

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2410746
<b>Decision Date:</b>	9/11/2024	<b>Hearing Date:</b>	08/16/2024
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.		

Appearances for Appellant:




Appearance for MassHealth:

Donna Burns, R.N. (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>	Dismissed in part; Denied in part	<b>Issue:</b>	Prior Authorization; PCA
<b>Decision Date:</b>	9/11/2024	<b>Hearing Date:</b>	08/16/2024
<b>MassHealth's Rep.:</b>	Donna Burns, R.N.	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Quincy Harbor South 2 (Telephone)	<b>Aid Pending:</b>	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 June 18, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on July 11, 2024 (*See* 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (*See* 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

### Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

### Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant also appeared at hearing via telephone and was accompanied by his PCA. The Appellant verified his identity. The parties' testimony and record evidence are summarized as follows:

The Appellant is an adult over the age of 65. The Appellant's medical history includes diabetes, neuropathy, osteoarthritis, vertigo, decreased mobility, and blindness. Testimony, Exhibit 6. The appellant was re-evaluated for PCA services on June 11, 2024, and his PCM agency, [REDACTED], requested 37 hours, 45 minutes per week for the service period of 8/29/2024-8/28/2025. This request was modified on June 18, 2024, to 35 hours, 45 minutes per week for the service period of 8/29/2024-8/28/2025. Testimony, Exhibit 6.

Based on testimony at hearing, MassHealth fully restored time as requested for Bathing; Grooming – Other; Assistance with Medication – physical assist with prefilling med box; and Laundry. Therefore, since the parties resolved the dispute for those activities of daily living (ADLs) and one Instrumental Activity of Daily Living (IADL), the appeal is dismissed as to Bathing (approved for 175 minutes per week); Grooming – Other (approved for 35 minutes per week); Assistance with Medication – physical assist with prefilling med box (approved for 10 minutes per week); and Laundry (approved for 90 minutes per week).

The remaining areas in dispute are: Physical Assistance with Medications (includes physical assistance with the administration of subcutaneous injections and the appellant's glucometer check), and Special Needs: Assistance with PCA paperwork.

#### Assistance with Medication<sup>1</sup>

The MassHealth representative testified that the remaining tasks in dispute were the categories for Physical Assistance with Medications, Physical Assistance with administration of subcutaneous injections, and Glucometer Check. She explained that assistance with taking medication was requested at 3 minutes each episode, 2 times a day, and this was modified by MassHealth to 2 minutes each episode, 2 times a day. Testimony. The MassHealth representative stated that this category is literally "handing pills" to the appellant. When asked how the PCA assists him with taking his daily medications, the appellant responded that "she plays a large role in deciding what he should take." Testimony. The MassHealth representative responded that no medical decisions should be made by the PCA. PCA services are about "hands on assistance, handing meds, this is not about making decisions as to which medications to take." The MassHealth representative

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<sup>1</sup> The appellant's PCM agency requested the following Assistance with Medication category of ADL tasks: Physical assist with prefilling med box 10x1x1, or 10 total minutes per week; Physical assist with medications 3x2x7 per week, or 42 total minutes per week; Physical assist to administer subcutaneous injections 3x1x7, or 21 total minutes per week; Glucometer check 3x1x7, or 21 total minutes per week. The total time requested for Assistance with Medication was 94 minutes per week. Exhibit 6.

asked the appellant what type of insulin injections he takes and how does the PCA assist with this task. The appellant responded that “she sets up stick pen, I draw my own blood, she tests it and gives me the number reading.” Testimony. The PCA then sets the correct dose on the pen, and he injects himself.

The MassHealth representative stated that there are already minutes per day allotted for the administration of insulin. It may take the appellant longer than the allotted time, but MassHealth can only allot time for the “hands on” work done by a PCA. MassHealth stands on its determination regarding Physical Assistance with Medications, Physical Assistance with administration of subcutaneous injections, and Glucometer Check because the appellant is doing part of the procedure himself and the PCA is doing the set up of the medication for the appellant. Pursuant to the regulations, time may only be allotted for the set-up of the meds. Testimony.

### PCA Paperwork

MassHealth allotted zero minutes per week of PCA assistance with completing PCA paperwork. The MassHealth representative testified that the appellant himself chose an administrative proxy for the PCA program, and that the regulations state that if there is a surrogate available, then they are responsible for completing and submitting the paperwork for the PCA program. The appellant did not believe he had appointed anyone, but the MassHealth representative reminded him that he appointed his sister as his surrogate, and that she agreed to remotely assist him. The appellant did not recollect appointing his sister at his surrogate, but he did not dispute the MassHealth representative’s assertion.

## **Findings of Fact**

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

1. The Appellant is an adult over the age of 65. Exhibit 5.
2. The Appellant’s medical history includes diabetes, neuropathy, osteoarthritis, vertigo, decreased mobility, and blindness. Testimony and Exhibit 6.
3. The appellant was re-evaluated for PCA services on June 11, 2024, and his PCM agency requested 37 hours, 45 minutes per week for the service period of 8/29/2024-8/28/2025. Testimony, Exhibit 6.
4. MassHealth modified the requested PCA time to 35 hours, 45 minutes per week for the service period of 8/29/2024-8/28/2025. Testimony, Exhibit 6.
5. Based on testimony at the hearing, MassHealth reversed itself on Bathing (approved for 175

minutes per week); Grooming – Other (approved for 35 minutes per week); Assistance with Medication – physical assist with prefilling med box (approved for 10 minutes per week); and Laundry (approved for 90 minutes per week). Testimony.

6. The disputed modifications occurred in one category of activities of daily living: Medication; and one category of instrumental activities of daily living: PCA Paperwork. Testimony, Exhibit 6:
  - a. Assistance with Medication was reduced in two sub-categories; Physical assist to administer subcutaneous injections from 21 minutes to 14 minutes per week, and Glucometer check was reduced from 21 minutes to 14 minutes per week.
  - b. PCA Paperwork was reduced from 15 minutes to 0 minutes per week.
7. The appellant testified that his PCA “plays a large role in deciding what medication he should take” and regarding his insulin injections, the PCA “sets up stick pen, I draw my own blood, she tests it and gives me the number reading.” Testimony.
8. Depending on his blood sugar reading, the PCA then sets the correct dose on the pen, and the appellant injects himself. Testimony.
9. The appellant named his sister as his surrogate when he enrolled in the PCA program. Testimony of MassHealth representative.

## **Analysis and Conclusions of Law**

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member’s health care.
- (2) The member’s disability is permanent or chronic in nature and impairs the member’s functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, 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.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) 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. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See, 130 CMR 450.204.

Pursuant to 130 CMR 422.410(A), 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 basic care such as bathing, personal hygiene, and grooming skills;
  - (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.

Pursuant to 130 CMR 422.410(B), instrumental activities of daily living include the following:

- (1) household services: physically assisting with **household management** tasks that are incidental to the care of the member, including **laundry**, shopping, and housekeeping;
- (2) meal preparation and clean-up: physically assisting a member to prepare meals;
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
  - (a) the care and maintenance of wheelchairs and adaptive devices;
  - (b) completing the paperwork required for receiving personal care services; and
  - (c) other special needs approved by the Division as being instrumental to the health care of the member.

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.

See, 130 CMR 422.412 (emphases added).

The appeal is dismissed as to PCA assistance with Bathing; Grooming – Other; Assistance with Medication – physical assist with prefilling med box; and Laundry, because at hearing, parties were able to resolve the dispute. MassHealth fully restored the time as requested for Bathing (175 minutes per week), Grooming – other (35 minutes per week), Assistance with Medication – physical assist with prefilling med box (10 minutes per week), and Laundry to 75 minutes per week.

As to the appellant's request for PCA assistance with Physical Assistance with Medications: Physical Assistance with administration of subcutaneous injections, and Glucometer Check, the appeal is denied. The appellant has not demonstrated that hands-on PCA assistance with preparing his insulin pen and reading his Glucometer takes longer than the time approved. It was not clear for what purpose the additional two minutes per day was requested. Based on the appellant's testimony, his PCA sets up his stick pen, he draws his own blood, the PCA tests the blood and states the blood sugar reading. The time that it takes for the appellant to participate in this process is not covered by PCA time. The appellant is doing part of the procedure himself, and the PCA is doing the set-up of the medication for the appellant. The testimony at hearing from both the appellant and his PCA requesting additional time for this task was not persuasive, as their routine for administering the injections was already efficient. Furthermore, the regulations do not allow for a PCA activity that is not "hands on" and actively assisting the appellant. For these reasons, the appellant has not shown that additional PCA assistance with Physical Assistance with Medications: Physical Assistance with administration of subcutaneous injections, and Glucometer Check, is medically necessary. This portion of the appeal is denied.

As to the appellant's request for PCA assistance with PCA paperwork, his testimony was not credible. The appellant was very attentive and persuasive in advocating for himself throughout the hearing, but he did not have an answer for why he needs time for his PCA to complete paperwork on his behalf. The record evidence and MassHealth testimony indicated that the appellant had appointed his sister as his surrogate for the PCA program; presumably, she handles completion of PCA paperwork each week. Therefore, the appellant did not demonstrate that PCA assistance with PCA paperwork is medically necessary. This portion of the appeal is also denied.

For these reasons, the appeal is dismissed in part and denied in part.

## Order for MassHealth

Approve Bathing (175 minutes per week); Grooming – Other (35 minutes per week); Assistance with Medication – physical assist with prefilling med box (10 minutes per week); and Laundry (90 minutes per week) in addition to the Assistance with Medication - physical assist with medications (42 minutes per week); Assistance with Medication - Physical assist to administer subcutaneous injections (14 minutes per week); Assistance with Medication - Glucometer Check (14 minutes per week), Special Needs - Assistance with required paperwork for PCA Program (0 minutes per week) for the service period of 8/29/2024-8/28/2025.

End aid pending and implement all adjustments effective as of the date of this decision.

## 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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Amy B. Kullar, Esq.  
Hearing Officer  
Board of Hearings

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