

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2412271
<b>Decision Date:</b>	01/07/2025	<b>Hearing Date:</b>	11/13/2024
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearance for Appellant:**



**Appearance for MassHealth:**

Robin Brown, RN, Optum

**Interpreter:**

N/A



*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>	Denied	<b>Issue:</b>	PCA, Prior Approval, Initial Evaluation, ADLs
<b>Decision Date:</b>	01/07/2025	<b>Hearing Date:</b>	11/13/2024
<b>MassHealth's Rep.:</b>	Robin Brown, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (Tel)	<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 July 31, 2024, MassHealth denied the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record. (See 130 CMR 422.402(C)(3) and Exhibit 1). The Appellant filed this appeal in a timely manner on August 5, 2024. (see 130 CMR 610.015(B)). A decision denying assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record. (See 130 CMR 422.402(C)(3) and Exhibit 1).

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.402(C)(3), in determining that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record and that the Appellant's disability is not permanent or chronic in nature.

## Summary of Evidence

The Appellant is a MassHealth member under the age of 65 who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 7). MassHealth received a prior authorization request for PCA services submitted by The Northeast ILP INC, the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) The Appellant's primary diagnosis includes a stress fracture. (Testimony, Exhibit 5, pg. 10) The Appellant's ankle was fractured in [REDACTED] due to a fall from slipping on ice. (Exhibit 5, pg. 10). The Appellant has had screws and plates implanted, the ankle appears mis-shaped, and the Appellant complains of constant pain. (Exhibit 5, pg. 10). Secondary diagnoses include polysubstance dependence, PTSD, anxiety, among other diagnoses. (Exhibit 5, pg. 52-53) MassHealth denied the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record, (See 130 CMR 422.402(C)(3) and Exhibit 1).

MassHealth, represented by a nurse from Optum, testified that the request was denied because the Appellant's clinical record does not support that the Appellant requires hands-on physical assistance with at least 2 ADLs. (Testimony) The Appellant's submitted request indicated the need for physical assist with the following ADLs:

- 1) ADL – Bathing – 15 minutes, 1 time a day, 7 days a week for a total of 170 minutes per week (Exhibit 5, pgs. 17)
- 2) ADL – Dressing – 5 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 70 minutes (Exhibit 5, pgs. 21)
- 3) ADL – Assistance with Medications Activities – Physical assist with dispensing medications – 1 minute, 2 times a day, 7 days a week, for a total of 14 minutes per week (Exhibit 5, pgs. 25)

The Appellant's submitted request indicated the need for physical assist with multiple Instrumental Activities of Daily Living (IADLs):

- 1) IADL – Meal Preparation – 20 minutes, 1 time a day, 7 days a week for lunch, and 20 minutes, 1 time a day, 7 days a week for dinner for a total of 280 minutes per

week (Exhibit 5, pgs. 30)

- 2) IADL – Laundry – 60 minutes per week (Exhibit 5, pgs. 31)
- 3) IADL – Housekeeping – 60 minutes per week (Exhibit 5, pgs. 31)
- 4) IADL – Shopping – 60 minutes per week (Exhibit 5, pgs. 31)

Before IADLS may be addressed, as a threshold inquiry, MassHealth must determine that the Appellant requires help with 2 or more ADLs. (Testimony, 130 CMR 450.303, 130 CMR 422.403(C)(3)).

Regarding the first requested ADL, Bathing – 15 minutes, 1 time a day, 7 days a week for a total of 170 minutes per week (Exhibit 5, pgs. 17), MassHealth testified that the Appellant's clinical record does not support that the Appellant requires hands-on physical assistance with the ADL of Bathing. (Testimony) MassHealth noted that the Appellant has the use of her upper body, there are devices (such as long handled sponges and grabbers) that may assist the Appellant, and the Appellant currently has a shower chair. (Testimony, Exhibit 5). The Appellant, who resides with a roommate, responded that the shower chair is removed so that the Appellant's roommate may utilize the shower<sup>1</sup>. (Testimony) MassHealth stated that the shower chairs are light in weight, and that the Appellant should be able to manipulate the chair on her own based upon the submitted documentation. (Testimony) The Appellant indicated that she cannot carry items (such as a cup of coffee) and walk with her injury. (Testimony) The Appellant indicated that she can bathe herself but requires help with transfers due to the movement of the shower chair. (Testimony) However, the Appellant's PCM did not request time for bathroom transfers, rather requested aid with Bathing. (Exhibit 5, pg. 17)

Regarding the second requested ADL, Dressing and Undressing – Dressing – 5 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 70 minutes (Exhibit 5, pgs. 21), MassHealth testified that the Appellant's clinical record does not support that the Appellant requires hands-on physical assistance with the ADL of Dressing and Undressing. (Testimony) MassHealth noted that the Appellant has the use of her upper body, there are devices (such as grabbers) that may assist the Appellant. (Testimony, Exhibit 5). The Appellant responded that she has a grabber and is able to dress herself, however, she requires help getting her clothing. (Testimony) MassHealth stated that based upon the submitted documentation, the Appellant does not required help with this ADL (Testimony)

Regarding the third requested ADL, Assistance with Medications Activities – Physical assist with dispensing medications – 1 minute, 2 times a day, 7 days a week, for a total of 14 minutes per week (Exhibit 5, pgs. 25), MassHealth testified that the Appellant's clinical record does not support that the Appellant requires hands-on physical assistance with the ADL of Medication Activities. (Testimony) MassHealth noted that the Appellant has the use of her upper body. (Testimony,

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<sup>1</sup> No explanation as to why the Appellant's roommate could not remove the lightweight shower chair, and then return the lightweight shower chair after utilizing the shower chair was offered.

Exhibit 5). The Appellant responded that she has is able to dispense her own medications, however, she forgets and needs reminders. (Testimony) MassHealth stated cueing is a non-covered service. (Testimony, 130 CMR 422.412(C))

On the day of the Appellant's in person evaluation, it was noted that the Appellant arrived immediately after the evaluator. The Appellant was observed to climb 2 flights of stairs slowly, utilizing the handrails for support. The Appellant did not utilize any additional type of mobility device or aid. (Exhibit 5, pg. 8)

In a progress note, dated July 15, 2024, a conversation with a New Hampshire pharmacy was discussed. The pharmacy manager discussed the difficulties that the pharmacy staff has had with the Appellant. Approximately 2 weeks prior to the progress note, the pharmacy received a request for double the amount of alprazolam prescribed to the Appellant. When the pharmacy manager spoke with the Appellant to explain that the pharmacy would not fill the prescription, the Appellant presented aggressive and began utilizing profanity over the phone. The Appellant demanded that her prescriptions be transferred to another pharmacy but was informed that this would require the Appellant's doctor to write a new prescription. It was noted that when the Appellant has called the pharmacy to refill prescriptions in the past, it was observed that the Appellant's speech was often mumbled and slurred. The Appellant is not allowed within this particular pharmacy due to a shoplifting incident and can only retrieve her prescriptions at the drive-through. (Exhibit 5, pg. 50)

Further within the progress note, discussion of the Appellant's polysubstance abuse was included. Although discussed in the past, in this particular conversation, the Appellant appeared to agree that 3 times a day of alprazolam was not necessary. The Appellant explained her mistaken belief that the Appellant required this dosage to address a seizure disorder as prescribed by her neurologist, however, no documentation from the neurology department was present. A discussion was had related to the Appellant utilizing a treatment team to manage the Appellant's controlled substance prescriptions. However, the Appellant denied polysubstance abuse. When the physician broached the subject of a past lab result taken during her prior hospitalization indicating the presence of cocaine and other substances, the Appellant stated that the test was inaccurate. (Exhibit 5, pgs. 50-51)

## **Findings of Fact**

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

1. The Appellant is a MassHealth member under the age of 65 who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 5).
2. The Appellant's primary diagnosis includes a stress fracture. (Testimony, Exhibit 5, pg. 10) The

Appellant's ankle was fractured in [REDACTED] due to a fall from slipping on ice. (Exhibit 5, pg. 10). The Appellant has had screws and plates implanted, the ankle appears mis-shaped, and the Appellant complains of constant pain. (Exhibit 5, pg. 10).

3. Secondary diagnoses include polysubstance dependence, PTSD, anxiety, among other diagnoses. (Exhibit 5, pg. 52-53)
4. MassHealth denied the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services did not indicate that the Appellant requires physical assistance with two or more Activities of Daily Living (ADL) as documented within the Appellant's clinical record, (See 130 CMR 422.402(C)(3) and Exhibit 1).
5. The Appellant's PCM requested assistance with the following ADLs: ADL – Bathing – 15 minutes, 1 time a day, 7 days a week for a total of 170 minutes per week (Exhibit 5, pgs. 17), ADL – Dressing – 5 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 70 minutes (Exhibit 5, pgs. 21), and ADL – Assistance with Medications Activities – Physical assist with dispensing medications – 1 minute, 2 times a day, 7 days a week, for a total of 14 minutes per week (Exhibit 5, pgs. 25)
6. Regarding the first requested ADL, Bathing – 15 minutes, 1 time a day, 7 days a week for a total of 170 minutes per week (Exhibit 5, pgs. 17), the Appellant has the use of her upper body, owns a grabber, and the Appellant currently has a shower chair. (Testimony, Exhibit 5). The Appellant, who resides with a roommate, indicated that she can bathe herself but requires help with transfers due to the movement of the shower chair. (Testimony) However, the Appellant's PCM did not request time for bathroom transfers, rather requested aid with Bathing. (Exhibit 5, pg. 17)
7. Regarding the second requested ADL, Dressing and Undressing – Dressing – 5 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 70 minutes (Exhibit 5, pgs. 21), the Appellant has the use of her upper body and the Appellant has a grabber. (Testimony, Exhibit 5). The Appellant testified that she is able to dress herself, however, she requires help getting her clothing. (Testimony)
8. Regarding the third requested ADL, Assistance with Medications Activities – Physical assist with dispensing medications – 1 minute, 2 times a day, 7 days a week, for a total of 14 minutes per week (Exhibit 5, pgs. 25), the Appellant has the use of her upper body. (Testimony, Exhibit 5). The Appellant testified that she has is able to dispense her own medications, however, she forgets and needs reminders. (Testimony) Cueing is non-covered service. (Testimony, 130 CMR 422.412(C))
9. On the day of the Appellant's in person evaluation, Appellant was observed to climb 2 flights

of stairs slowly, utilizing the handrails for support. The Appellant did not utilize any additional type of mobility device or aid. (Exhibit 5, pg. 8)

## Analysis and Conclusions of Law

Personal Care Assistant 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.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

(1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;

(2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;

(3) bathing/grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;

- (4) dressing or undressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

(B) Instrumental Activities of Daily Living (IADLs). Instrumental activities of daily living include the following:

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

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

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

Additionally, the Regulation cited by MassHealth at the Hearing is codified in 130 CMR 422.403(C):

422.403: Eligible Members

(C) MassHealth covers PCA 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 PCA services are authorized for the member in accordance with 130 CMR 422.416.



- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

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). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

Here, the Appellant has not met her burden, by a preponderance of evidence, to show that MassHealth's administrative determination is invalid. The Appellant submitted the required documentation for evaluation. (Exhibit 5). The Appellant underwent an assessment. (Exhibit 5). Based upon the assessment, the assessing nurse submitted the following related to ADLs:

- 1) ADL – Bathing – 25 minutes, 1 time a day, 7 days a week for a total of 175 minutes per week
- 2) ADL – Grooming – Nail care, 3 minutes, 1 time a day, 1 day a week and Grooming – other (lotion) – 3 minutes, 1 time a day, 7 days a week for a total of 24 minutes per week
- 3) ADL – Dressing – 6 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 77 minutes
- 4) ADL – Assistance with Medications Activities – Prefilling assist, 10 minutes, 1 time a day, 1 day a week – Physical assist with dispensing medications – 1 minute, 4 times a day, 7 days a week, Glucometer check, 3 minutes, 3 times a day, 7 days a week for a total of 101 minutes per week

Regarding the first requested ADL, Bathing – 15 minutes, 1 time a day, 7 days a week for a total of 170 minutes per week (Exhibit 5, pgs. 17), the Appellant has the use of her upper body, owns devices (such as a grabber) that may assist the Appellant bathing, and the Appellant currently has a shower chair. (Testimony, Exhibit 5). Additionally, the Appellant testified that she can bathe herself<sup>2</sup>. Therefore, based upon the submissions and the Appellant's testimony, I find that the Appellant has not met the burden, by a preponderance of evidence, to show that MassHealth's administrative determination is invalid.

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<sup>2</sup> Regarding the Appellant's testimony that she requires help with transfers due to the movement of the shower chair, the Appellant's PCM did not request time for bathroom transfers. (Exhibit 5, pg. 17)

Regarding the second requested ADL, Dressing and Undressing – Dressing – 5 minutes, 1 time a day, 7 days a week and Undressing, 5 minutes, 1 time a day, 7 days a week for a total of 70 minutes (Exhibit 5, pgs. 21), the Appellant has the use of her upper body, owns a grabber, and is able to dress herself. (Testimony, Exhibit 5). Therefore, based upon the submissions and the Appellant’s testimony, I find that the Appellant has not met the burden, by a preponderance of evidence, to show that MassHealth’s administrative determination is invalid.

Regarding the third requested ADL, Assistance with Medications Activities – Physical assist with dispensing medications – 1 minute, 2 times a day, 7 days a week, for a total of 14 minutes per week (Exhibit 5, pgs. 25), the Appellant has the use of her upper body, and testified that she has is able to dispense her own medications, however, she forgets and needs reminders. (Testimony) Cueing is non-covered service. (Testimony, 130 CMR 422.412(C)) Therefore, based upon the submissions and the Appellant’s testimony, I find that the Appellant has not met the burden, by a preponderance of evidence, to show that MassHealth’s administrative determination is invalid

Based upon the Record in the instant appeal, including the testimony of the Appellant as well as the submissions, I find that the Appellant has not met her burden, by a preponderance of evidence, that MassHealth’s administrative determination is invalid. MassHealth’s findings are supported by the Appellant’s own testimony at Hearing. According, this appeal is DENIED.

## **Order for MassHealth**

None.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Patrick Grogan  
Hearing Officer  
Board of Hearings

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