

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2411221
Decision Date:	10/04/2024	Hearing Date:	08/20/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN, 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

Appeal Decision:	Denied	Issue:	Prior Authorization Personal Care Attendant (PCA) Services
Decision Date:	10/04/2024	Hearing Date:	08/20/2024
MassHealth's Rep.:	Kelly Rayen, RN, Optum	Appellant's Rep.:	[REDACTED]
Hearing Location:	Springfield MassHealth Enrollment Center	Aid Pending:	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 06/20/2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 53 hours and 30 minutes (53:30) of day/evening hours per week to 45:45 day/evening hours per for the dates of service from 08/24/2024 to 08/23/2025 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 07/19/2024 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that on 06/14/2024, a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA provider, [REDACTED] ("provider"), and is a re-evaluation request for the dates of service of 08/24/2024 to 08/23/2025. In the PA request for PCA services (Exhibit 4), the provider requested 53:30 day/evening hours per week. The appellant is an adult man who lives in the community with his wife and adult son. His diagnoses include cerebrovascular accident ("CVA" or "stroke") in 2023, dysphasia, sleep apnea, chronic obstructive pulmonary disease ("COPD"), chronic lower back pain, and he is legally blind (Exhibit 4).

The Optum representative testified that on 06/20/2024 MassHealth modified the PCA request to 45:45 day/evening hours per week. Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) task of passive range of motion assistance; and in the instrumental activity of daily living (IADL) tasks of laundry, housekeeping, and shopping.

The appellant's provider requested 30 minutes per day, 3 times per day, 7 days per week (30 X 3 X 7) for assistance with passive range of motion for each of his lower extremities. The provider noted that the appellant "requires assist[ance] for exercises to [bilateral lower extremities] to improve circulation and balance" (Exhibit 4, p. 13). MassHealth modified the request for assistance with PROM to 15 X 1 X 7 because the time requested is longer than ordinarily required for someone with the appellant's abilities. Also, the Optum nurse testified that appellant is ambulatory with an assistive device. She testified that, according to professional standards, PROM is used for members who cannot move their limbs independently. It is not used to strengthen muscles or increase motion. It is to put a joint through motion to prevent contractures.

The appellant, his wife and their adult son appeared at the fair hearing. The son provided the testimony on behalf of the appellant. He testified that the appellant cannot do his own PROM because of his balance issues. He needs help when he is standing because he gets "wiggly." He needs PCA assistance with balance to make sure he does not fall. The son testified that the appellant's doctor recommended the PROM to increase his strength. The son stated that the appellant is not able to climb more than 5 stairs.

MassHealth modified the appellant's request for PCA assistance in the IADLs of meal preparation and clean up, laundry, shopping, and housekeeping. The provider noted that the appellant

is totally dependent for all IADL tasks due to impaired balance and dizziness. He has limited range of motion to bilateral upper extremities and fine motor deficits. He is a high fall risk due to impaired balance and left sided weakness. The consumer cannot bend, lift or carry items. He lives with his wife who has medical issues of her own limiting her ability to assist [him]

(Exhibit 4, p. 31).

The appellant's provider requested 60 minutes of assistance per day for meal preparation and clean up, (10 minutes for breakfast, 15 minutes for lunch, and 35 minutes for dinner). MassHealth modified the request for assistance with meal preparation and clean up to a total of 45 minutes per day.

The appellant's provider requested 60 minutes per week for assistance with laundry, 60 minutes per week for assistance with housekeeping, and 60 minutes per week for assistance with shopping. MassHealth modified the requests to 45 minutes per week for assistance with laundry, 45 minutes per week for assistance with housekeeping, and 45 minutes per week for assistance with shopping.

The MassHealth representative testified that the modifications were made to the appellant's request for assistance with IADLs because the appellant lives with family members. Family members are expected to incorporate the appellant's IADL needs with the family's needs.

The appellant's son testified that the PCA needs 20 minutes per day for assistance with breakfast, 45 minutes per day for assistance with lunch, and 40 minutes per day for assistance with dinner. The son testified he is not able to prepare and cook food because he does not know how. Additionally he works full-time outside the home.

The son testified he assists the appellant with laundry and shopping, but that he is not able to incorporate the appellant's laundry and shopping with the family's. The son testified he needs to make a separate trip to the supermarket to shop for the appellant because he has different requirements and shopping is "very hard" for him. The appellant's wife has Lupus and is not able to do assist with these tasks due to her health. She is able to clean the house every week, but it takes extra time because the appellant spills his drinks.

Findings of Fact

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

1. MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, [REDACTED] ("provider"). It is a re-

evaluation request for the dates of service of 08/24/2024 to 08/23/2025 (Testimony; Exhibit 4).

2. In the PA request for PCA services, the provider requested 53:30 day/evening hours per week (Testimony; Exhibit 4).
3. The appellant is an adult man who lives in the community with his wife and adult son, who is his PCA. His primary diagnoses are include cerebrovascular accident (“CVA” or “stroke”) in 2023, dysphasia, sleep apnea, chronic obstructive pulmonary disease (“COPD”), chronic lower back pain, and he is legally blind (Testimony; Exhibit 4).
4. On 06/20/2024 MassHealth modified the PCA request to 45:45 day/evening hours per week (Testimony; Exhibits 1 and 4).
5. The appellant filed his timely request for a fair hearing with the Board of Hearings on 07/19/2024. A fair hearing was held on 08/20/2024 (Exhibits 2 and 3).
6. The appellant’s provider requested 30 minutes per day, 3 times per day, 7 days per week (30 X 3 X 7) for assistance with passive range of motion for each of his lower extremities. The provider noted that the appellant “requires assist[ance] for exercises to [bilateral lower extremities] to improve circulation and balance” (Testimony; Exhibit 4).
7. MassHealth modified the request for assistance with PROM to 15 X 1 X 7 (Testimony; Exhibit 4).
8. According to the information in the PA request, the appellant can ambulate independently with an assistive device (Testimony; Exhibit 4).
9. According to the Optum nurse, PROM is recommended only for members who cannot independently move their limbs (Testimony).
10. The appellant’s provider requested 60 minutes of assistance per day for meal preparation and clean up, (10 minutes for breakfast, 15 minutes for lunch, and 35 minutes for dinner) (Testimony; Exhibit 4).
11. MassHealth modified the request for assistance with meal preparation and clean up to a total of 45 minutes per day (Testimony; Exhibit 4).
12. The appellant’s provider requested 60 minutes per week for assistance with laundry, 60 minutes per week for assistance with housekeeping, and 60 minutes per week for assistance with shopping (Testimony; Exhibit 4).

13. MassHealth modified the requests to 45 minutes per week for assistance with laundry, 45 minutes per week for assistance with housekeeping, and 45 minutes per week for assistance with shopping (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

- (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/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.

(B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.

- (1) ***When a member is living with family members, the family members will provide assistance with most IADLs. For example, routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.***
- (2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(Emphasis added.)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

MassHealth modified the appellant's request for PCA time in the areas of Passive Range of Motion (PROM), meal preparation and clean up, laundry, shopping, and housekeeping.

The appellant's provider requested 30 minutes per day, 3 times per day, 7 days per week (30 X 3 X 7) for assistance with passive range of motion for each of his lower extremities. The provider noted that the appellant "requires assist[ance] for exercises to [bilateral lower extremities] to improve circulation and balance." MassHealth modified the request for assistance with PROM to 15 X 1 X 7, based on the testimony of the MassHealth nurse that the request for assistance with PROM does not meet professional standards because the appellant is able to ambulate independently with an assistive device. Although the appellant's son stated that the PCA assists him with active range of motion for strength and balance; this is not a covered service by the MassHealth PCA program. This portion of the appeal is therefore denied.

The appellant's provider requested 60 minutes of assistance per day for meal preparation and clean up, (10 minutes for breakfast, 15 minutes for lunch, and 35 minutes for dinner) MassHealth modified the request for assistance with meal preparation and clean up to a total of 45 minutes per day.

The appellant's provider requested 60 minutes per week for assistance with laundry, 60 minutes per week for assistance with housekeeping, and 60 minutes per week for assistance with shopping. MassHealth modified the requests to 45 minutes per week for assistance with laundry, 45 minutes per week for assistance with housekeeping, and 45 minutes per week for assistance with shopping.

MassHealth's modifications to the requests for assistance with the IADLs were based on the documentation that the appellant lives with his family, including an adult son, and MassHealth regulations expect that family members "will provide assistance with most IADLs." MassHealth did approve some time for these tasks, based on the documentation that the appellant's wife suffers from Lupus and cannot fully assist the appellant. The appellant's son, who is also the appellant's PCA, stated he is not able to incorporate the appellant's needs with the family's because he "does not know how to cook," he feels he must shop separately for the appellant's food, and the housekeeping and laundry must be done separately. This testimony does not meet the burden of showing that MassHealth's decision is incorrect. The appellant's son was unable to adequately explain who provides assistance with the IADLs to the family and why the appellant's needs cannot be incorporated. As such, MassHealth's modifications to the request for assistance with IADLs is supported by the facts in the hearing record and the MassHealth regulations. This portion of the appeal is therefore denied.

For the foregoing reasons, this appeal is denied.

Order for MassHealth

None.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc: Appellant Representative: [REDACTED]

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