

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied-in-part; Dismissed-in-part	<b>Appeal Number:</b>	2410299
<b>Decision Date:</b>	09/26/2024	<b>Hearing Date:</b>	08/01/2024
<b>Hearing Officer:</b>	Casey Groff		

**Appearance for Appellant:**

Pro se

**Appearance for MassHealth:**

Robin Brown, OTR/L, Clinical Reviewer, 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

<b>Appeal Decision:</b>	Denied-in-part; Dismissed-in-part	<b>Issue:</b>	Personal Care Attendant Services
<b>Decision Date:</b>	09/26/2024	<b>Hearing Date:</b>	08/01/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OTR/L	<b>Appellant's Rep.:</b>	██████
<b>Hearing Location:</b>	Board of Hearings, 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 6/7/24, MassHealth informed Appellant that it modified her prior authorization (PA) request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 2. On 7/2/24, Appellant filed a timely request to appeal the notice. See 130 CMR 610.015(B); Exhibit 2. Modification of a PA request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

### Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct in modifying Appellant's request for PCA services.

### Summary of Evidence

At hearing, MassHealth was represented by a registered & licensed occupational therapist (OT) and clinical appeals reviewer. Appellant appeared at the hearing, acting pro se, and testified through a Spanish interpreter. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth OT representative presented the following information: Appellant is an adult MassHealth member under the age of 65 and has a primary diagnosis of lower back pain. See Exh. 4, pp. 2, 7. On 5/17/24, a registered nurse (RN) from AgeSpan, Inc., Appellant's personal care management (PCM) agency, performed an in-home re-evaluation of Appellant to determine her ongoing need for personal care attendant (PCA) services. See Exh. 4, p. 6. Pursuant to its evaluation, the PCM agency, acting on behalf of Appellant, sent MassHealth a request for 38 hours and 30 minutes of PCA services per-week for dates of service beginning 8/2/2024 and ending 8/1/2025. See Exhs. 2 and 4.

Through a notice dated 6/7/24, MassHealth informed Appellant that it modified her PA request by authorizing a total of 25 hours and 15 minutes per-week of PCA services for the requested period. See Exh. 2. Specifically, MassHealth modified the times requested for the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): (1) transfers, (2) dressing, (3) undressing, (4) bladder care, (5) laundry, (6) PCA paperwork, and (7) MD transport. Id. At hearing, the parties addressed each modification as follows:

### ***Transfers***

Appellant, through her PCM agency, requested 3 minutes 6 times daily (3x6x7) for assistance with transfers. See Exh. 4. at 11. According to the PA request, Appellant requires minimum assistance transferring "[out of bed] to low furniture and back in [due to] limited [range of motion], pain of back, knees, shoulders [related to] arthritis." Id. at 12. MassHealth modified the time for transfers to 2 minutes, 6 times daily (2x6x7) because the time per-episode was longer than ordinarily required for someone with Appellant's physical needs.

The MassHealth representative testified that "minimum assistance" means that the PCA is doing no more than 25% of the work to assist the consumer in completing the task. A "transfer" under the PCA program is the time it takes to physically assist the consumer to move between surfaces, such as to/from a bed, chair, wheelchair or seated position, and excludes waiting time. The MassHealth OT representative distinguished this task from mobility, which involves movement between rooms or locations, including up and down stairs. According to the PA documentation, the PCM agency found that Appellant was independent with mobility, as she is capable of walking with the use of a cane. The request, therefore, is solely to assist Appellant in getting her feet on the floor from a lying or sitting position from a low surface and into a standing position. The representative testified that two minutes should be more than sufficient for the PCA to provide minimal physical assistance with this task.

Appellant testified that it takes the PCA more than two minutes to perform transfers and that they have to take their time due to pain in her back. This is problematic if she has to go to the bathroom and cannot get out of bed in time, which occurs frequently.

### ***Dressing / Undressing***

Appellant's PCM agency requested 12 minutes once per-day (12x1x7) for dressing and 10 minutes per-day (10x1x7) for undressing. See Exh. 4, p. 18. The PA request indicates that Appellant requires moderate assistance with upper and lower body dressing/undressing due to limited range of motion, a right frozen shoulder, history of multiple toe fractures (left foot); poor activity tolerance, and shortness of breath with minimal exertion, which are caused by her low back pain asthma, and arthritis. Id.

MassHealth modified the requests to 10 minutes daily for dressing (10x1x7) and 7 minutes daily for undressing (7x1x7) because the times requested were longer than ordinarily required for someone with the same physical needs as Appellant. The MassHealth representative testified that because Appellant requires "moderate" assistance with dressing-related activities, she can do 50% of the work but requires 50% assistance from the PCA to complete the task. Based on the documentation regarding Appellant's physical needs, MassHealth applied program guidelines which provide averages of the time it takes to assist someone, like Appellant, who requires moderate assistance with dressing/undressing.

Appellant testified that her PCA helps her with changing clothes. She believed that each episode of dressing/undressing takes closer to 13 minutes. Appellant testified that she has difficulty getting dressed herself due to chronic pain and limited range of motion. She has difficulty moving her leg as it often becomes swollen, and the PCA will help lift her leg so she can put on and remove clothing items.

### ***Bladder care***

Under the ADL category of toileting, Appellant requested "moderate assistance" with bladder care at 6 minutes, 6 times daily (6x6x7). See id. at 20. The PA request indicates that Appellant requires assistance to and from the bathroom; on and off the toilet; assistance with hygiene, wipes, clothing management, and changing of absorbent product. Id. As a basis for the request, the PCM agency cited Appellant's limited range of motion, right frozen shoulder, history of multiple toe fractures (left foot); poor activity tolerance, and shortness of breath with minimal exertion, which are caused by her low back pain asthma, and arthritis. Id.

MassHealth modified the request to 4 minutes, 6 times daily (4x6x7) because the time requested was longer than ordinarily required for someone with Appellant's physical needs. The MassHealth representative testified that, as a moderate assist, Appellant requires 50% physical assistance to complete each bladder care episode. MassHealth again applied program

guidelines which include average assistance times needed for someone with Appellant's physical limitations and capabilities. MassHealth did not modify the requested frequency of episodes. In addition, MassHealth approved, as requested, 2 nighttime bladder care episodes at 6 minutes per-night. There was no modification to the nighttime episodes as MassHealth included the additional transfer time that would be needed to help Appellant get out of bed and to the bathroom.

Appellant objected to the modification and testified that her PCAs assist her to the bathroom; they help her clean herself; and assist her getting on and off the toilet.

### ***Medical Appointment Transport***

Appellant requested PCA transportation to attend a total of 8 medical appointments per-year, which, broken down, amounted to 6 minutes per-week (6x1). See id. at 32. MassHealth denied the request and approved no time for this IADL. The MassHealth representative testified that MassHealth members may submit a "PT-1" to obtain MassHealth transportation services to get to and from medical appointments. Unless the consumer has a need for PCA assistance beyond transportation alone, e.g., mobility assistance while in the medical office, then it would be deemed a non-covered PCA service due to the availability of other MassHealth providers. The MassHealth representative testified that documentation showed that Appellant is able to walk independently with a cane. Furthermore, the documentation showed that the assistance Appellant requires with transfers is primarily for help getting up and down from low furniture, which would not be an issue in a medical office. If Appellant is unable to rely on family or friends to drive her to appointments, or is unable to use public transportation, she can submit a PT-1 and request MassHealth transportation services.

In response, Appellant objected to the modification. She testified that she does not use MassHealth PT-1 services, nor does she use public transportation. She frequently relies on her PCA to assist with transportation to medical appointments.

### ***Laundry***

Appellant requested 60 minutes per-week (60x1x1) of PCA assistance with laundry. MassHealth modified the request to 45 minutes per-week (45x1x1). After the parties discussed this issue at hearing, Appellant asserted that she did not object to the modification, and thereby accepted 45x1 for laundry.

### ***PCA paperwork***

Appellant sought 15 minutes per week (15x1x1) for assistance completing PCA paperwork. MassHealth denied the request on the basis that Appellant was capable of completing this IADL

task independently. After a discussion between the parties, Appellant stated that she did not object to the modification, thereby accepting 0x0 for PCA paperwork.

## **Findings of Fact**

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

1. Appellant is an adult MassHealth member and is enrolled as a consumer in MassHealth's PCA program.
2. Appellant is under the age of 65 and has a primary diagnosis of lower back pain and arthritis, which causes limited range of motion and pain in her back, knees, and shoulders.
3. On 5/17/24, AgeSpan, Inc., Appellant's PCM agency, performed an in-home re-evaluation to determine Appellant's ongoing need for PCA services.
4. Pursuant to its evaluation, the PCM agency, acting on behalf of Appellant, sent MassHealth a PA request seeking 38 hours and 30 minutes of PCA services per-week for dates of service beginning 8/2/2024 and ending 8/1/2025.
5. Through a notice dated 6/7/24, MassHealth informed Appellant that it modified the PCA PA request by approving 25 hours and 15 minutes per-week based on modifications to the following requested ADLs and IADLs: (1) transfers, (2) dressing, (3) undressing, (4) bladder care, (5) laundry, (6) PCA paperwork, and (7) MD transport.

### ***Transfers***

6. Appellant, through her PCM agency, requested 3x6x7 for minimum assistance with transferring out of bed to low furniture and back in due to her limited range of motion and pain in her back, knees, and shoulders.
7. MassHealth modified the request and approved 2x6x7.
8. Appellant is independent with mobility and walking with the use of her cane.

### ***Dressing / Undressing***

9. Appellant's PCM agency requested 12 minutes once per-day (12x1x7) and 10 minutes per-day (10x1x7) for moderate assistance with dressing and undressing, respectively.

10. Appellant requires moderate assistance with upper and lower body dressing due to limited range of motion, a right frozen shoulder, history of multiple toe fractures (left foot); poor activity tolerance, and shortness of breath with minimal exertion, which are caused by her low back pain asthma, and arthritis.
11. MassHealth modified the requests to 10 minutes daily for dressing (10x1x7) and 7 minutes daily for undressing (7x1x7).

***Bladder care***

12. Under the ADL category of toileting, Appellant requested “moderate assistance” with daytime bladder care at 6 minutes, 6 times daily (6x6x7).
13. Due to her medical conditions and physical impairments, Appellant requires assistance getting on and off the toilet, as well as assistance with hygiene, clothing management, and changing of absorbent product.
14. MassHealth modified the request for daytime bladder care to 4 minutes, 6 times daily (4x6x7).
15. In addition to the daytime bladder care episodes, Appellant requested, and MassHealth approved, 2 nighttime bladder care episodes at 6 minutes per-night.

***Medical Appointment Transport***

16. Appellant requested PCA transportation to attend a total of 8 medical appointments per-year, which, broken down on a weekly basis, amounted to 6 minutes per-week (6x1).
17. MassHealth denied Appellant’s request for PCA assistance with medical appointment transportation.
18. As a MassHealth member, Appellant may seek covered transportation through submitting a “PT-1” through MassHealth’s transportation program.
19. Appellant does not require PCA assistance with ADLs once she is at the medical appointment.

***Laundry***

20. Appellant requested 60 minutes per-week (60x1x1) of PCA assistance with laundry.

21. MassHealth modified the request to 45 minutes per-week (45x1x1).
22. Appellant accepted the modification to laundry at 45x1.

***PCA paperwork***

23. Appellant sought 15 minutes per week (15x1x1) for assistance completing PCA paperwork.
24. MassHealth denied the Appellant's request for assistance with PCA paperwork.
25. Appellant did not dispute MassHealth's modification of 0x0 for PCA paperwork.

## **Analysis and Conclusions of Law**

MassHealth covers personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:<sup>1</sup> First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." See 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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 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, or 517.007.

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<sup>1</sup> PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.



See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the prerequisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to meet her care needs.

The MassHealth PCA program covers medically necessary assistance with the following ADLs:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) dressing or undressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

See 130 CMR 422.410 (emphasis added).

In addition, MassHealth reimburses for PCA assistance with certain IADLs, which include tasks that are “instrumental to the care of the member’s health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services.” 130 CMR 422.402. MassHealth sets forth several factors it may consider in determining the time it takes a PCA to physically assist a member to complete an IADL, including the member’s individual circumstances. Id.

With respect to both ADLs and IADLs, MassHealth will approve time in accordance with the “activity time performed by a PCA in providing assistance with the [task].” See 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with their ADL/IADL. See 130 CMR 422.402. MassHealth does not pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412. Additionally, MassHealth will not cover PCA assistance that is otherwise available to the member from other MassHealth providers, such as a physician, pharmacy, or community health center services. Id.

### ***Transfers***

In the present case, MassHealth modified Appellant’s request for assistance with transfers from 3 minutes per-episode (as requested) to 2 minutes per-episode. The evidence shows that Appellant requires minimum assistance with transfers to and from low surfaces, i.e., going from a lying or seated position to a standing position. As MassHealth testified, this means Appellant requires no more than 25% assistance from the PCA to complete each transfer episode. When considering solely the time it takes the PCA to physically assist Appellant, and excluding waiting time, MassHealth’s modification to two minutes per episode was appropriate. While Appellant objected to the modification, she did not provide sufficient detail to explain why, in her case, she required assistance beyond the average of two minutes. Given Appellant’s ability to perform at least 75% of the work to complete a transfer and in the absence of evidence to suggest more time is necessary, MassHealth did not err in modifying the request to 2x6x7. This portion of the appeal is DENIED.

### ***Dressing/Undressing***

For each daily episode of dressing and undressing, Appellant requested, respectively, 12 minutes and 10 minutes of PCA assistance. MassHealth modified the requests to 10 minutes and 7 minutes, respectively. It is undisputed that Appellant has physical impairments and chronic pain that limit her ability to perform dressing-related tasks independently. Using the documentation provided, MassHealth applied the average times for individuals, like Appellant, who require moderate assistance with dressing/undressing. Because the requested amount of assistance exceeded the average time needed for someone with Appellant’s physical capabilities, MassHealth appropriately modified dressing to 10x1x7 and undressing to 7x1x7. Although Appellant objected to the modification, she did not provide any specific detail to explain why the approved time would be insufficient to meet her care needs. For these reasons, this appeal is DENIED with respect to dressing and undressing.

### ***Bladder Care***

Next, Appellant requested bladder care assistance at 6x6x7. MassHealth modified only the time per-episode approving 4x6x7. The evidence supports MassHealth’s decision. Specifically,

documentation from the PA request indicates that Appellant requires moderate assistance with bladder care, meaning Appellant can contribute to 50% of the task and needs 50% assistance from the PCA. In the allotted 4 minutes per-episode, MassHealth included transfer time, i.e., assisting Appellant with sitting down and getting up from the toilet. MassHealth did not, however, include time to bring Appellant to the bathroom as documentation showed she was “independent” with mobility, i.e., room to room, with the use of her cane. Absent evidence of any extenuating or unique circumstances, MassHealth appropriately applied the average time it would take for a PCA to provide moderate bladder care assistance, including assistance on and off the toilet, hygiene, changing of absorbent product, and clothing management. Although Appellant objected to the modification, she did not testify to any additional tasks or factors not already considered by MassHealth, that would warrant an increase in the authorized time. The appeal is DENIED with respect to bladder care.

### ***MD Transportation Assistance***

Appellant’s PCM agency requested 6 minutes per-week (6x1x1) for her PCA to assist in transporting her to and from 8 medical appointments per-year. MassHealth denied this request and allotted no time for medical transportation. As noted above, the PCA program does not cover assistance for medical services that are available to the member through other MassHealth providers. See 130 CMR 422.412. As such, MassHealth will pay a PCA to provide medical transportation assistance when there is an accompanying need that traditional MassHealth transportation services are not capable of providing. Here, there is no evidence that Appellant requires additional ADL or IADL assistance from her PCA when she attends medical appointments. As a MassHealth member, Appellant can receive medical transportation services for her appointments through a submission of a PT-1. Accordingly, MassHealth acted within its discretion by modifying this request to 0x0. See 130 CMR 422.412. The appeal is DENIED with respect to medical transportation.

### ***Laundry & PCA Paperwork***

The appeal is DISMISSED-in-part with respect to the IADL issues of laundry and PCA paperwork, as these modifications were accepted by Appellant.

## **Order for MassHealth**

None. All modifications may remain in effect in accordance with the 6/7/24 notice.

## **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.

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Casey Groff  
Hearing Officer  
Board of Hearings

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