

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

[REDACTED]  
[REDACTED]  
[REDACTED]

<b>Appeal Decision:</b>	Approved in Part; Dismissed in Part;	<b>Appeal Number:</b>	2411027
<b>Decision Date:</b>	08/20/2024	<b>Hearing Date:</b>	08/12/2024
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**

[REDACTED]

**Appearance for MassHealth:**

Kelly Rayen

**Interpreter:**

[REDACTED]



*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; Approved in Part	<b>Issue:</b>	Prior Authorization; PCA Services
<b>Decision Date:</b>	08/20/2024	<b>Hearing Date:</b>	08/12/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<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 June 20, 2024, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant filed this appeal in a timely manner on July 16, 2024. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

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

### Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services.

### Summary of Evidence

The appellant has the following diagnoses: insulin dependent diabetes with neuropathy; osteoarthritis; adenocarcinoma in situ of the cervix; chronic depression; GERD; obesity; gallstones;

anxiety; sciatica; and dermatitis. (Testimony; Exhibit 4). The appellant had breast cancer and underwent chemotherapy, radiation, and a mastectomy with lymph node removal in June 2023. (Testimony; Exhibit 4). The appellant had surgery on the left hand 2 to 3 years ago. (Testimony; Exhibit 4). The appellant has not had any falls. The appellant has had approximately 6 visits to the Emergency Department and 1-2 hospitalizations in the past year primarily related to side effects to chemotherapy and infections. (Testimony; Exhibit 4). The appellant lives with a teenage son in an apartment building that is elevator accessible. (Testimony; Exhibit 4). The appellant walks with a cane, has chronic pain in her knees, as well as pain in her head, left shoulder, lower back, feet and hands. (Testimony; Exhibit 4). The appellant has poor balance, an unsteady gait, poor endurance and activity tolerance. (Testimony; Exhibit 4). The appellant is easily fatigued. (Testimony; Exhibit 4).

The appellant requested 43 day/evening hours and 2 nighttime hours for PCA services. MassHealth modified this request and approved 42.25 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 4). The dates of service are July 15, 2024 to July 14, 2025.

Upon hearing testimony, MassHealth restored the time requested for meal preparation approving 30 minutes, one time each day, 7 days each week for lunch. MassHealth adjusted the time requested for medical transportation due to a clerical error of duplicating time requested for appointments to a cardiologist. MassHealth eliminated the time requested for transportation to a second cardiologist. The appellant did not challenge the adjustment to transportation acknowledging that she has only one cardiologist and no other provider other than those listed in the request. The only modification that remains at issue is the time requested for shopping.

The appellant requested 90 minutes each week for shopping. MassHealth modified this request and approved 75 minutes for shopping. MassHealth determined that the time requested was longer than ordinarily required for completing this task. The MassHealth representative noted that the appellant was approved for 75 minutes in the past and felt that the records presented did not show any changes to warrant more time to complete the task. The records note that the appellant is more easily fatigued after undergoing chemotherapy. The records state that the appellant loses her balance if she lifts her foot more than a few inches off the floor and cannot bend to reach her feet. The records indicate that the appellant cannot carry, push, pull, or lift heavy items.

The appellant testified that the PCA often goes out more than one time each week and goes to several stores. The trips to other stores can be because of one not having the item needed or forgetting to purchase something during a shopping trip. The appellant testified that the PCA primarily goes to a Russian market that does not always have all of the necessary items. The appellant testified that she often went shopping to assist the PCA in the past but that does not occur as frequently due to fatigue caused from undergoing chemotherapy as well as other changes in her medical condition. The shopping is done for the entire household and the overall time for shopping is longer than 90 minutes each week. The MassHealth representative noted that the

time for shopping is for the appellant alone and the appellant's ability to complete some of the task is considered in calculating time for the PCA.

## **Findings of Fact**

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

1. The appellant has the following diagnoses: insulin dependent diabetes with neuropathy; osteoarthritis; adenocarcinoma in situ of the cervix; chronic depression; GERD; obesity; gallstones; anxiety; sciatica; and dermatitis.
2. The appellant had breast cancer and underwent chemotherapy, radiation, and a mastectomy with lymph node removal in June 2023.
3. The appellant had surgery on the left hand 2 to 3 years ago.
4. The appellant has not had any falls.
5. The appellant has had approximately 6 visits to the Emergency Department and 1-2 hospitalizations in the past year primarily related to side effects to chemotherapy and infections.
6. The appellant lives with a teenage son in an apartment building that is elevator accessible.
7. The appellant walks with a cane, has chronic pain in her knees, as well as pain in her head, left shoulder, lower back, feet and hands.
8. The appellant has poor balance, an unsteady gait, poor endurance and activity tolerance.
9. The appellant is easily fatigued.
10. The appellant requested 43 day/evening hours and 2 nighttime hours for PCA services.
11. MassHealth approved 42.25 day/evening hours and 2 nighttime hours.
12. The dates of service are July 15, 2024 to July 14, 2025.
13. Upon hearing testimony, MassHealth restored the time requested for meal preparation for lunch, approving 30 minutes, one time each day, 7 days each week.
14. MassHealth adjusted the time requested for medical transportation.

15. The prior authorization request lists a request for transportation to two cardiologists.
16. The appellant has only one cardiologist.
17. MassHealth corrected the clerical error and eliminated the time for transportation to a second cardiologist.
18. The appellant did not challenge the adjustment to transportation acknowledging that she only has one cardiologist and no other provider other than those listed in the request.
19. The appellant requested 90 minutes each week for shopping.
20. MassHealth approved 75 minutes for shopping.
21. In the past, the appellant was approved for 75 minutes for shopping as the appellant went on most shopping trips with the PCA.
22. Since the appellant underwent chemotherapy in June 2023, she is easily fatigued and the PCA often goes shopping on their own.
23. The PCA often goes shopping more than one time each week.
24. The time for shopping for the entire household takes longer than 90 minutes each week.

## **Analysis and Conclusions of Law**

MassHealth covers personal care attendant (PCA) services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (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.
- (3) The member, as determined by the personal care 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 and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

MassHealth covers activity time performed by a PCA in providing assistance with ADLs and IADLs as described in 130 CMR 422.410, as specified in the evaluation described in 130 CMR 422.422(C) and (D), and as authorized by the MassHealth agency. (130 CMR 422.411(A)).

The Personal Care Management (PCM) agency must request prior authorization from MassHealth as a prerequisite to payment for PCA services. (130 CMR 422.416). Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care. (130 CMR 422.416). The regulations define a service as “medically necessary” if 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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

In reviewing records presented by the appellant’s provider MassHealth authorized time for PCA services but modified the time requested for three tasks.

As noted above, the appellant did not challenge the modification made to the time for transportation. Additionally, MassHealth adjusted their decision and approved the time requested for assistance with lunch preparation. Since the appellant did not dispute the modification made to the time for transportation and MassHealth restored the time for assistance with lunch preparation, this part of the appeal is dismissed. (130 CMR 610.035; 130 CMR 610.051).

Instrumental activities of daily living include physically assisting a member with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping. (130 CMR 422.410(B)(1)). In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the Personal Care Management (PCM) agency must assume that MassHealth will consider individual circumstances.

In this case, the agency and MassHealth considered the fact that the appellant lives with others. However, in making their decision, MassHealth did not appear to consider the appellant’s poor

balance, unsteady gait, poor endurance and activity intolerance in making the decision. As noted by the appellant at hearing and in the records presented, the appellant's fatigue has increased due to her undergoing chemotherapy and other changes in her condition. The appellant testified as to the overall time for shopping for the household taking more than 90 minutes each week making it evident that the agency calculated time for assisting the appellant alone. The decision made by MassHealth was not correct. This part of the appeal is approved.

This appeal is approved in part and dismissed in part.

## **Order for MassHealth**

Adjust the decision and approve the time requested for the following tasks effective July 15, 2024:

- 30 minutes, 7 times each day for assistance with lunch preparation;
- 90 minutes each week for assistance with shopping.

## **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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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

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