

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; Dismissed in part	<b>Appeal Number:</b>	2412042
<b>Decision Date:</b>	10/9/2024	<b>Hearing Date:</b>	09/13/2024
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*

Pro se

**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

<b>Appeal Decision:</b>	Approved in part; Dismissed in part	<b>Issue:</b>	Prior Authorization – PCA
<b>Decision Date:</b>	10/9/2024	<b>Hearing Date:</b>	09/13/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South Remote	<b>Aid Pending:</b>	No

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated June 28, 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 August 5, 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 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 a primary diagnosis of spastic hemiplegic cerebral palsy. Relevant medical history shows bipolar disorder, gastroparesis, PCOS, GERD, iron deficiency anemia, peripheral neuropathy, lumbar radiculopathy, dystonia, sciatica, lumbosacral spondylosis, cervical spondylosis, chronic back pain, and spinal stenosis. On June 27, 2024, the appellant's personal care management (PCM) agency, [REDACTED] submitted a prior authorization for PCA services (re-evaluation) requesting 73 hours per week for dates of service of July 7, 2024 through July 6, 2025. On June 28, 2024, MassHealth modified the request to 65 hours and 15 minutes per week. MassHealth made modifications related to mobility and special toileting transfers.

Based on testimony at hearing, MassHealth and the appellant agreed to the following for PCA assistance with special toileting transfers: 3 minutes, 7 times per day, 7 days per week. Therefore, since parties resolved the dispute for special toileting transfers, the appeal is dismissed as to that activity of daily living (ADL).

### **Mobility**

The appellant requested 5 minutes, 6 times per day, 7 days per week and 5 minutes, 6 times per day, 7 days per week for PCA assistance with mobility. MassHealth approved 5 minutes, 6 times per day, 7 days per week because the time requested is longer than ordinarily required for someone with the appellant's physical needs and there are less costly options available to meet those needs.

The mobility comments state the following: the appellant requires a two-person assist for all ambulation. One PCA will walk in front of her and hold the appellant's hands while the other PCA will walk behind consumer and manually push each leg with their own foot for each step. The appellant needs assistance with starting each step but is able to complete the step. Her gait is unsteady and she is unable to lift her left leg. She slides right foot and drags left foot. The appellant reports frequent falls.

The MassHealth representative testified that this is an unsafe way to ambulate on a day-to-day basis and considered the appellant a non-functional ambulator. The appellant has a wheelchair and MassHealth will also pay for physical therapy and occupational therapy. But she stated that a physical therapist or occupational therapist would not discharge someone with this type of ambulation technique because it is not safe.

The appellant testified that she has been through physical and occupational therapy, but this is the way she has been ambulating safely her entire life. It is complicated, but her PCAs know how to help her safely ambulate in this fashion. While she has a wheelchair, it is not her primary means of mobility. If she uses the wheelchair too much, she locks up. Physical and occupational therapy worked on her balance and learning how to function without her wheelchair because using her wheelchair was becoming problematic. She is unable to do a lot for herself, but having two PCAs assist her ambulation means she can continue to ambulate without her wheelchair and keep her legs from locking up.

The MassHealth representative responded that she was approved for the one-person assist for ambulation because the wheelchair is safer. There are other avenues to prevent the locking up of her muscles, such as passive range of motion and frequent transfers.

## **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 spastic hemiplegic cerebral palsy (Testimony and Exhibit 4).
2. On June 27, 2024, MassHealth received a prior authorization request for PCA services requesting 73 hours per week for dates of service of July 7, 2024 through July 6, 2025 (Testimony and Exhibit 4).
3. On June 28, 2024, MassHealth informed the appellant that it had modified the request to 65 hours and 15 minutes per week (Testimony and Exhibits 1 and 4).
4. MassHealth made modifications related to PCA assistance with mobility and special toileting transfers (Testimony and Exhibits 1 and 4).
5. On August 5, 2024, the appellant timely appealed the MassHealth action (Exhibit 2).
6. At hearing, MassHealth and the appellant agreed to 3 minutes, 7 times per day, 7 days per week for special toileting transfers, which resolved the dispute related to PCA assistance with that ADL (Testimony).
7. The appellant seeks time for PCA assistance with mobility as follows: 5 minutes, 6 times per day, 7 days per week, and 5 minutes, 6 times per day, 7 days per week (Testimony and Exhibit 4).

8. MassHealth modified the request to 5 minutes, 6 times per day, 7 days per week (Testimony and Exhibit 4).
9. The appellant requires the assistance of two PCAs to ambulate and has ambulated this way her entire life (Testimony and Exhibit 4).

## **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.

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).

The appeal is dismissed as to special toileting transfers because at hearing parties were able to resolve the dispute. They agreed to 3 minutes, 7 times per day, 7 days per week for special toileting transfers.

As to the appellant's request for 5 minutes, 6 times per day, 7 days per week and 5 minutes, 6 times per day, 7 days per week of PCA assistance with mobility, 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. She requires a two-person assist for all ambulation. She does not use a wheelchair the majority of time and it is important for her continued mobility to ambulate. If she is in the wheelchair too long, she locks up. This is how she has been ambulating safely for her entire life and it requires two people who are hands-on the whole process. The appellant has shown that the additional time for PCA assistance with mobility is medically necessary. For these reasons, she is approved for mobility as requested: 5 minutes, 6 times per day, 7 days per week and 5 minutes, 6 times per day, 7 days per week.

Therefore, the appeal is approved in part and dismissed in part.

## **Order for MassHealth**

Approve 5 minutes, 6 times per day, 7 days per week and 5 minutes, 6 times per day, 7 days per week for mobility. Implement agreement made at hearing for special toileting transfers (3 minutes, 7 times per week, 7 days per week). Modifications should go retroactive to the beginning of the prior authorization period, July 7, 2024.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact Optum. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

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