

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2411997
Decision Date:	9/30/2024	Hearing Date:	09/03/2024
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen, R.N., Clinical Reviewer, 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:	Approved in part; Denied in part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	9/30/2024	Hearing Date:	09/03/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South 2 (Telephone)	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 July 30, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.410(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on August 1, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict or modify a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

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

Issue

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

Summary of Evidence

The Appellant verified her identity and represented herself at the hearing. MassHealth was represented by a clinical reviewer for Optum, which manages MassHealth's PCA program. All parties appeared by telephone. The parties' testimony and record evidence are summarized as follows:

The Appellant is an adult between the ages of 18-65 and has diagnoses of fibromyalgia, osteoarthritis, poor endurance, depression, anxiety, bipolar, drowsiness, chronic fatigue, incontinence, neuropathy, poor coordination, impaired standing, edema in her feet, and anemia. Testimony, Exhibit 6. The appellant is categorized as requiring the maximum level of assistance to accomplish bathing, toileting, and dressing/undressing activities. Exhibit 6.

On July 29, 2024, MassHealth received an annual renewal prior authorization request submitted by the personal care management agency (PCM), [REDACTED] on the appellant's behalf requesting 57 hours and 30 minutes of weekly PCA services, dates of service beginning 9/17/2024 and ending 9/16/2025. On July 30, 2024, MassHealth modified the request in nine (9) categories and approved the appellant for 49 hours and 45 minutes of weekly PCA services, with services being provided for the period 9/17/2024-9/16/2025.

The MassHealth representative testified to the following modifications for Activities of Daily Living (ADLs):

Stairs/outdoors

The appellant requested 3 minutes, 2 times a day, 7 times a week (42 total minutes per week) for assistance with outdoor stairs. Exhibit 6 at 11. MassHealth denied the request in full and argued that the requested service was not covered through the PCA program regulations, because the documentation submitted by the appellant's PCM agency says that this activity occurs outside on stairs and this time is already included in the approved MD transportation category. Testimony. In response, the Appellant stated "I go down the stairs with my cane, when I go to a doctor's appointment. I didn't request this." Testimony.

Hair washing

The appellant requested 5 minutes, 1 time a day, 7 times a week (35 total minutes a week) to wash her hair. Exhibit 6 at 14. MassHealth denied the request in full and argued the appellant was approved for 30 minutes for a daily bath and the appellant's hair should be washed during this time. MassHealth also stated the appellant was approved for an additional 10 minutes a day for a quick wash. MassHealth stated the appellant's request is longer than ordinarily required for an individual with her medical needs. The documentation submitted by the PCM agency states that the Appellant washes her hair during her bath. When questioned by the

MassHealth representative, as to “Where is your hair washed?”, the Appellant responded, “On the bathtub, I sit in the chair, and I have to do it separately, because I have a treatment they apply on my scalp.” Testimony. The Appellant explained that she has dermatitis on her head, and this condition must be treated and bathed separately. She takes 10-15 minutes for a bath and she is approved for 30 minutes; she stated that the scalp treatment is applied every day. The MassHealth representative asked the Appellant to clarify the time it takes to apply the treatment: the Appellant stated that it takes 15 minutes to put the treatment in her hair, then there is wait time 10-15 minutes, then she takes her bath or takes a shower. In response, the MassHealth representative stated that the PCA program does not cover wait time or things you can do yourself. Testimony.

Grooming (oral care set up)

The Appellant requested 2 minutes, 3 times a day, 7 times a week (42 total minutes a week) to have her toothbrush prepared for her. MassHealth modified this request to 1 minute per day, 3 times per day, 7 days per week (21 minutes a week). Exhibit 6 at 16. MassHealth’s reasoning for the modification is that the requested time is longer than ordinarily required for an individual with the Appellant’s medical needs. The Appellant did not offer a clear reason as to why the extra minute was needed for each episode of oral care set up.

Dressing/Undressing

The Appellant requested 20 minutes, one time per day, 7 times a week (140 minutes a week) for assistance with dressing. MassHealth modified this request to 15 minutes, one time per day, 7 times a week. The rationale for MassHealth’s modification in this category is that the time requested is longer than ordinarily required for someone with the Appellant’s medical needs. The Optum appeal packet states that the Appellant requires the Maximum physical assistance with all aspects of dressing. Exhibit 6. The Appellant stated in response that she cannot dress safely. She became emotional and testified, “I weigh almost 250 pounds, I have to be transported to the bathroom, I have to sit, I have to be dried then helped with undergarments, pajamas, socks, bra, dressing me takes 15-20 minutes.”

The Appellant requested 15 minutes, one time per day, 7 times a week (105 minutes a week) for assistance with undressing. MassHealth modified this request to 10 minutes, one time per day, 7 times a week. Exhibit 6, Testimony. The reasoning for MassHealth’s modification in this category is that the time requested is longer than ordinarily required for someone with her medical needs. In response, the Appellant stated that it is difficult for her to undress. “[She] can’t bend, can’t lift my hands, can’t stretch safely.” Testimony.

Bladder Care/Bowel Care

The Appellant requested 15 minutes, 6 times per day, 7 days a week (630 minutes a week) for

assistance with bladder care. MassHealth modified this request to 10 minutes, 6 times per day, 7 days a week. The Appellant requested 18 minutes, one time per day, 7 days a week (126 minutes a week) for assistance with bowel care. MassHealth modified this request to 15 minutes, one time per day, 7 times a week. MassHealth's reasoning for this modification is that the time requested for assistance is longer than ordinarily required for those with the Appellant's medical needs. The documentation submitted by the PCM agency states that the Appellant requires physical assistance getting to the bathroom, physical assistance with getting on and off the toilet, and physical assistance with clothing management and tending to the Appellant's hygiene. It is the MassHealth representative's opinion that 10 minutes per episode should be sufficient to get the Appellant upstairs with hands on physical assistance of her PCA, get her to toilet, and then perform necessary hygiene. The Appellant stated in response that she can only go upstairs in her home with the assistance of her PCA. She testified that her PCA must help her a lot near the toilet area. She can sit but she suffers from incontinence, and while she wears absorbents, unfortunately she does not always make it to toilet in time, and she will then need to change her garments and absorbents. Testimony.

The MassHealth representative stated that nothing is different from last year, but the Appellant feels that she is getting worse. Her mobility is worse, and she stated: "my pain has gotten worse, I have arthritis and I cannot walk the same way as last year; last year I can walk, I can't do that anymore; I am very limited to how much I can walk; I was not having issues." Testimony. The Appellant further testified that she contracted MRSA this year and now has skin issues.

The Appellant's PCM also requested PCA hours for the laundry and housekeeping categories of Instrumental Activities of Daily Living (IADLs).

Laundry

The MassHealth representative testified that laundry was modified from 90x1x1 to 60x1x1 because the time the Appellant requested for laundry is longer than ordinarily required with someone with her physical needs. The MassHealth representative stated that her laundry is residential, so the only assistance the Appellant needs is to have someone place the laundry in the washer, transfer it to the dryer, then help sort fold and put away. Testimony. The documentation submitted by the Appellant's PCM states that the Appellant is Dependent on her PCA for all laundry tasks. The Appellant "is unable to fully, freely, safely, or successfully bend, reach, stretch, twist, or grasp to lift or carry bags, baskets, or supplies, is unable to load, unload, or operate machines, is unable to fold or put away clean laundry, and requires extra loads of wash. . ." Exhibit 6 at 29.

The Appellant responded by explaining that her laundry must be done every day. She soils herself frequently, and every day her PCA puts laundry in the washer. The MassHealth representative asked the Appellant if she is able to help and sort the laundry. Testimony. The Appellant responded that she can barely move [her] hands. When the MassHealth representative pointed

out that the documentation that the Appellant's PCM submitted states that the Appellant can feed herself and manage her own medications, the Appellant stated in response that she has a hard time grabbing and holding on to things. Testimony.

Housekeeping

The Appellant's PCM requested 90 minutes per week and MassHealth modified this request to 60 minutes per week. As grounds for this decision, the MassHealth representative stated that the time requested is longer than ordinarily required for someone with the Appellant's medical conditions. The PCA is compensated for sweeping, dusting, light dusting and vacuuming. The PCA cleans the tub, the toilet, the sink, and does dishes. Testimony. The MassHealth representative further testified that this is the same modification as the past two years; MassHealth considers any activities in the kitchen to be a part of meal preparation, and the Appellant has 90 minutes daily for meal preparation and cleanup, and the kitchen should be cleaned up during meal preparation. The Appellant stated that she needs this assistance because she lives alone, in a duplex. Testimony.

When asked if she had anything further to place on the record, the Appellant concluded her testimony by stating:

[My PCA] does more for me than the PCA program pays him for. I don't know how to repay him for that. I really wish that you do take into consideration that my health is declining and will continue to decline. I don't want to go through this every year, just over a couple of hours every year. 15 minutes extra to wash my hair! My hands and fingers are bending and I can't move them like I used to. I used to be a caseworker and help disabled people, I used to be that person. Now, I am on the other side of this.

Testimony.

Findings of Fact

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

1. Appellant is an adult MassHealth member under the age of 65.
2. Appellant has diagnoses of fibromyalgia, osteoarthritis, poor endurance, depression, anxiety, bipolar, drowsiness, chronic fatigue, incontinence, neuropathy, poor coordination, impaired standing, edema in her feet, and anemia. Testimony and Exhibit 6.

3. On July 29, 2024, Appellant's PCM agency sent MassHealth a PA request seeking 57 hours and 30 minutes of weekly PCA services, dates of service beginning 9/17/2024 and ending 9/16/2025. Testimony and Exhibit 6.
4. On July 30, 2024, MassHealth modified the request in nine (9) categories and approved the appellant for 49 hours and 45 minutes of weekly PCA services, with services being provided for the period 9/17/2024-9/16/2025; specifically, by modifying the times for "stairs/outdoor, hair washing, grooming (oral care setup), dressing/undressing, bladder care/bowel care, laundry, and housekeeping." Exhibits 1 and 6.
5. The appellant requested 3 minutes, 2 times a day, 7 times a week (42 total minutes per week) for assistance with outdoor stairs. Testimony and Exhibit 6.
6. MassHealth denied the request in full because the requested service was not covered through the PCA program regulations. Testimony.
7. The appellant requested 5 minutes, 1 time a day, 7 times a week (35 total minutes a week) to wash her hair. Testimony and Exhibit 6.
8. MassHealth denied the request in full because the appellant was approved for 30 minutes for a daily bath and the appellant's hair should be washed during this time. Testimony.
9. The Appellant has dermatitis on her head, and she treats this condition with a daily scalp treatment that takes 15 minutes to apply. Testimony.
10. The Appellant requested 2 minutes, 3 times a day, 7 times a week (42 total minutes a week) to have her toothbrush prepared for her.
11. MassHealth modified this request to 1 minute per day, 3 times per day, 7 days per week (21 minutes a week). The reasoning for MassHealth's modification in this category is that the time requested is longer than ordinarily required for someone with the Appellant's medical needs.
12. The Appellant requested 20 minutes, one time per day, 7 times a week (140 minutes a week) for assistance with dressing.
13. MassHealth modified this request to 15 minutes, one time per day, 7 times a week. The reasoning for MassHealth's modification in this category is that the time requested is longer than ordinarily required for someone with the

Appellant's medical needs.

14. The Appellant requested 15 minutes, one time per day, 7 times a week (105 minutes a week) for assistance with undressing.
15. MassHealth modified this request to 10 minutes, one time per day, 7 times a week. The reasoning for MassHealth's modification in this category is that the time requested is longer than ordinarily required for someone with the Appellant's medical needs.
16. The Appellant requires the maximum physical assistance with all aspects of dressing. Exhibit 6.
17. The Appellant requested 15 minutes, 6 times per day, 7 days per week (630 minutes a week) for assistance with bladder care.
18. MassHealth modified this request to 10 minutes, 6 times per day, 7 days per week. MassHealth's reasoning for this modification is that the time requested for assistance is longer than ordinarily required for those with the Appellant's medical needs.
19. The Appellant requested 18 minutes, one time per day, 7 days a week (126 minutes a week) for assistance with bowel care. MassHealth's rationale for this modification is that the time requested for assistance is longer than ordinarily required for those with the Appellant's medical needs.
20. The Appellant requires physical assistance getting to the bathroom, physical assistance with getting on and off the toilet, and physical assistance with clothing management and tending to the Appellant's hygiene. The Appellant's PCA must help the Appellant a lot near the toilet area.
21. Appellant requires maximum assistance for bladder care activities. Exhibit 6.
22. Appellant requires maximum assistance for bowel care activities. Exhibit 6.
23. The Appellant requested 90 minutes, 1 time a week (90 total minutes a week) for assistance with Laundry.
24. MassHealth modified this request to 60 minutes, 1 time a week (60 total minutes in a week) because the time the Appellant requested for Laundry is longer than

ordinarily required with someone with her physical needs.

25. The Appellant is dependent on her PCA for all laundry tasks. Exhibit 6.
26. The Appellant's PCM requested 90 minutes per week for housekeeping.
27. MassHealth modified this request to 60 minutes per week because the time requested is longer than ordinarily required for someone with the Appellant's medical conditions.

Analysis and Conclusions of Law

MassHealth covers personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:¹ First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's ... care." *See* 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." *See* 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. *See* 130 CMR 422.403(4). 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.

See 130 CMR 450.204(A).

Here, there is no dispute that Appellant meets all the prerequisites to qualify for PCA services.

¹ PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." *See* 130 CMR 422.002.

This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive PCA assistance to meet her care needs.

The MassHealth PCA program covers medically necessary assistance with the following ADLs:

(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 bathing, personal hygiene, or grooming;
- (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.

See, 130 CMR 422.410.

MassHealth will approve time in accordance with the “activity time performed by a PCA in providing assistance with the [task].” *See* 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with his or her ADL/IADL. *See*, 130 CMR 422.402.

MassHealth does not, however, pay for those services it considers “non-covered” PCA services, which include, but are not limited to, the following:

- (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

.....

See, 130 CMR 422.412.

Assistance with Outdoor Stairs/Grooming

As to the appellant's request for PCA assistance with stairs/outdoors and grooming (oral care set up), this appeal is denied. The appellant has not demonstrated that PCA assistance with stairs out of doors is medically necessary in addition to the already approved outdoor stair time under the Medical Transportation category. As to the grooming (oral care set up) request, the Appellant has not demonstrated that an additional 21 minutes per week for her PCA to set up and hand the toothbrush to her is medically necessary.

Assistance with Washing Hair

As to the Appellant's request for PCA assistance with hair washing, the appeal is approved. The appellant requested 5 minutes, 1 time per day, 7 days per week (35 total minutes per week) for assistance with hair washing. MassHealth did not approve any time. The appellant's testimony was credible and demonstrated that she requires assistance with applying a daily treatment to her scalp. Although the Appellant does wash her hair during the allotted Bathing time, she credibly testified that she must apply the scalp treatment to her dermatitis on a daily basis. The appellant has shown that PCA assistance with hair washing is medically necessary. The appellant is approved for hair washing as requested: 5 minutes, 1 time per day, 7 days per week (35 total minutes per week.)

Assistance with Dressing

As to the appellant's request for PCA assistance with dressing, the appeal is approved. The Appellant requested 20 minutes, one time per day, 7 times a week (140 minutes a week) for assistance with dressing. The appellant has demonstrated that hands-on PCA assistance with dressing takes longer than the time approved by MassHealth. It was clear from her testimony that the Appellant assists her PCA with all aspects of dressing to the best of her ability but that the time it takes for her to accomplish the task of dressing, even with PCA assistance, can be as long as 15-20 minutes. For these reasons, the appellant has shown that additional PCA assistance with dressing is medically necessary.

Assistance with Undressing

As to the appellant's request for PCA assistance with undressing, the appeal is approved. The Appellant requested 15 minutes, one time per day, 7 times a week (105 minutes a week) for assistance with undressing. Here, the appellant has very credibly demonstrated that hands-on PCA assistance with undressing takes longer than the time approved. She has difficulty bending and stretching her arms and hands safely. For these reasons, the appellant has shown that additional PCA assistance with undressing is medically necessary.

Assistance with Bladder Care/Bowel Care

As to the Appellant's request for PCA assistance with bladder care and bowel care, this appeal is approved. The Appellant requested 15 minutes, 6 times per day, 7 days a week (630 minutes a week) for assistance with bladder care. The Appellant requested 18 minutes, one time per day, 7 days a week (126 minutes a week) for assistance with bowel care. The Appellant credibly testified as to the reasons that she requires the maximum assistance of her PCA for managing her bladder care and bowel care. Her testimony regarding the assistance and involvement of PCA with all of her toileting needs was detailed and she was very clear about her own physical limitations in these tasks. Her incontinence continues to grow worse and that fact, plus her worsening mobility issues indicate that additional PCA assistance with bladder care and bowel care, at the amounts requested by her PCM agency, is medically necessary.

Assistance with Laundry

The Appellant requested 90 minutes, one time per week (90 minutes a week) for assistance with laundry. MassHealth modified this request to 60 minutes, one time per week. The Appellant is fully dependent on her PCA for all laundry tasks. She credibly testified that she cannot fully, freely, safely, or successfully bend, reach, stretch, twist, or grasp to lift or carry bags, baskets, or supplies, is unable to load, unload, or operate machines, is unable to fold or put away clean laundry, and that due to her incontinence she soils herself every day, requiring extra loads of wash to be done. For these reasons, she has demonstrated that an additional 30 minutes per week is medically necessary for housekeeping.

Assistance with Housekeeping

As to the appellant's request for housekeeping, the appeal is denied. The appellant has not demonstrated that PCA assistance with housekeeping takes longer than the time approved. The PCA is compensated for sweeping, dusting, light dusting and vacuuming. Furthermore, MassHealth considers any activities in the kitchen to be a part of meal preparation and cleanup, and the Appellant has 90 minutes daily for meal preparation and cleanup. The kitchen should be cleaned up during meal preparation. She has not demonstrated that an additional 30 minutes per week is medically necessary for housekeeping.

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

Order for MassHealth

For the PA period beginning 9/17/2024 and ending 9/16/2025 approve the time for hair washing to 5x1x7 (35 total minutes per week), approve the time for dressing to 20x1x7 (140 minutes per week), approve the time for undressing to 15x1x7 (105 minutes per week), approve the time for requested for bladder care to 15x6x7 (630 minutes per week), approve the time requested for bowel care to 18x1x7 (126 minutes per week), approve the time requested for laundry to 90x1x1.

MassHealth's denial related to the additional request for stairs/outdoor at 0x0x0, grooming (oral care setup) at 1x3x7 (21 minutes a week), and housekeeping at 60x1x1 is to remain in effect, consistent with its 7/30/24 notice.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

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