

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed part; Denied in part	Appeal Number:	2412735
Decision Date:	12/19/2024	Hearing Date:	10/25/2024
Hearing Officer:	Thomas Doyle	Record Open to:	N/A

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	Issue:	Prior Authorization, PCA Services
Decision Date:	12/19/2024	Hearing Date:	10/25/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	Aid Pending:	Yes

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 18, 2024, MassHealth modified the appellant's request for prior authorization for Personal Care Attendant (PCA) services. (Ex. 1). Appellant filed this appeal in a timely manner on August 15, 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

The MassHealth representative, a registered nurse, (RN), appeared at the hearing telephonically. She testified that the appellant is in her late [REDACTED] and has a primary diagnosis of Multiple

Sclerosis and osteoporosis. She stated that appellant lives with her significant other and children. (Testimony; Ex. 4, p. 7). On July 16, 2024, the appellant's provider, Independence Associates, Inc., submitted a prior authorization (PA) request for PCA services. The provider requested PCA services in the amount of 61 hours per week for the prior authorization period of September 26, 2024, to September 25, 2025. On July 18, 2024, MassHealth modified the request in several respects and approved 47 hours per week. The appellant filed a timely appeal on August 15, 2024. (Testimony).

The MassHealth representative testified that there were 6 areas of modification to the PA request. At hearing, 2 of these modifications were resolved as follows:

Grooming, hair care: Appellant requested PCA assistance with Grooming, hair care, in the amount of 10 minutes an episode, 1 episode a day, 7 days a week. (Ex. 4, p. 16). MassHealth modified the request to 5 minutes an episode, 1 episode a day, 7 days a week. (Testimony). After testimony from appellant and discussion between the parties, MassHealth restored the requested time made by appellant.

Shopping: Appellant requested PCA assistance with Shopping in the amount of 45 minutes a week. (Ex. 4, p. 31). MassHealth modified the request to 30 minutes a week. (Testimony). Appellant accepted MassHealth's modification to 30 minutes a week. (Testimony).

The 4 areas of modification that remain in dispute are Toileting Special Transfer, Meal Preparation, Laundry 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.

Toileting Special Transfer: Appellant requested PCA assistance with Toileting Special Transfer in the amount of 9 minutes an episode, 9 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 20). MassHealth modified the request to 3 minutes an episode, 7 episodes a day, 7 days a week on the basis the time requested is longer and more frequent than ordinarily required for someone with the appellant's physical needs. (Testimony). The RN further explained that under Mobility Transfers, which was approved in full, appellant was approved for 3 minutes an episode. (Testimony; Ex. 4, p. 11). She stated under Toileting Special Transfer, the PCM agency requested triple the amount of time, 9 minutes an episode, that was approved for Mobility Transfers, without documentation. (Testimony; Ex. 4, p. 20). The RN stated that under Toileting, Bladder care, approval was given at 3 minutes an episode, 6 episodes a day, 7 days a week while Bowel care was approved at 5 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 20). The RN concluded the PCM agency requested 2 more episodes a day, totaling 9, for Toileting Special Transfer than was requested for Bowel and Bladder care combined, which was a total of 7 episodes a day. The RN summarized that MassHealth modified the time frequency of each episode to match the frequency of going to the toilet, which is 7 times per day. She also stated the modified time for the number of episodes a day under Toileting Special Transfer, 7, is the same amount of time as to what was requested and approved under Mobility and Mobility Transfers,

again, 7. (Testimony; Ex. 4, p. 11, 20). The RN stated in response to appellant's testimony that a PCA is not compensated for time they spend waiting.

Appellant stated she has residual volume in her bladder and has to go back into the bathroom after an hour and sit and wait to empty her bladder. She stated she is also constipated and must wait and then when there is movement, it comes out all at once. She believed the time requested should have been more and did not agree with the modification.

Meal Preparation: Appellant requested 65 minutes per day, 5 days a week for breakfast, lunch and dinner and 5 minutes per day, 7 days a week for a snack. (Testimony; Ex. 4, p. 28). MassHealth modified the time to a total of 50 minutes per day, 5 days per week. (Testimony). The RN stated this was modified because appellant lives with her spouse and pursuant to the regulations, the spouse is responsible for providing meal preparation for appellant. The RN asked appellant if her spouse has dinner at home during the week and appellant stated he does. (Testimony; 130 CMR 422.412 (F)).

Appellant stated sometimes her spouse gets stuck in traffic and he is late getting home. She said "it's tough" and requested more time. (Testimony).

Laundry: Appellant requested 75 minutes a week to do laundry. (Ex. 4, p. 29). MassHealth modified this task to 45 minutes a week. (Testimony). The RN stated appellant lives with her spouse and the spouse is legally required to provide this service for appellant. (Testimony; 130 CMR 422.412 (F)).

Appellant testified that if her husband is not there, the PCA is present and can do her laundry. She stated if her spouse is late getting home, he is not going to want to wash, dry and fold her laundry. (Testimony). Appellant stated she has soiled laundry several times a week. The RN stated in response that MassHealth also looks at sporadic issues or "once in a while" laundry. Appellant stated it is not once in a while. The RN stated it is the responsibility of the spouse to do appellant's laundry. (Testimony).

Medical Transportation: Appellant requested 281 minutes per week for PCA assistance with medical transportation and MassHealth modified this to 52 minutes per week. (Testimony; Ex. 4, p. 32). The RN stated that the time was modified because some of the services requested are longer than ordinarily required for someone with appellant's physical needs and some of the documentation does not support medical necessity. (Testimony). The RN stated there were "a lot of inconsistencies." (Testimony).

She referenced a chart in the record reflecting appellant's transportation requests. (Ex. 4, p. 36). She noted that the first three providers in the extreme left column, Neuro, Eliot Physical Therapy (EPT) and Podiatrist, displayed 5 minutes for "transfer time in/out of home" but the "minutes/appointment" column for all three providers showed 0 time. (Id). The RN then spoke

about the next four providers in the left column, PCP Norwood, CT scans, Dental Boston and Ophthalmology. She noted how the time requested for “transfer in/out of home” was 20 minutes and the time requested for “transfer in/out of office” was 10 minutes.

The RN stated that the first modification was to “transfer time in/out of home” and “transfer time in/out of office” for PCP Norwood, CT scans, Dental Boston and Ophthalmology. This time was modified to 5 minutes for transfers in and out of home, and no time for transfers in and out of office, in order to be consistent with the time requested for Neuro, EPT, and Podiatrist.

The RN stated that the second modification was to the number of visits to the Podiatrist. Appellant requested 68 visits a year and this was modified to 12 visits a year. (Testimony; Ex. 4, p. 36).

The RN stated that the third modification was to the frequency of visits to EPT. Appellant requested 52 visits a year and this was modified to 20 visits a year. (Testimony; Ex. 4, p. 36). The RN explained that MassHealth allows up to 20 visits a year for PT but for anything above that, the physical therapist must submit a prior authorization request, and there was no prior authorization request found in the MassHealth system. (Testimony). In testifying about the number of PT services, the RN stated that part of the review was deferred for clarification because there was documentation that stated appellant used PT-1 services for transportation. The response to the deferment was appellant did have PT-1 but did not use it. However, at hearing, appellant testified that, “I do use it.” (Appellant Testimony). The RN that stated if that is the case, then if the PCA only assists with transfers in and out of home and in and out of appointments, the PCA only gets compensated for that time and not driving. (Testimony). Appellant’s travel time, in minutes, was not modified. The RN testified that all other numbered visits were approved as requested. (Testimony).

Appellant testified that she thought the time requested for podiatry “was a bit much” and regarding the modification made by MassHealth she stated, “I understand that.” (Testimony).

Findings of Fact

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

1. Appellant is in her late [REDACTED] and has a primary diagnosis of Multiple Sclerosis and osteoporosis. Appellant lives with her significant other and children. (Testimony; Ex. 4, p. 7).
2. On July 16, 2024, the appellant’s provider, Independence Associates, Inc., submitted a PA request for PCA services. The provider requested PCA services in the amount of 61 hours per week for the prior authorization period of September 26, 2024, to September 25, 2025. On July 18, 2024, MassHealth modified the request in several respects and approved 47 hours per week.

(Testimony).

3. Appellant filed a timely appeal on August 15, 2024. (Testimony; Ex. 2).
4. At hearing, the parties resolved 2 of the modifications (related to Grooming and Shopping). (Testimony). The modifications for Toileting Special Transfer, Meal Preparation, Laundry and Medical Transportation remained in dispute. (Testimony).
5. Appellant requested PCA assistance with Toileting Special Transfer in the amount of 9 minutes an episode, 9 episodes a day, 7 days a week. (Testimony; Ex. 4, p. 20). MassHealth modified the request to 3 minutes an episode, 7 episodes a day, 7 days a week. (Testimony).
6. For Meal Preparation, appellant requested 65 minutes per day, 5 days a week for breakfast, lunch and dinner and 5 minutes per day, 7 days a week for a snack. (Testimony; Ex. 4, p. 28). MassHealth modified the time to a total of 50 minutes per day, 5 days per week. (Testimony).
7. For Laundry, appellant requested 75 minutes a week. (Ex. 4, p. 29). MassHealth modified this task to 45 minutes a week. (Testimony).
8. Regarding Medical Transportation, appellant requested 281 minutes per week and MassHealth modified this to 52 minutes per week. (Testimony; Ex. 4, p. 32).
9. Appellant has and uses PT-1 services. (Appellant Testimony; Ex. 4, p. 32).

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.

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

In this case, MassHealth modified the appellant's PA request for PCA services by reducing the time requested for several activities. After resolution of some of these modifications at hearing, the areas of Toileting Special Transfer, Meal Preparation, Laundry and Medical Transportation remain in dispute.

Appellant disagreed with the medically necessary decision of MassHealth in modifying her hours for PCA services. 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).

Toileting Special Transfer: Appellant requested PCA assistance with Toileting Special Transfer in the amount of 9 minutes an episode, 9 episodes a day, 7 days a week. MassHealth modified the request to 3 minutes an episode, 7 episodes a day, 7 days a week on the basis that the time requested is longer and more frequent than ordinarily required for someone with the appellant's physical needs. The RN further explained that under Mobility Transfers, which was approved in full, appellant was approved for 3 minutes an episode. She stated under Toileting Special Transfers, the PCM agency requested triple the amount of time, 9 minutes an episode, that was approved for Mobility Transfers, without any documentation. The RN stated that under Toileting, Bladder care, MassHealth approved time at 3 minutes an episode, 6 episodes a day, 7 days a week while Bowel care was approved at 5 minutes an episode, 1 episode a day, 7 days a week. The RN stated the PCM agency requested 2 more episodes a day, totaling 9, for Toileting Special Transfer than was requested for Bowel and Bladder transfer care combined, which was a total of 7 episodes a day. The RN stated MassHealth modified the time frequency of each episode to match the frequency of going to the toilet, which is 7 times per day. She also stated the modified time for the number of episodes a day under Toileting Special Transfer, 7, is the same amount of time as to what was requested and approved under Mobility and Mobility Transfers, again, 7. I find the RN's

testimony credible and supported by the record. Appellant did not substantiate the medical necessity for 2 additional Toileting Special Transfers per day. This part of the appeal is denied.

Meal Preparation: Appellant requested 65 minutes per day, 5 days a week for breakfast, lunch and dinner and 5 minutes per day, 7 days a week for a snack. MassHealth modified the time to a total of 50 minutes per day, 5 days per week. MassHealth eliminated time for snack. The RN stated this was modified because appellant lives with her spouse and pursuant to the regulations, (130 CMR 422.410 (C)(1)- ("family member will provide assistance"), the spouse is responsible for providing meal preparation for appellant. The RN asked appellant if her spouse has dinner at home during the week and appellant stated, "he does." In response, appellant stated that her spouse may get stuck in traffic and have a difficult time getting home with her then becoming hungry. I find that is an invalid reason to disregard the regulation that a family member living with MassHealth member "will provide assistance." I find that appellant has not met her burden and the part of her appeal regarding Meal Preparation is denied.

Laundry: Appellant requested 75 minutes a week to do laundry. MassHealth modified this task to 45 minutes a week. The RN stated appellant lives with her spouse and the spouse is legally required to provide this service for appellant. The regulation is clear, stating "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" (emphasis added). (130 CMR 422.410 (C)(1)). Appellant stated if her spouse gets caught in traffic and come home late, he does not want to wash, dry and fold laundry. Appellant also mentioned she has soiled laundry. The RN stated that was taken into consideration when modifying the time for Laundry. Appellant has offered no evidence that the modification from 75 minutes a week to 45 minutes a week for Laundry is incorrect or why I should disregard the regulation that says a family member must help with most IADL's. I find appellant has not met her burden and the part of the appeal disputing Laundry is denied.

Medical Transportation: Appellant requested 281 minutes per week and MassHealth modified this to 52 minutes per week. The RN stated that the time was modified because some of the services requested are longer than ordinarily required for someone with appellant's physical needs and some of the documentation does not support medical necessity. The RN noted inconsistencies in the request for time.

A chart in the record reflects appellant's transportation requests. (Ex. 4, p. 36). The first three providers in the extreme left column - Neuro, EPT and podiatrist - request 5 minutes for "transfer time in/out of home." The next four providers in the left column, PCP Norwood, CT scans, Dental Boston and Ophthalmology requested time for "transfer in/out of home" at 20 minutes and the time requested for "transfer in/out of office" was 10 minutes. The first modification was to "transfer time in/out of home" and "transfer time in/out of office" for PCP Norwood, CT scans, Dental Boston and Ophthalmology. This time was modified for these four providers to 5 minutes

for transfers in and out of home, and no time for transfers in and out of office, in order to be consistent with the requested time for the first three providers. I find no error in modifying the transfer time for these four providers as appellant has not met her burden and I find no medical necessity as to why the transfer time in/out of home and transfer time in/out of office should vary between providers. This part of the appeal is denied.

The RN stated that the second modification was to the number of visits to the podiatrist. Appellant requested 68 visits a year and this was modified to 12 visits a year. At hearing, appellant testified she did not understand the time requested for the podiatrist and she admitted the request was a “a bit much” and a “little high.” Appellant has not met her burden and I find no medical necessity for the number of visits requested to the podiatrist, therefore, this part of the appeal is denied.

The third modification under Medical Transportation was to the frequency of visits to EPT. Appellant requested 52 visits a year and this was modified to 20 visits a year. The RN explained MassHealth allows up to 20 visits a year for PT but for anything above that, the physical therapist must submit a prior authorization request. I find there is no prior authorization request for additional visits in the record before me. I find the RN’s testimony credible and supported by the record, therefore this part of the appeal is denied.¹

For the reasons set forth above, appellant has not demonstrated the medical necessity of the full PCA time requested for Toileting Special Transfer, Meal Preparation, Laundry or Medical Transportation. This appeal is denied in part (as to these 4 issues) and dismissed in part (as to the issues resolved at hearing).

Order for MassHealth

Implement the changes agreed to at the hearing.

Notification of Your Right to Appeal to Court

¹ During discussion of transportation for EPT, the RN stated part of the review was deferred for clarification because there was documentation that stated appellant used PT-1 services for transportation. The response to the deferment was appellant did have PT-1 but did not use it. However, at hearing, appellant testified “I do use it.” (Appellant Testimony). The RN stated if that is the case, then the PCA can only assist with transfers in an out of home and in and out of the provider’s office and the PCA does not receive compensation for driving.

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