

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part; Approved in part	Appeal Number:	2411256
Decision Date:	1/24/2025	Hearing Date:	08/22/2024
Hearing Officer:	Thomas Doyle	Record Open to:	10/24/24

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen, RN



*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:	Dismissed in part; Denied in part; Approved in part	Issue:	Prior Authorization – PCA Services
Decision Date:	1/24/2025	Hearing Date:	08/22/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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

This appeal has two parts. Appellant is appealing MassHealth's modification of her Personal Care Attendant (PCA) services on an adjustment on the current reevaluation for the period September 1, 2023 to August 31, 2024. The second part is appellant appealing MassHealth's modifications to the reevaluation that is to start in September 2024. Through a notice dated June 27, 2024, MassHealth modified the appellant's request for an adjustment to her previously authorized PCA services by denying some of the time requested. (Ex. 1). Through a notice dated July 10, 2024, MassHealth also modified appellant's request for prior authorization for PCA services for the new PA period. (Ex. 1A). The appellant filed an appeal on both modifications in a timely manner on July 19, 2024. (130 CMR 610.015(B) and Ex. 2). Modification of a request for PCA services is a valid basis for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in modifying the appellant's request for PCA services.

Summary of Evidence

Adjustment request for PCA services covering effective dates of service from September 1, 2023 to August 31, 2024

A letter submitted by appellant's elbow doctor describes how appellant required elbow surgery on November 17, 2023 and as of May 1, 2024, there was no significant improvement in nerve function. The doctor stated appellant would "require an additional 12 weeks of continued assistance with activities of daily living, transferring to and from seated position, ambulating with an assistive device and heavy lifting to slow healing of right elbow." (Ex. 4, p. 34). After this elbow surgery, appellant's PCM agency, Arc of the South Shore, submitted an adjustment request that was received by MassHealth on June 24, 2024.

Appellant and the MassHealth representative, a registered nurse (RN), appeared by phone and were sworn. Appellant is a female in her early sixties. On June 24, 2024, appellant requested an adjustment in PCA hours for her current prior authorization period. Appellant's total PCA hours at the time of the adjustment request were 22 hours a week and she requested an increase of 17 hours a week for a total request of 39 hours per week effective June 19, 2024 to September 11, 2024. (Ex. 4, p. 33). MassHealth modified the requested time on June 27, 2024 to 30 hours and 30 minutes a week, effective June 24, 2024, the date MassHealth received the prior authorization request, to August 31, 2024. (Testimony).

The MassHealth representative testified all requested time for ADLs in the adjustment were approved. She stated there were 4 modifications to IADL's in the PA request. For each of these areas, the MassHealth representative testified to the basis for MassHealth's modification, and the appellant responded in turn.

Meal Preparation: In her adjustment request, appellant requested an additional 60 minutes a week, totaling 90 minutes an episode, 7 days a week for a total of 630 minutes a week for this task. Appellant currently has 30 minutes per episode, 7 days a week for a total of 210 minutes a week for this task. (Testimony; Ex. 4, p. 30). MassHealth denied the request because "when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis." (Testimony; 130 CMR 422.410 (C)(2)). The RN testified appellant is living with another member who has PCA services. That other

member is receiving 90 minutes a day, 7 days a week for Meal Preparation. (Testimony).

Appellant testified her son is medically fragile and has his own PCA. She stated she and her son have different diets, eat at different times and she lives downstairs, and her son lives upstairs. She stated she understands what the regulations say but it does not reflect her real life. (Testimony).

Laundry: In her adjustment request, appellant requested an additional 30 minutes a week. She currently has 60 minutes per week, for a total of 90 minutes a week for this task. (Testimony; Ex. 4, p. 30). MassHealth denied the request because “when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.” (Testimony; 130 CMR 422.410 (C)(2)). The RN testified appellant is living with another member who has PCA services. That other member is receiving 90 minutes a day, 7 days a week for Laundry. (Testimony).

Appellant stated her “son’s laundry is his and her laundry is hers.” Their laundry is done at different times, and she cannot do laundry. (Testimony). The RN asked appellant how many loads of laundry she generates herself per week. Appellant stated, “I have no idea.” (Testimony).

Housekeeping: In her adjustment request, appellant requested an additional 30 minutes a week. She currently has 60 minutes per week, for a total request of 90 minutes a week for this task. (Testimony; Ex. 4, p. 30). MassHealth denied the request because “when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.” (Testimony; 130 CMR 422.410 (C)(2)). The RN testified appellant is living with another member who has PCA services. That other member is receiving 45 minutes a week for Housekeeping. (Testimony).

Appellant testified she cannot do housekeeping. She stated “her son’s PCA does housekeeping upstairs on the floor where they live “and “my PCA helps on the floor I am on.” (Testimony).

Shopping: In her adjustment request, appellant requested an additional 30 minutes a week. She currently has 60 minutes per week, for a total request of 90 minutes a week for this task. (Testimony; Ex. 4, p. 30). MassHealth denied the request because “when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.” (Testimony; 130 CMR 422.410 (C)(2)). The RN testified appellant is living with another member who has PCA services. That other member is receiving 45 minutes a week for Housekeeping. (Testimony).

Appellant testified her son “has a specific diet and his food is his food.” She stated, “I have a specific diet and my food is my food.” She stated her son eats more meat and she eats more fresh

vegetables. She stated the shopping “was not combined.” She testified that they do not eat fast food so the shopping is more extensive than the typical American diet, so it takes more time to shop. (Testimony).

Reevaluation request for PCA services covering effective dates of service from September 1, 2024 to August 31, 2025

For the Reevaluation, appellant has a primary diagnosis of right elbow surgery, chronic pain, fibromyalgia, spinal cord injury, breast cancer, depression and PTSD. (Testimony; Ex. 4, p. 40). On June 24, 2024, the appellant’s provider, [REDACTED], submitted a prior authorization (PA) request and re-evaluation for PCA services. The provider requested PCA services in the amount of 36 hours and 45 minutes a week for the prior authorization period of September 1, 2024 to August 31, 2025. MassHealth modified the request in several respects and approved 28 hours per week. (Testimony). The appellant filed a timely appeal on July 19, 2024. (Ex. 2).

The MassHealth representative testified that there were 6 areas of modification to the PA request. At hearing, 1 of these modifications was resolved as follows:

Assistance with Medications, physical assistance with prefilling med box: Appellant requested 30 minutes an episode, 1 episode a day, 1 day a week to fill a pill box. (Ex. 4, p. 50). MassHealth modified this to 10 minutes per week. (Testimony). After testimony from appellant and discussion between the parties, MassHealth reinstated the 30 minutes a week to fill a pill box. (Testimony). Appellant agreed with this restoration of time for this task. This part of the appeal is dismissed.

The 5 areas of modification that remain in dispute are Mobility, Mobility Transfer, Undressing, Meal Preparation and Medical Transportation. For each of these areas, the MassHealth representative testified to the basis for MassHealth’s modification, and the appellant responded in turn.

Mobility: Appellant requested PCA assistance with Mobility in the amount of 5 minutes an episode, 8 episodes a day, 7 days a week. MassHealth modified the request to 1 minute an episode, 8 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 43). The MassHealth representative testified that MassHealth modified the request because the time requested is longer than ordinarily required for someone with the appellant’s needs. The RN stated the documentation noted appellant is able to ambulate slowly with a walker/rollator. (Ex. 4, p. 43). After testimony from appellant, the RN was willing to modify MassHealth’s offer to 2 minutes an episode, 8 episodes a day, 7 days a week. Appellant declined the offer. (Testimony).

Appellant stated she had no questions for the RN. She testified she needs a lot of help and does not want to fall. She stated she needs maximum assistance to go upstairs. The RN informed her

that physical assistance with stairs was not requested. (Ex. 4, p. 43). Appellant was asked by the RN how long it takes for her and the PCA to walk from one point to another in the home? Appellant replied "not more than 2 minutes." (Testimony). Appellant declined the offered modification from MassHealth of 2 minutes an episode, 8 episodes a day, 7 days a week. Appellant stated it was a good start. (Testimony).

Mobility Transfers: Appellant requested PCA assistance with Mobility Transfers in the amount of 5 minutes an episode, 5 episodes a day, 7 days a week. MassHealth modified the request to 3 minutes an episode, 5 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 43). The RN stated the documentation noted appellant requires a minimum level of assist and there was no documentation supporting a 5-minute transfer. The RN testified that this task covers assisting appellant from sitting to standing within the home. (Testimony; Ex. 4, p. 43).

Appellant testified she had no questions for the R.N. but said she needs more help. (Testimony).

Undressing: Appellant requested PCA assistance with Undressing in the amount of 15 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified the request to 10 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 47). The RN testified that MassHealth modified the request because the time requested is longer than ordinarily required for someone with the appellant's needs. The RN stated appellant was approved for 15 minutes a day to get dressed. She did note that, although appellant requires a maximum level of assist for Undressing, it generally takes less time to undress because you are pulling clothes and shoes off and are not attempting to fit them as you do when dressing. (Testimony).

Appellant stated she gets dressed 2 to 3 times a day and "something has to be done with the clothes, hang things up, fold them or put into laundry." When appellant was asked by the RN if she could participate in undressing with her left arm, appellant stated it is hard to get a shirt off with the right arm not working. She tries but "stuff gets stuck." Appellant was asked by the RN how long to take a shirt off with PCA assistance, appellant stated "like a minute or so, trying to avoid pain." The RN asked appellant how long it takes for her to get her bottom clothing off her body. Appellant stated she has two bottoms of clothing, underwear and regular clothing and she is trying to avoid pain. The RN asked appellant what is the average time it takes the PCA to provide hands on assist to undress. Appellant stated, "have to think about it." I asked appellant how long it took her the day before the hearing to undress and she said "one time, 3 to 5 minutes." The RN stated if it is 3 to 5 minutes to undress, then MassHealth's modification seemed correct. At this point, appellant stated she undressed 3 times a day due to different activities. One of the activities cited by appellant was going to the pool. Appellant was asked by the RN who changes her at the pool, and appellant stated the PCA. The RN stated this was a recreational activity outside the home and not covered by the PCA program. Appellant stated it was therapy, not recreational. When asked if the therapy was prescribed by a doctor, appellant stated she was "taught physical therapy and exercise and told she needed to do them." The RN responded this seemed like Vocational Rehabilitation, which is a non-covered service. (Testimony; see 130 CMR 422.412 (A)).

The RN stated appellant would need a prescription for this pool therapy. Appellant stated she did not go to the pool every day. (Testimony).

Meal Preparation: Appellant requested a total of 50 minutes a day for preparation of breakfast, lunch and dinner, 7 days a week. (Ex. 4, p. 55). MassHealth modified this to 30 minutes a day for breakfast, lunch and dinner, 7 days a week. MassHealth modified the request because “when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.” (Testimony; 130 CMR 422.410 (C)(2)). The RN testified appellant is living with another member who has PCA services. That other member is receiving 90 minutes a day, 7 days a week for Meal Preparation. (Testimony).

Appellant stated “we don’t eat packaged foods. I have to have a lot of fresh fruit and vegetables and need time to prepare. We are not warming things up. His food is his food, my food is my food.” (Testimony).

Medical Transportation: Appellant requested 120 minutes a week. (Ex. 4, p. 58). MassHealth modified the time to 90 minutes a week. (Testimony). The RN testified that MassHealth modified the request because the time requested is longer than ordinarily required for someone with the appellant’s needs. The RN testified MassHealth modified the number of visits for appellant’s PCP from 12 visits a year to 4. The RN stated this was done because appellant has numerous visits with other specialists and there was no supporting documentation provided as to why appellant was visiting her PCP every month. (Testimony). MassHealth modified appellant’s visits to the dentist from 4 to 2 per year because no supporting documentation was provided to indicate why appellant needed to visit the dentist 4 times a year. MassHealth modified the number of visits to the Chiropractor from 36 to 20. The RN stated there was no documentation provided explaining why appellant was visiting a chiropractor this often when appellant has dozens of visits for other doctors seen by appellant.¹ (Testimony; Ex. 4, p. 58).

Appellant stated she see her PCP once a month because she is “not a well person. It is not unusual for an unwell person to see their PCP one time a month, especially if I get sick frequently.” (Testimony). Appellant testified that she visits her dentist 4 times a year because her teeth are “crumbling.” She stated 2 of the visits are regular visits for cleaning and then usually “a tooth or two a year need work.” Regarding the visits to the chiropractor, appellant stated she should be seeing the chiropractor “at least weekly” and the number of visits “should be a lot more” than 36 a year. (Testimony).

At the end of testimony and discussion of the modifications, appellant requested the record be left open for her to obtain letters from her doctors and chiropractor. Specifically, she sought to submit

¹ In addition to her PCP, Dentist and Chiropractor, appellant visits Neurology, Neurosurgeon, Pain MD, Podiatry Surgeon, Psychiatrist, Ortho Surgeon for knee, Ortho Surgeon for elbow, GYN and Mammogram. (Ex. 4, p. 58).

a letter from her elbow surgeon; a letter from her PCP; a letter from her pain doctor, and a letter from her chiropractor stating how many visits appellant makes currently. The record open email notified appellant she had until September 12, 2024 to provide the above, with time for MassHealth to respond. (Ex. 6). Appellant notified me she became ill and requested an extension of the record open period. It was allowed to September 26, 2024, with time for MassHealth to respond. (Ex. 7). Appellant contacted me again and requested an extension of the record open period and this was allowed to October 10, 2024, with MassHealth given time to respond. (Ex. 8). Lastly, appellant contacted me and stated she was ill again and requested another extension of the record open period which was allowed with no further extensions to be granted. Appellant was given until October 24, 2024 to provide the letters with MassHealth given time to respond. (Ex. 9).

On October 24, 2024, I received letters from appellant's elbow surgeon, appellant's PCP, appellant's pain doctor and appellant's chiropractor. (Ex. 10 pp. 1-5). MassHealth then requested an extension of time to review and respond to appellant's submissions. This was granted and MassHealth was given until November 8, 2024 to provide a response. (Ex. 11). MassHealth provided a written response to appellant's letters. (Ex. 12).

The record was left open for the elbow surgeon to describe what appellant cannot do and in what areas appellant needs help. (Testimony). The elbow surgeon stated appellant had surgery on her right elbow on November 17, 2023. As of May 1, 2024, there was no significant improvement in nerve function. The doctor described appellant's difficulties with numerous tasks including opening jars, medication bottles, and food containers; grooming; buttoning clothing; and washing hair; and stated that she has problems with dropping and spilling items. (Ex. 9, p. 1). A letter from appellant's PCP was to describe the PCP's recommendation for physical therapy in a pool and what exercises to perform in the pool to help justify more time for the ADL of Undressing. (Testimony). Appellant's PCP stated in her letter appellant continues to have difficulties with ADLs. She writes that, in her opinion, appellant's current condition will require extra hours of assistance per week. There was no mention of pool therapy or recommended exercises. (Ex. 9, p. 2). The pain doctor reiterated in her letter that appellant has limited ability to perform ADLs. She writes that appellant has significant impairment including elbow pain, reduction in motion, contraction of fingers and decreased motor control. The doctor requests increased hours of assistance in ADLs and IADLs. (Ex. 9, p. 3-4). The record was left open for appellant to provide information from her chiropractor describing the number of times appellant currently visits the chiropractor. (Testimony). The chiropractor wrote appellant "has been seeing me consistently on a weekly basis and sometimes more frequently if needed, for the past several years." (Ex. 9, p. 5).²

² Appellant offered other documents post hearing that were not part of the record open agreement, including an affidavit from appellant; medical summary of appellant; letter regarding aquatic therapy; pill box list of appellant; chiropractor list of supplements; dental visit documentation; documentation of recent scans; medical summary of [REDACTED] and a MassHealth decision notice for [REDACTED]. As there was no agreement for these documents to be offered post hearing and appellant did not submit a motion or request to offer these documents post hearing, the documents are not part of the record and I did not consider them in my decision.

MassHealth's response was received and marked as Exhibit 11. The RN argued there was no documentation provided by appellant's elbow surgeon to support medical necessity. The RN wrote appellant's PCP and pain doctor provided no documentation supporting medical necessity for pool therapy or increased time for undressing. Regarding the letter from appellant's chiropractor, the RN wrote while the chiropractor does confirm weekly appointments, she does not specify for chiropractic visits. (Ex. 12, p. 1-2).

Findings of Fact

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

1. Appellant is a female MassHealth member in her early sixties who requested an adjustment in her PCA hours for services effective September 1, 2023 to August 31, 2024. (Testimony; Ex. 1).
2. Appellant required elbow surgery on November 17, 2023 and appellant's PCM agency, Arc of the South Shore, submitted an adjustment request that was received by MassHealth on June 24, 2024. (Testimony; Ex. 1; Ex. 4, p. 34).
3. All requested time for ADLs were approved in the adjustment request. (Testimony).
4. The modifications for the IADLs of Meal Preparation, Laundry, Housekeeping and Shopping are in dispute. (Testimony).
5. For Meal Preparation, appellant requested an additional 60 minutes a week, totaling 90 minutes an episode, 7 days a week for a total of 630 minutes a week for this task. Appellant currently has 30 minutes per episode, 7 days a week for a total of 210 minutes a week for this task. (Testimony; Ex. 4, p. 30).
6. MassHealth denied the request for increased time for Meal Preparation because appellant is living with another member who has PCA services. That other member is receiving 90 minutes a day, 7 days a week for Meal Preparation. (Testimony).
7. For Laundry, appellant requested an additional 30 minutes a week. She currently has 60 minutes per week, for a total of 90 minutes a week for this task. (Testimony; Ex. 4, p. 30).
8. MassHealth denied the request for increased time for Laundry because appellant is living with another member who has PCA services. That other member is receiving 90 minutes a day, 7 days a week for Laundry. (Testimony).
9. For Housekeeping, appellant requested an additional 30 minutes a week. She currently has 60 minutes per week, for a total request of 90 minutes a week for this task. (Testimony; Ex. 4, p.

30).

10. MassHealth denied the request for increased time for Housekeeping because appellant is living with another member who has PCA services. That other member is receiving 45 minutes a week for Housekeeping. (Testimony).

11. For Shopping, appellant requested an additional 30 minutes a week. She currently has 60 minutes per week, for a total request of 90 minutes a week for this task. (Testimony; Ex. 4, p. 30).

12. MassHealth denied the request for increased time for Shopping because appellant is living with another member who has PCA services. That other member is receiving 45 minutes a week for Housekeeping. (Testimony).

13. For the Reevaluation period effective September 1, 2024 to August 31, 2025, appellant has a primary diagnosis of right elbow surgery, chronic pain, fibromyalgia, spinal cord injury, breast cancer, depression and PTSD. (Testimony; Ex. 4, p. 40).

14. On June 24, 2024, the appellant's provider, [REDACTED] submitted a prior authorization (PA) request and re-evaluation for PCA services in the amount of 36 hours and 45 minutes a week for the prior authorization period of September 1, 2024 to August 31, 2025. MassHealth modified the request in several respects and approved 28 hours per week. (Testimony). The appellant filed a timely appeal on July 19, 2024. (Ex. 2).

15. At hearing, the parties resolved 1 of the modifications (related to Assistance with Medications, physical assistance with prefilling med box). (Testimony). The modifications for Mobility, Mobility Transfers, Undressing, Meal Preparation and Medical Transportation remained in dispute. (Testimony).

16. For Mobility, appellant requested PCA assistance in the amount of 5 minutes an episode, 8 episodes a day, 7 days a week. MassHealth modified the request to 1 minute an episode, 8 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 43).

17. For Mobility Transfers, appellant requested PCA assistance in the amount of 5 minutes an episode, 5 episodes a day, 7 days a week. MassHealth modified the request to 3 minute an episode, 5 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 43).

18. For Undressing, appellant requested PCA assistance in the amount of 15 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified the request to 10 minute an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 47).

19. For Meal Preparation, appellant requested a total of 50 minutes a day for breakfast, lunch and dinner, 7 days a week. (Ex. 4, p. 55). MassHealth modified this to 30 minutes a day for

breakfast, lunch and dinner, 7 days a week because appellant is living with another member who has PCA services. That other member is receiving 90 minutes a day, 7 days a week for Meal Preparation. (Testimony).

20. For Medical Transportation, appellant requested 120 minutes a week. (Ex. 4, p. 58). MassHealth modified the time to 90 minutes a week. (Testimony).

Analysis and Conclusions of Law

Regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 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 MassHealth as being instrumental to the health care of the member.

(C) 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.
- (2) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204,

below:

(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.

(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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

Appellant disagreed with the medically necessary decision of MassHealth in modifying her hours for PCA services for the adjustment period and the reevaluation. The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

Adjustment request for PCA services covering effective dates of service from September 1, 2023 to August 31, 2024:

In this case, MassHealth modified appellant's PA request for PCA services for the IADLs of Meal Preparation, Laundry, Housekeeping and Shopping by denying an increase in time for each IADL.

Regarding Meal Preparation, appellant testified her son is medically fragile and has his own PCA. She stated she and her son have different diets, eat at different times and she lives downstairs, and her son lives upstairs. She stated she understands what the regulations say but it does not reflect her real life. Regarding Laundry, appellant stated her "son's laundry is his and her laundry is hers." Their laundry is done at different times, and she cannot do laundry. For Housekeeping,

appellant testified she cannot do housekeeping. She stated “her son’s PCA does housekeeping upstairs on the floor where they live and my PCA helps on the floor I am on.” Regarding Shopping, appellant testified her son “has a specific diet and his food is his food.” She stated, “I have a specific diet and my food is my food.” She stated her son eats more meat and she eats more fresh vegetables. She stated the shopping “was not combined.” She testified that they do not eat fast food, so the shopping is more extensive than the typical American diet, so it takes more time to shop.

The regulations contained at 130 CMR 422.410 are clear regarding IADLs:

(C) 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:

...

- (3) 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. (emphasis added).

There is no dispute appellant is living with her son, who is a member authorized for MassHealth PCA services, therefore, appellant’s PCA time must be calculated on a shared basis. The stated reasons by appellant for an increase in time for these IADLs is not a consideration. The regulation contains no exceptions to the shared time mandate. This part of the appeal is denied.

Reevaluation request for PCA services covering effective dates of service from September 1, 2024 to August 31, 2025

The MassHealth representative testified that there were 6 areas of modification to the reevaluation PA request. At hearing, 1 of these modifications were resolved as follows:

Assistance with Medications, physical assistance with prefilling med box: Appellant requested 30 minutes an episode, 1 episode a day, 1 day a week to fill a pill box. (Ex. 4, p. 50). MassHealth modified this to 10 minutes per week. (Testimony). After testimony from appellant and discussion between the parties, MassHealth reinstated the 30 minutes a week to fill a pill box. (Testimony). Appellant agreed with this restoration of time for this task. This part of the appeal is dismissed.

The 5 areas of modification that remain in dispute are Mobility, Mobility Transfer, Undressing, Meal Preparation and Medical Transportation.

Mobility: Appellant requested PCA assistance with Mobility in the amount of 5 minutes an episode, 8 episodes a day, 7 days a week. She testified she needs a lot of help and does not want to fall. MassHealth modified the request to 1 minute an episode, 8 episodes a day, 7 days a week. The MassHealth representative testified that MassHealth modified the request because the time requested is longer than ordinarily required for someone with the appellant's needs. The RN stated the documentation noted appellant is able to ambulate slowly with a walker/rollator. (Ex. 4, p. 43). After testimony from appellant that it takes "not more than 2 minutes" for her and the PCA to walk from one point to another in the home, the RN was willing to modify MassHealth's offer to 2 minutes an episode, 8 episodes a day, 7 days a week. Appellant declined the offer. MassHealth recognizes an increase in time for PCA assistance with Mobility due to the testimony of appellant. However, I find appellant has not met her burden and shown a medical necessity for more time than 2 minutes an episode, 8 episodes a day, 7 days a week. This part of the appeal is approved in part and MassHealth shall approve appellant for Mobility at 2 minutes an episode, 8 episodes a day, 7 days a week.

Mobility Transfers: Appellant requested PCA assistance with Mobility Transfers in the amount of 5 minutes an episode, 5 episodes a day, 7 days a week. MassHealth modified the request to 3 minutes an episode, 5 episodes a day, 7 days a week. Appellant testified she had no questions for the RN but said she needs more help. Appellant has not met her burden under the preponderance of evidence standard and has not shown a medical necessity for additional time for this task. This part of the appeal is denied.

Undressing: Appellant requested PCA assistance with Undressing in the amount of 15 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified the request to 10 minutes an episode, 1 episode a day, 7 days a week. The RN testified that MassHealth modified the request because the time requested is longer than ordinarily required for someone with the appellant's needs. The RN stated appellant was approved for 15 minutes a day to get dressed. She did note that, although appellant requires a maximum level of assist for Undressing, it generally takes less time to undress because you are pulling clothes and shoes off and are not attempting to fit them as you do when dressing.

Appellant stated she gets dressed 2 to 3 times a day and "something has to be done with the clothes, hang things up, fold them or put into laundry." When appellant was asked by the RN if she could participate in undressing with her left arm, appellant stated it is hard to get a shirt off with the right arm not working. She tries but "stuff gets stuck." Appellant was asked by the RN how long to take a shirt off with PCA assistance, appellant stated "like a minute or so, trying to avoid pain." The RN asked appellant how long it takes for her to get her bottom clothing off her body. Appellant stated she has two bottoms of clothing, underwear and regular clothing and she

is trying to avoid pain. The RN asked appellant what is the average time it takes the PCA to provide hands on assist to undress. Appellant stated, "have to think about it." I asked appellant how long it took her the day before the hearing to undress and she said "one time, 3 to 5 minutes." The RN stated if it is 3 to 5 minutes to undress, then MassHealth's modification seemed correct. Immediately after the RN made this statement, appellant stated she undressed 3 times a day due to different activities. One of the activities cited by appellant was going to the pool. Appellant was asked by the RN who changes her at the pool, appellant stated the PCA. The RN stated this was a recreational activity outside the home and not covered by the PCA program. Appellant stated it was therapy, not recreational. When asked if the therapy was prescribed by a doctor, appellant stated she was "taught physical therapy and exercise and told she needed to do them." The RN responded this seemed like Vocational Rehabilitation, which is a non-covered service. The RN stated appellant would need a prescription for this pool therapy. Appellant stated she did not go to the pool every day.

The record was left open for appellant to obtain a letter from her PCP to describe the PCP's recommendation for physical therapy in a pool and what exercises to perform in the pool to help justify more time for the ADL of undressing. In the PCP's letter, there was no mention of pool therapy or recommended exercises. I find appellant's testimony she undresses 3 times a day unpersuasive. Appellant stated this immediately after she testified it only took her 3-5 minutes to get undressed the day before the hearing and then the RN noted this time was in line with the MassHealth modification. Additionally, the letter from appellant's PCP mentions no recommendation by the PCP for pool therapy for appellant. (Ex. 10, p. 2). Appellant has not met her burden and this part of the appeal is denied.

Meal Preparation: Appellant requested 50 minutes a day for breakfast, lunch and dinner, 7 days a week. MassHealth modified this to 30 minutes a day for breakfast, lunch and dinner, 7 days a week. MassHealth modified the request because when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis. The RN testified appellant is living with another member who has PCA services and that other member is receiving 90 minutes a day, 7 days a week for Meal Preparation. Appellant stated "we don't eat packaged foods. I have to have a lot of fresh fruit and vegetables and need time to prepare. We are not warming things up. His food is his food, my food is my food." The regulations contained at 130 CMR 422.410 are clear regarding IADLs:

(C) 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 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. (emphasis added).

There is no dispute appellant is living with her son, who is a member authorized for MassHealth PCA services, therefore, appellant's PCA time must be calculated on a shared basis. The stated reasons by appellant for an increase in time for this IADL are immaterial. The regulation contains no exceptions to the shared time mandate; therefore, this part of the appeal is denied.

Medical Transportation: Appellant requested 120 minutes a week. MassHealth modified the time to 90 minutes a week. The RN testified that MassHealth modified the request because the time requested is longer than ordinarily required for someone with the appellant's needs.

The RN testified MassHealth modified the number of visits for appellant's PCP from 12 visits a year to 4. The RN stated this was done because appellant has numerous visits with other specialists and there was no supporting documentation provided as to why appellant was visiting her PCP every month. Appellant stated she see her PCP once a month because she is "not a well person. It is not unusual for an unwell person to see their PCP one time a month, especially if I get sick frequently." I find appellant has not shown a medical necessity to visit her PCP once a month and her general testimony about her health is unpersuasive. This part of the appeal is denied.

MassHealth modified appellant's yearly Dentist visits from 4 to 2 because no supporting documentation was provided to indicate why appellant needed to visit the dentist 4 times a year. Appellant testified that she visits her dentist 4 times a year because her teeth are "crumbling." She stated 2 of the visits are regular visits for cleaning and then usually "a tooth or two a year need work." (emphasis added). I find appellant has not shown a medical necessity for 4 visits a year to her dentist and her speculative testimony is unpersuasive. This part of the appeal is denied.

MassHealth modified the number of visits to the Chiropractor from 36 to 20 a year. The RN stated there was no documentation provided explaining why appellant was visiting a chiropractor this often when appellant has dozens of visits for other doctors seen by appellant. Regarding the visits to the chiropractor, appellant stated she should be seeing the chiropractor "at least weekly" and the number of visits "should be a lot more" than 36 a year. The parties agreed the record would be left open for appellant to provide information from her chiropractor describing the number of times appellant currently visits the chiropractor. The chiropractor wrote appellant "has been seeing me consistently on a weekly basis and sometimes more frequently if needed, for the past several years." It is clear MassHealth agrees with the medical necessity of appellant visiting a chiropractor, having modified the yearly visits to 20. However, MassHealth disagrees with the number of visits. Appellant has provided documentation from her chiropractor where the chiropractor states she sees appellant consistently on a weekly basis. However, appellant's PCM agency only requested 36 visits a year to the chiropractor. Appellant has met her burden regarding this task and the request for 36 visits a year to the chiropractor is approved.

Conclusion:

Concerning the appeal for the Adjustment period, for the reasons set forth above, the appeal is denied regarding increased time for PCA services for Meal Preparation, Laundry, Housekeeping and Shopping.

Regarding the Reevaluation period, the appeal is dismissed as to the ADL of Assistance with Medications, physical assistance with prefilling med box. MassHealth agreed to reinstate the 30 minutes a week requested by appellant for this task. Appellant agreed.

For the remainder of the tasks that are the subject of the reevaluation appeal period, for the reasons set forth above, regarding Mobility, appellant's request is approved but not for the amount of time she requested. Appellant has not met her burden and shown a medical necessity for more time than 2 minutes an episode, 8 episodes a day, 7 days a week. Regarding Mobility Transfers, as appellant has not met her burden and shown no medical necessity, this part of the appeal is denied. For Undressing, as appellant has not met her burden, this part of the appeal is denied. The request for more time for Meal Preparation is denied. Regarding Medical Transportation, appellant's request for 12 visits a year to her PCP is denied; appellant's request for 4 visits a year to the Dentist is denied and appellant's request for 36 visits a year to the chiropractor is approved.

Order for MassHealth

Implement the changes agreed to at hearing.

For the Reevaluation period:

Approve appellant for 36 visits a year to her chiropractor.

Approve appellant for 2 minutes an episode, 8 episodes a day, 7 days a week for Mobility.

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.

Thomas Doyle
Hearing Officer
Board of Hearings

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