

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2411548
Decision Date:	10/2/2024	Hearing Date:	08/27/2024
Hearing Officer:	Alexandra Shube		

Appearances for Appellant:



Appearance for MassHealth:

Via telephone:
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:	Approved in part; Denied in part; Dismissed in part	Issue:	Prior Authorization – PCA
Decision Date:	10/2/2024	Hearing Date:	08/27/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Reps.:	Pro se; Husband/Surrogate; PCA
Hearing Location:	Quincy Harbor South Remote	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 June 17, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on July 25, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

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

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant, her husband who is her surrogate, and her PCA also appeared at hearing via telephone.

The MassHealth representative testified that the documentation submitted shows the appellant is an adult under the age of 65 with primary diagnosis of a cerebrovascular accident (CVA)/brain bleed in [REDACTED] that resulted in left-sided weakness. On June 4, 2024, the appellant's personal care management (PCM) agency, [REDACTED] submitted a prior authorization for PCA services (initial evaluation) requesting 32 hours per week for dates of service of June 17, 2024, through June 16, 2025. On June 17, 2024, MassHealth modified the request to 21 hours and 45 minutes per week. MassHealth made modifications related to PCA assistance with bathing: hair washing; toileting: bladder care; toileting: bowel care; meal preparation; housekeeping; and shopping.

Based on testimony at hearing, MassHealth fully restored time as requested for PCA assistance with hair washing (5 minutes, 1 time per day, 7 days per week). Parties agreed to 30 minutes per week for housekeeping. Therefore, since parties resolved the disputes for hair washing and housekeeping, the appeal is dismissed as to those activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

Toileting: Bladder Care

The appellant requested 9 minutes, 6 times per day, 7 days per week for PCA assistance with bladder care. MassHealth modified it to 8 minutes, 6 times per day, 7 days per week because the time requested is longer than ordinarily required for someone with her needs. Documentation states she is independent to ambulate with rolling walker, but she needs help with transferring on and off the toilet, hygiene, and clothing management. The MassHealth representative stated that the PCA program does not cover wait time or cueing, but only hands-on assist.

The appellant testified that it is at least a 10 minute process. She needs to get from her chair to the bathroom, then needs to be reminded what she needs to do. The PCA takes down her pants and briefs, transfers her to the toilet, wipes/cleans her, stands her back up, puts on cream to prevent rash, and pulls briefs and pants back on. With her balance and unsteadiness, it takes at least two to three minutes to ease her onto the toilet and the same to stand back up. She has poor standing tolerance. Additionally, when she is shaking, the PCA will hold her steady while she is on the toilet. While she can walk with her walker, it is very slowly and only an inch or two each step. At the evaluation, the nurse evaluator only saw her walk about three feet with the walker and she did not observe the bladder care routine.

Toileting: Bowel Care

The appellant requested 19 minutes, 1 time per day, 7 days per week for PCA assistance with bowel care. MassHealth modified it to 10 minutes, 1 time per day, 7 days per week because the time requested is longer than ordinarily required for someone with her needs. The MassHealth representative explained that it is for hands-on time only and would be for help with transfers, changing briefs, clothing management, and hygiene.

The appellant testified that she has accidents that require additional cleaning of her legs and back. The appellant is completely incontinent and does not know when she goes to the bathroom until she smells the odor or has an accident down her legs and/or up her back. Those accidents result in additional cleaning time. It takes at least ten minutes but often longer because clothing changes are necessary. Additionally, her chair needs to be cleaned every time she goes. She wears pull-ups but there are still accidents.

Meal Preparation

The appellant requested 100 minutes per day (20 for breakfast, 30 for lunch, 45 for dinner, and 5 for a snack), 7 days per week for PCA assistance with meal preparation. MassHealth approved 45 minutes per day because she lives with her spouse who is her surrogate and legally responsible. IADLs, such as meal preparation, are the responsibility of family members. The comments note that the spouse works long, irregular work hours which is why MassHealth approved 45 minutes per day, when typically, MassHealth would not approve any time for an IADL that should be the responsibility of a family member.

The appellant's spouse works five days per week and sometimes a sixth day. On his working days, he leaves at 8:00AM and is not home until 8:00PM. The appellant cannot go to the refrigerator, cannot use a microwave, and cannot make a sandwich. She cannot walk and carry something at the same time. The PCA testified that breakfast is typically a bowl of cereal and coffee. Lunch is leftover pasta salad, egg salad, or a tuna sandwich. For dinner, the PCA makes pasta, chicken, pizza, or will grab something out once in a while.

Shopping

The appellant requested 45 minutes per week for PCA assistance with shopping. MassHealth did not approve any time because she lives with her spouse who is legally responsible. IADLs, such as shopping, are the responsibility of family members. The MassHealth nurse asked if there was a reason why the spouse could not do the shopping.

The appellant responded that her husband does the shopping for food but the PCA will go out for certain personal items such as gloves, cream, and chair pads. The PCA will do that so the appellant is not left home alone.

The MassHealth representative explained that supervision is not covered under the PCA program.

Findings of Fact

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

1. The appellant is an adult under the age of 65 with a primary diagnosis of CVA/brain bleed with left-sided weakness (Testimony and Exhibit 4).
2. On June 4, 2024, MassHealth received a prior authorization request for PCA services requesting 32 hours per week for dates of service of June 17, 2024, through June 16, 2025 (Testimony and Exhibit 4).
3. On June 17, 2024, MassHealth informed the appellant that it had modified the request to 21 hours and 45 minutes per week (Testimony and Exhibit 4).
4. MassHealth made modifications related to PCA assistance with bathing: hair washing; toileting: bladder care; toileting: bowel care; meal preparation; housekeeping; and shopping (Testimony and Exhibit 1).
5. At hearing, MassHealth fully restored the time as requested for bathing: hair wash to 5 minutes, 1 time per day, 7 days per week and parties agreed to 30 minutes per week for housekeeping, which resolved the disputes related to PCA assistance with those tasks (Testimony).
6. The appellant seeks time for PCA assistance with bladder care as follows: 9 minutes, 6 times per day, 7 days per week (Testimony and Exhibit 4).
7. MassHealth modified the request to 8 minutes, 6 times per day, 7 days per week (Testimony and Exhibit 4).
8. The appellant seeks PCA assistance with bowel care as follows: 19 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
9. MassHealth modified the request to 10 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 4).
10. When toileting, the PCA take down her pants and briefs, transfers her to the toilet, wipes/cleans her, stands her back up, puts on cream, and pulls briefs and pants back on. With her poor balance, unsteadiness, and poor standing tolerance, it takes at least two to three minutes to ease her onto the toilet and the same to stand back up. Additionally, when

she is shaking, the PCA will hold her steady while she is on the toilet. The appellant is incontinent and has accidents that require clothing changes and clean-up, both of the appellant and her chair. (Testimony).

11. The appellant seeks PCA assistance with meal preparation as follows: 100 minutes per day (20 for breakfast, 30 for lunch, 45 for dinner, and 5 for a snack), 7 days per week (Testimony and Exhibit 4).
12. MassHealth modified the request to 45 minutes per day because she lives with her spouse who is her surrogate and IADLs are the responsibility of family members; however, because of the spouse's long, irregular work hours, MassHealth approved some time daily for meal preparation (Testimony and Exhibit 4).
13. The appellant's husband works long, irregular hours, usually five days per week, but sometimes six days per week. When he works, he leaves the house at 8:00AM and is not home until 8:00PM. (Testimony).
14. The appellant is unable to walk and carry something at the same time and cannot go to the refrigerator, use a microwave, or make a sandwich. (Testimony).
15. Breakfast is typically a bowl of cereal and coffee. Lunch is leftover pasta salad, egg salad, or a tuna sandwich. For dinner, the PCA makes pasta, chicken, pizza, or will occasionally grab something out. (Testimony).
16. The appellant seeks PCA assistance with shopping as follows: 45 minutes per week (Testimony and Exhibit 4).
17. MassHealth did not approve any time for shopping because she lives with her spouse who is her surrogate and IADLs are the responsibility of family members (Testimony and Exhibit 4).
18. The appellant's spouse does the food shopping, but the PCA will sometimes go out for personal items so that the appellant is not left home alone (Testimony).

Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all 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 or grooming;
- (d) dressing or undressing;
- (e) range-of-motion exercises;
- (f) eating; and
- (g) toileting.

(4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

A service is "medically necessary" if:

- 1) it is reasonably calculated to prevent, diagnose, prevent worsening of, alleviate, correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity; and
- 2) there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality. A provider must make

those records, including medical records, available to the Division upon request.
(See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

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

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

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

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

MassHealth **does not cover** any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;**
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402;** or
- (G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C). Family members include the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to hair washing and housekeeping because at hearing, parties were able to resolve the disputes.

As to the appellant’s request for 9 minutes, 6 times per day, 7 days per week of PCA assistance with bladder care, the appeal is approved. The appellant’s testimony was credible and demonstrated that she requires more time than what was approved given her physical needs. Her poor balance, unsteadiness, and poor standing tolerance make transfers on and off the toilet time consuming. She also needs a cream applied to avoid rashes. The appellant has shown that additional time for PCA assistance with bladder is medically necessary. For these reasons, she is approved for bladder care as requested: 9 minutes, 6 times per day, 7 days per week.

As to the appellant’s request for 19 minutes, 1 time per day, 7 days per week of PCA assistance

with bowel care, the appeal is approved in part and denied in part. The appellant's testimony demonstrated that she needs more than the 10 minutes, 1 time per day, 7 days per week that MassHealth approved; however, she did not establish that it took the full 19 minutes per day requested. Similarly to bladder care, her poor balance, unsteadiness, and poor standing tolerance make transfers on and off the toilet time consuming. Additionally, her accidents result in clothing changes and additional hygiene care. Her chair also needs to be cleaned after every time she has a bowel movement. The PCA program covers hands-on time only and the time waiting for the appellant to have a bowel movement is not covered by the PCA program. But the appellant has shown that additional PCA assistance with bowel care is medically necessary. For these reasons, the appellant is approved for 15 minutes, 1 time per day, 7 days per week for bowel care.

As to the appellant's request for meal preparation, the appeal is denied. The appellant has not demonstrated that additional PCA assistance with meal preparation takes longer than the time approved. Her husband falls under the definition of family member who is expected to provide assistance with most IADLs; however, MassHealth approved the appellant for 45 minutes per day for meal preparation because her husband works long, irregular hours at least five days per week. The appellant's spouse can assist on the days that he is home. The appellant and her representatives did not show that her breakfast (a bowl of cereal and coffee), lunch (leftovers or a tuna or egg salad sandwich), and dinner would take longer than the time approved.

As to the appellant's request for shopping, the appeal is denied. IADLs, including shopping, are the responsibility of family members. The appellant lives with her husband and testified that he does the food shopping. The reason given for the PCA shopping for some personal items was so the appellant is not left alone; however, the PCA program does not cover supervision or social services such as babysitting. The appellant has not demonstrated that the appellant's shopping needs go above and beyond what would be expected of a responsible family member who is already doing the majority of the household shopping.

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

Order for MassHealth

Approve 9 minutes, 6 times per day, 7 days per week for toileting: bladder care; approve 15 minutes, 1 time per day, 7 days per week for toileting: bowel care; and implement agreements made at hearing for bathing: hair washing (5 minutes, 1 time per day, 7 days per week) and housekeeping (30 minutes 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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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