

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied in Part; Dismissed in Part	<b>Appeal Number:</b>	2410836
<b>Decision Date:</b>	10/21/2024	<b>Hearing Date:</b>	09/03/2024
<b>Hearing Officer:</b>	Mariah Burns		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Kelly Rayen, 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

<b>Appeal Decision:</b>	Denied in Part; Dismissed in Part	<b>Issue:</b>	Prior Authorization; Personal Care Attendant Services
<b>Decision Date:</b>	10/21/2024	<b>Hearing Date:</b>	09/03/2024
<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 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. *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. 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 telephone. The following is a summary of the testimony and evidence presented:

The appellant suffers from diagnoses of rheumatic disorders of her mitral and aortic valves, epilepsy, and depression.<sup>1</sup> She was previously approved for 13 hours per week of PCA services on January 26, 2024. On June 27, 2024, MassHealth received a prior authorization request on the appellant's behalf for an adjustment of services, requesting 21 daytime hours and 14 nighttime hours totaling 35 hours of PCA assistance per week. On June 1, 2024, MassHealth modified the request and approved the appellant 14 hours of weekly assistance with dates of service from June 27, 2024, to January 25, 2025.

Modifications were made in the areas of mobility, bathing, dressing/undressing, and toileting. After hearing, the parties agreed to the following modifications:

- **Mobility:** approved for 4 minutes, 4 times per day, 7 days per week for assistance with getting up and down the stairs (no other time for mobility approved);
- **Bathing:** parties agree to 20 minutes per day, 4 days per week and 25 minutes per day, 3 days per week;
- **Dressing/Undressing:** appellant agrees to modification of 8 minutes per day, 7 days per week for dressing and 6 minutes per day, 7 days per week for undressing.

Thus, after hearing, disputes remained over assistance with mobility not involving the stairs and toileting.

The appellant's initial evaluation services took place on December 20, 2023. The evaluation notes that the appellant recently underwent heart valve replacement surgery. In support of the request for an adjustment of services, the appellant's personal care management (PCM) agency reported that she underwent heart surgery in December of 2023, and the appellant's physician wrote: "[Appellant] is v. depressed. Declines visits to coumadin clinic. Noncompliant with medications. [Appellant] had aortic and valve replacement 12/23 & needs to be on coumadin & her INR<sup>2</sup> needs to be monitored. She needs PCA services to manage her medications & INR." Exhibit 5 at 42. The appellant submitted a letter from that same physician in support of her appeal. The letter states essentially the same facts and includes "[Appellant] needs her PCA worker...to give her

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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 11-12 and are hereby incorporated by reference.

<sup>2</sup> The MassHealth representative explained that INR stands for "international normalized ratio" and is used for patients who take coumadin to ensure their blood is thin enough that it is not improperly clotting.

medications, help with ADL's and IADL's. [Appellant] also needs her PCA...to take her to her appointments." Exhibit 6 at 1.

### **Mobility**

Apart from stairs, the appellant requested 2 minutes, 4 times per day, 7 days per week for assistance with other mobility functions. The MassHealth representative reported that this was denied because the appellant has the functional ability to perform the task without requiring assistance. The appellant testified that she needs help getting out of bed in the morning to be assisted up the stairs to go to the bathroom. Once she is up the stairs, she is otherwise able to walk around on her own with her walker. She reported that she spends almost all day in bed except to use the bathroom.

### **Toileting**

The appellant requested 4 minutes, 4 times per day, 7 days per week for assistance with other toileting during the day and 5 minutes per night. The MassHealth representative reported that this was denied because the appellant has the functional ability to perform the task without requiring assistance. The appellant testified that she suffers from dizziness, which means that she needs help getting to the bathroom, which is on a separate floor from her bedroom. Once she is in the bathroom, she is able to use the toilet and clean herself without assistance. Her PCA assists her with this in the morning and in the evening, which she estimated is at around 8:30 PM, but almost always before midnight.

## **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 suffers from diagnoses of rheumatic disorders of her mitral and aortic valves, epilepsy, and depression. Exhibit 4, Exhibit 5 at 11-12. Prior to the notice at issue, the appellant received 13 hours of weekly PCA assistance, which was approved by MassHealth on January 26, 2024, after an initial evaluation and prior authorization request. Testimony, Exhibit 5 at 10.
2. On June 27, 2024, MassHealth received a prior authorization request on the appellant's behalf for an adjustment of services requesting 21 daytime hours and 14 nighttime hours totaling 35 hours of PCA assistance per week. Testimony, Exhibit 5 at 37-42. On July 1, 2024, MassHealth modified the request and approved the appellant for 14 hours of weekly assistance with dates of service from June 27, 2024, to January 25, 2025. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of mobility, bathing, dressing/undressing,

and toileting. Exhibit 1.

4. After hearing testimony, MassHealth and the appellant agreed to the following hours:
  - **Mobility:** approved for 4 minutes, 4 times per day, 7 days per week for assistance with getting up and down the stairs (no other time for mobility approved);
  - **Bathing:** parties agree to 20 minutes per day, 4 days per week and 25 minutes per day, 3 days per week;
  - **Dressing/Undressing:** appellant agrees to modification of 8 minutes per day, 7 days per week for dressing and 6 minutes per day, 7 days per week for undressing.

Testimony.

5. In support of her request for an adjustment of PCA hours, the appellant provided a letter from her physician which states the following: “[Appellant] is v. depressed. Declines visits to coumadin clinic. Noncompliant with medications. [Appellant] had aortic and valve replacement 12/23 & needs to be on coumadin & her INR needs to be monitored. She needs PCA services to manage her medications & INR.” Exhibit 5 at 42. The appellant submitted a letter from that same physician in support of her appeal. The letter states essentially the same facts and includes “[Appellant] needs her PCA worker...to give her medications, help with ADL’s and IADL’s. [Appellant] also needs her PCA...to take her to her appointments.” Exhibit 6 at 1.

6. The appellant requested 2 minutes, 4 times per day, 7 days per week for assistance with mobility. She requires assistance to get into and out of bed in to use the bathroom, which is located on a separate floor from her bedroom. She can ambulate a room on her own with the use of a walker. None of the required assistance takes place between the hours of midnight and 6 AM. Exhibit 5 at 37, Testimony.

7. The appellant requested 3 minutes, 4 times per day, 7 days per week and 5 minutes per night for assistance with toileting. She requires assistance to get into the bathroom because of the stairs in her home but is otherwise able to use the bathroom without assistance. None of the required assistance takes place between the hours of midnight and 6 AM. Exhibit 5 at 38, Testimony.

8. The modifications for the tasks at issue were all made because MassHealth determined that the appellant possesses the functional ability to complete the requested tasks without assistance. Exhibit 1, 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>3</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 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

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<sup>3</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).

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).

If a member is requesting an adjustment of their current PCA hours, they must submit a prior authorization request that includes the following:

- (1) a copy of the original prior authorization request and PCA evaluation;
- (2) a written summary of the specific adjustment requested that includes the reason for the adjustment and the specific ADLs or IADLs for which an increase or decrease in PCA services is being requested, including the number of units, the number of hours, and the duration of time for which the adjustment is being requested; and
- (3) a letter from the member’s physician, nurse practitioner, or physician assistant stating that the need for an adjustment in the member’s authorized number of hours of PCA services is a result of changes in the member’s medical condition, functional status, or living situation that affects the member’s ability to perform ADLs and IADLs without physical assistance. The letter must also describe these conditions. The letter must include the length of time for which the adjustment is required.

130 CMR 422.416(B).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for assistance with stairs, bathing, and dressing/undressing, 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:

- **Mobility:** approved for 4 minutes, 4 times per day, 7 days per week for assistance with getting up and down the stairs;
- **Bathing:** parties agree to 20 minutes per day, 4 days per week and 25 minutes per day, 3 days per week;
- **Dressing/Undressing:** maintain 8 minutes per day, 7 days per week for dressing and 6 minutes per day, 7 days per week for undressing.

With respect to the two tasks remaining of mobility and toileting, I find it persuasive that the note provided from the appellant’s physician does not detail how the appellant’s functional abilities with respect to those tasks have changed since her initial evaluation. The appellant reported her December 2023 heart surgery in her initial prior authorization request, and the doctor’s note provided makes no reference to any deterioration to the appellant’s condition as it relates to either of the two tasks at issue. Instead, the letter states that she needs PCA assistance with managing her medication and her INR. There is nothing in the letter that refers to any issues with

mobility or toileting. The letter in support of this hearing provides no further information, as it merely states that the appellant needs “help with ADL’s and IADL’s” without specificity. Further, the appellant herself reports that she does not require assistance with toileting or with ambulating around the room, but instead needs help getting up and down the stairs to the bathroom, which is essentially the only reason why she gets out of bed and is a task for which she has already been granted PCA assistance.

As such, I find that the appellant has not sufficiently demonstrated, pursuant to 130 CMR 422.416(B), that she has had a change in her medical condition, functional status, or living situation that affects her mobility or her ability to use the bathroom without assistance. For those reasons, the appellant’s requests as they pertain to mobility (excepting MassHealth’s approval for assistance with stairs made at the hearing) and toileting are denied.

## Order for MassHealth

Modify the appellant’s approved PCA hours to include the following assistance, retroactive to June 27, 2024:

- **Mobility:** 4 minutes, 4 times per day, 7 days per week for assistance with getting up and down the stairs;
- **Bathing:** 20 minutes per day, 4 days per week and 25 minutes per day, 3 days per week.

## 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