- **Shaving:** parties agree to 8 minutes per day, 7 days per week;
- **Toileting Transfers:** approved for 10 minutes, 4 times per day, 7 days per week;
- **Neti Pot Assistance:** approved for 5 minutes per day, 7 days per week;
- **Shopping:** approved for 30 minutes per week
- **Medical Transportation:** Parties agree to 110 minutes, 2 times per week from June 1, 2024, to August 15, 2024, to [REDACTED] and 80 minutes, 2 times per week from August 16, 2024, to February 22, 2025, to [REDACTED] (all other approved assistance remains in place).

Thus, after hearing, disputes remained over assistance with lotion application and bowel care.

### Lotion Application

The appellant requested 10 minutes per day, 7 days per week for assistance with applying lotion and checking his body for bed sores. The MassHealth representative reported that this was modified from 10 minutes per instance to 7, because the requested time for applying lotion is longer than typically required for someone with the appellant's needs, and checking for bed sores

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<sup>1</sup> This is not an extensive list of the appellant's conditions or symptoms, which can be found at Exhibit 5 at 11-13 and are hereby incorporated by reference.

is a skilled service not covered by the PCA program. The appellant testified that applying lotion and barrier cream is a necessary and difficult task for his PCA, as he has no movement in his legs and very flaky skin. The PCA starts at the appellant's feet and works their way up, having to turn the appellant on his side to be able to properly apply lotion everywhere. The appellant testified that a wedge is used to keep him in position during this process. He is checked for sores on his buttocks due to him being largely bed bound. The MassHealth representative offered to increase the approved amount per day from 7 minutes to 8 minutes. The appellant rejected that offer and asked that the matter be taken under advisement.

## **Bowel Care**

The appellant requested 90 minutes per day for assistance with bowel care. MassHealth approved the appellant for 40 minutes per day because the requested time is longer than typically required for someone with the appellant's needs. The appellant testified that he undergoes a lengthy daily regimen to assist him with having bowel movements. His PCA places him into a lift which raises him onto a chair. The PCA straps him into that chair which rests over the toilet. The PCA inserts a suppository into his rectum and digitally stimulates the appellant for 2-3 minutes. That digital stimulation is repeated approximately 5 times during the process. The PCA then takes approximately 3 minutes to apply a cuff to take the appellant's blood pressure at least 3-4 times while he is sitting over the toilet. The appellant is frequently repositioned after the blood pressure is taken to avoid fainting. The appellant testified that the process, from start to finish, takes roughly 90 minutes. He reported that, although the PCA does not provide hands-on assistance during the entire routine, the appellant requires significant assistance and cannot be left alone due to his fainting risk. The MassHealth representative offered to increase the approved amount per day from 40 minutes to 60 minutes. The appellant rejected that offer and asked that the matter be taken under advisement.

## **Findings of Fact**

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

1. The appellant is an adult MassHealth member under the age of 65 who, after a serious accident causing a C7 spinal cord injury, suffers from tetraplegia, atrial fibrillation, several fractures, and a host of additional medical conditions. He remains bed and chair bound, and often experiences postural hypotension when in an upright position causing him to faint. He has no feeling from the nipples down, and has limited mobility and function of his shoulders, arms, and hands. Exhibit 4, Exhibit 5 at 12-13. The appellant did not receive PCA services prior to the notice at issue. Testimony.
2. On February 22, 2024, MassHealth received a prior authorization request on the appellant's behalf for initial implementation of services requesting 96 hours of PCA services per week.

Testimony, Exhibit 5 at 37. On February 23, 2024, MassHealth modified the request and approved the appellant for 82 hours of weekly assistance with dates of service from February 23, 2024, to February 22, 2025. Testimony, Exhibit 1, Exhibit 5 at 37.

3. The specific modifications were made in the areas of passive range of motion (PROM), shaving, lotion application, bowel care, assistance with neti pot, shopping, and some requested medical transportation. Exhibit 1.

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

- **PROM:** approved for 10 minutes, 2 times per day, 7 days per week per extremity;
- **Shaving:** parties agree to 8 minutes per day, 7 days per week;
- **Toileting Transfers:** approved for 10 minutes, 4 times per day, 7 days per week;
- **Neti Pot Assistance:** approved for 5 minutes per day, 7 days per week;
- **Shopping:** approved for 30 minutes per week
- **Medical Transportation:** Parties agree to 110 minutes, 2 times per week from June 1, 2024, to August 15, 2024, to [REDACTED] and 80 minutes, 2 times per week from August 16, 2024, to February 22, 2025, to [REDACTED] (all other approved assistance remains in place).

Testimony.

5. The appellant requested 10 minutes per day, 7 days per week for assistance with applying lotion and barrier cream and for skin checks for bed sores. MassHealth modified this request to 7 minutes per instance, and approved nighttime hours. At the hearing, MassHealth offered to increase that amount to 8 minutes per instance. Exhibit 5 at 22, Testimony.

6. The appellant requested 90 minutes per day, 7 days per week for assistance with bowel care. MassHealth modified this request to 40 minutes per instance. At the hearing, MassHealth offered to increase that amount to 60 minutes per instance. Exhibit 5 at 26, Testimony.

9. The modifications were all made because MassHealth determined that the time requested exceeds the amount of assistance typically required for someone with the appellant's needs. Exhibit 1, Testimony.

10. The appellant's PCA applies lotion and barrier cream to his entire body daily because he is largely bed bound and has flaky skin. The PCA starts at the appellant's feet and works their way up, having to turn the appellant on his side and use a wedge to be able to properly apply the creams everywhere. Testimony.

11. The appellant undergoes a rigorous routine each day to assist him with having a bowel movement. The appellant's PCA places him into a lift which raises him onto a chair. The PCA straps him into a chair that then rests over the toilet. The PCA inserts a suppository into his

rectum and digitally stimulates the appellant for 2-3 minutes. That digital stimulation is repeated approximately 5 times during the process. The PCA then takes approximately 3 minutes to apply a cuff to take the appellant's blood pressure at least 3-4 times while he is sitting over the toilet. The appellant is frequently repositioned after the blood pressure is taken to avoid fainting. The process, from start to finish, takes roughly 90 minutes, but the PCA does not provide hands-on assistance for the entirety of the routine. 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.<sup>2</sup>
- (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). 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

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<sup>2</sup> 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).

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.

130 CMR 450.204(A)-(B).

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).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for PROM, shaving, toileting transfers, neti pot assistance, shopping, and medical transportation, 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:

- **PROM:** 10 minutes, 2 times per day, 7 days per week per extremity;
- **Shaving:** 8 minutes per day, 7 days per week;
- **Toileting Transfers:** 10 minutes, 4 times per day, 7 days per week;
- **Neti Pot Assistance:** 5 minutes per day, 7 days per week;
- **Shopping:** 30 minutes per week
- **Medical Transportation:** 110 minutes, 2 times per week from June 1, 2024, to August 15, 2024, to [REDACTED] and 80 minutes, 2 times per week from August 16, 2024, to February 22, 2025, to [REDACTED] (all other approved medical transportation assistance remains in place).

Thus, at issue in this case is whether the appellant met his burden of proof in establishing medical necessity for more PCA assistance than MassHealth approved for assistance with lotion application and bowel care.

### **Lotion Application and Skin Checks**

Lotion application falls under the category of grooming, the definition for which can be found at 130 CMR 422.410(A)(3) and involves “physically assisting a member with bathing, personal hygiene, or grooming.” In this case, the appellant testified that his PCA must reposition him during the lotion application process due to his inability to move his legs. He also reported that he must be checked for sores due to being largely bed bound. MassHealth argued that skin checks

for bed sores are a skilled task not covered by the PCA program. While I do not necessarily credit that simply checking someone for sores requires a skilled provider, I also do not believe that checking for sores takes any additional time if the appellant has lotion applied on his whole body. Further, although the appellant's lotion application clearly takes longer than the average individual, the appellant did not provide evidence that he requires 10 minutes per instance for this task. I impose MassHealth's offer of 8 minutes per day, 7 days per week for assistance with lotion application. The appeal with respect to lotion assistance is therefore approved in part and denied in part.

## **Bowel Care**

In this case, the appellant testified that his bowel care regimen is an arduous task that takes roughly 90 minutes from start to finish. While his credible testimony supports this, it is also important to note MassHealth's argument that the PCA program does not cover time for supervision. The testimony made clear that the appellant's PCA, while providing a significant amount of hands-on assistance with getting the appellant onto his chair, inserting his suppository and conducting multiple digital stimulations, frequently checking his blood pressure, and repositioning him, if necessary, does not provide *constant* hands-on assistance for the entire 90-minute routine. However, I am not satisfied that MassHealth's offer of 60 minutes per day adequately addresses the appellant's specific and unique needs as described at the hearing. Thus, based on the testimony, I order that the appellant is to be provided with 75 minutes per day, 7 days per week for assistance with bowel care. The appeal with respect to bowel care is therefore approved in part and denied in part.

For the foregoing reasons, the appeal is dismissed with respect to PROM, shaving, toileting transfers, neti pot assistance, shopping, and medical transportation. With respect to lotion application and bowel care, the appeal is hereby approved in part and denied in part.

## **Order for MassHealth**

Modify the appellant's approved PCA hours to include the following assistance, retroactive to February 22, 2024 (except for medical transportation as agreed to at the hearing and described herein):

- **PROM:** 10 minutes, 2 times per day, 7 days per week per extremity;
- **Shaving:** 8 minutes per day, 7 days per week;
- **Lotion Application:** 7 minutes per day, 7 days per week;
- **Toileting Transfers:** 10 minutes, 4 times per day, 7 days per week;
- **Bowel Care:** 75 minutes per day, 7 days per week;
- **Neti Pot Assistance:** 5 minutes per day, 7 days per week;
- **Shopping:** 30 minutes per week;
- **Medical Transportation:** 110 minutes, 2 times per week from June 1, 2024, to August 15,



2024, to [REDACTED] and 80 minutes, 2 times per week from August 16, 2024, to February 22, 2025, to [REDACTED] (all other approved medical transportation assistance remains in place).

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Mariah Burns  
Hearing Officer  
Board of Hearings

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