

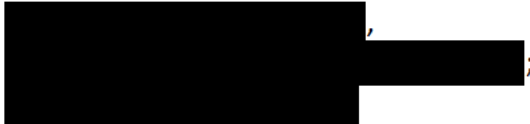
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2413157
<b>Decision Date:</b>	10/17/2024	<b>Hearing Date:</b>	09/26/2024
<b>Hearing Officer:</b>	Amy B. Kullar, Esq.		

**Appearances for Appellant:**



**Appearance for MassHealth:**

Robin Brown OT/L, 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

<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Issue:</b>	Prior Authorization; Personal Care Attendant services
<b>Decision Date:</b>	10/17/2024	<b>Hearing Date:</b>	09/26/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OT/L	<b>Appellant's Reps.:</b>	Pro se; Danielle Kenyon; James Macik
<b>Hearing Location:</b>	Quincy Harbor South 2 (Telephone)	<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 11, 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 23, 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 MassHealth representative appeared via telephone and identified herself as an occupational therapist and clinical appeals reviewer. The appellant also appeared at hearing via telephone and was accompanied by his authorized representative/daughter/PCA and his son/surrogate. The appellant's daughter verified the appellant's identity. The parties' testimony and record evidence are summarized as follows:

The appellant is an adult over the age of 65. The appellant's medical history includes Type 2 diabetes with hyperosmolarity, stroke, incontinence of bladder and bowel, dementia and cognitive decline due to dementia, impaired speech, and three open wounds on his scrotum, left shin, and left elbow. He is a high falls risk. Testimony, Exhibit 5. He lives with his daughter and she serves as his PCA. Testimony. The appellant was re-evaluated for PCA services on July 3, 2024, and on July 3, 2024, his PCM agency, AdLib, Inc., requested 53 hours per week for the service period of 8/19/2024-8/18/2025. This request was modified on July 11, 2024, to 48 hours per week for the service period of 8/19/2024-8/18/2025. Testimony, Exhibit 5. MassHealth made seven (7) modifications related to PCA assistance with mobility, grooming: nails, oral care, undressing, bladder care, meal preparation and cleanup, and housekeeping.

Based on the testimony and discussion at hearing, the following categories are no longer in dispute: grooming: nails – the appellant agreed to accept 3x1x3 (9 minutes per week); MassHealth overturned the housekeeping modification and approved the requested 60x1, or 60 minutes per week for housekeeping; and the appellant's daughter dropped her disputes as to the modifications in the categories of bladder care (7x6x7, or 294 minutes per week); oral care (2x2x7, or 28 minutes per week), and meal preparation and cleanup (60x1x7, or 420 minutes per week).

The remaining disputed categories are mobility and undressing.

### Mobility

The MassHealth representative testified that the appellant's PCM agency requested 8 minutes per episode, 7 times a day, 7 days a week for PCA assistance with mobility. Testimony, Exhibit 5. The appellant is categorized as requiring a "maximum" level of assistance for mobility. Exhibit 5. The MassHealth representative explained that this activity consists of "walking or riding in a wheelchair room to room in the home." Testimony. MassHealth modified this request to 3 minutes per episode, 7 times per day, 7 days a week. Testimony and Exhibit 1. The MassHealth representative further testified that the requested 8 minutes is a long time even for someone who requires maximum assistance, as the appellant is documented to require. Testimony. This task was modified because the appellant can provide 25% assistance, and the time requested is longer than ordinarily required by someone with the appellant's medical needs. Testimony.

The appellant's daughter responded that the appellant's complete diagnosis is not properly documented. She stated that the appellant's hip fracture is inside the hip socket, and as a result "he drags his right leg, it slips and it makes him fall, he goes really slowly." Testimony. She acknowledged that 8 minutes is a long time for mobility, but due to his health needs, this is typical for him. She stated that the appellant has had major changes to his health this year, he now has both knees in braces, he suffered a third stroke earlier this year, and his neuropathy is causing him to be unable to hold his walker. Testimony.

In response, the MassHealth representative stated that the category of "mobility" is defined as physically assisting [the appellant] due to a mobility impairment and that in her professional experience, the appellant's daughter is describing a situation that sounds extremely dangerous. Testimony. MassHealth cannot approve time for activities that do not meet the standard of care. Testimony. In her opinion, if the appellant "has falls all the time, what is actually happening [in the home] doesn't meet the standard of care." Testimony. The MassHealth representative further stated that MassHealth pays for durable medical equipment that is medically necessary, and it is clear that the equipment they have is not meeting the appellant's needs at home. Testimony.

The appellant's daughter addressed the perceived unsafe home situation by clarifying that the Appellant can walk without help. He will fall "all the time if he tries to go himself." Testimony. The appellant has a special brace that keeps his right leg from flipping, and this injury cannot be repaired surgically. The appellant's daughter feels that the PCM assessment documented his needs – the appellant is unsafe without support. Testimony. She stated that one person assists the appellant to walk, and she keeps two people in the house to assist in getting him up if he falls. Testimony.

The MassHealth representative asked the appellant's daughter why the appellant needed so many episodes of mobility per day, and why are the rooms in their home that he occupies so far apart. The appellant's daughter acknowledged that the actual number of mobility tasks varied, it can be around 5 [episodes] per day of mobility. The appellant's daughter then described how she assists the appellant with mobility and ambulating around their home:

It takes him a long time to move around – he needs to be monitored using a walker, the braces slow him down but he needs them, the diabetic shoes are unfamiliar, and he stubs [his feet] a lot and he is very afraid to fall so he goes very slowly. Whatever room he goes in, he has to back in because he can't maneuver the walker to turn, and he stops and turns in a circle and backs in. When he is trying to lift what is almost a dead leg and brace and fractured hip, and she is spotting him, holding his hips, it takes a long time for safety purposes, he can't pick up his right leg; he really does take longer than a normal person would.

Testimony.

The MassHealth representative responded that not only do the requested tasks have to be medically necessary, but also the activity that is being requested must meet the standard of care and be safe to perform. The appellant's daughter is describing "non-functional ambulation." Testimony. This is not functional mobility; this is exercise, not a task. It sounds like "a safety risk for her and [the appellant], and it's extremely time-intensive." Testimony. The MassHealth representative strongly encouraged the appellant's daughter to consider a wheelchair for everyone's safety.

### Undressing

The MassHealth representative explained that the PCM agency requested 7x1x7, or 49 minutes per week, of PCA assistance with getting undressed, and MassHealth modified this requested time to 5x1x7, or 35 minutes per week. Testimony. The MassHealth representative stated that the category of undressing was modified because the time requested for undressing is longer than someone with the appellant's needs usually requires if he only needs 7 minutes to get dressed<sup>1</sup>. Testimony. The MassHealth representative testified that the clinical judgment that was used in modifying this category is that it takes someone who has had a stroke or a hip fracture longer to get dressed than undressed. Since the same amount of time was requested for undressing and dressing, the undressing time was modified down a little bit. Testimony. The appellant's daughter asked in response, "Where does changing him for incontinence come into play?" Testimony. The MassHealth representative stated that the undressing category is the time it takes to get him undressed at night only. Hygiene and changes associated with toileting are handled under those categories, not here. Testimony. At the end of the discussion on the category of undressing, the appellant's daughter said she was fine with 5 minutes per episode<sup>2</sup>. Testimony.

## **Findings of Fact**

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

1. Appellant is an adult MassHealth member over the age of 65.
2. Appellant has diagnoses of Type 2 diabetes with hyperosmolarity, stroke,

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<sup>1</sup> The appellant was approved for 7x1x7, or 49 minutes per week, of PCA assistance with dressing. This category was not in dispute at the hearing. Exhibit 6 at 18.

<sup>2</sup> At the end of the hearing when the Hearing Officer reviewed the modified categories and times that were approved to confirm that all parties were in agreement with all modifications, the appellant's daughter requested the Hearing Officer to issue a decision in the category of undressing in addition to mobility.

incontinence of bladder and bowel, dementia and cognitive decline due to dementia, impaired speech, and three open wounds on scrotum, left shin, and left elbow. He is also a high fall risk. Testimony and Exhibit 5.

3. On July 3, 2024, appellant's PCM agency sent MassHealth a PA request seeking 53 hours per week for the service period of 8/19/2024-8/18/2025. Testimony and Exhibit 5.
4. On July 11, 2024, MassHealth modified the request in seven (7) categories and approved the appellant for 48 hours per week for the service period of 8/19/2024-8/18/2025; specifically, by modifying the times for "mobility, grooming: nails, oral care, undressing, bladder care, meal preparation and cleanup, and housekeeping." Exhibits 1 and 6.
5. At hearing, MassHealth fully restored time as requested for PCA assistance with housekeeping (60 minutes per week), MassHealth and the appellant agreed upon 3x1x3, or 9 minutes per week for grooming: nails, and the appellant accepted MassHealth's modification of the bladder care (7x6x7, or 294 minutes per week), oral care (2x2x7, or 28 minutes per week) and meal preparation and cleanup (60x1x7, or 420 minutes per week), which resolved the disputes related to PCA assistance with those tasks. Testimony.
6. The appellant seeks time for PCA assistance with mobility as follows: 8 minutes per episode, 7 times a day, 7 days a week (392 minutes per week). Testimony and Exhibit 5.
7. MassHealth approved 3 minutes of PCA assistance per episode, 7 times per day, 7 days a week (147 minutes per week) for mobility. Testimony and Exhibit 5.
8. The appellant seeks time for PCA assistance with undressing as follows: 7 minutes per episode, 1 time a day, 7 days a week (49 minutes per week). Testimony and Exhibit 5.
9. MassHealth approved 5 minutes of PCA assistance per episode, once per day, 7 days a week (35 minutes per week) for undressing. Testimony and Exhibit 5.

## **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).

The appeal is dismissed as to PCA assistance with grooming: nails, bladder care, oral care, meal preparation and cleanup, and housekeeping, which resolved the dispute related to PCA assistance with those tasks. MassHealth fully restored the time requested for housekeeping (60 minutes per week), and MassHealth and the appellant agreed to 3x1x3, or 9 minutes per week for grooming: nail care. The appellant accepted MassHealth's modifications for bladder care (7x6x7, or 294 minutes per week), oral care (2x2x7 or 28 minutes per week) and meal preparation (60x1x7, or 420 minutes per week), which resolved the disputes related to PCA assistance with those tasks. These portions of the appeal are therefore DISMISSED.

As to the appellant's request for PCA assistance with undressing, the appeal is denied. The appellant requested 7x1x7, or 49 minutes per week, of PCA assistance with getting undressed and this was modified to 5x1x7, or 35 minutes per week. This task involves removing the appellant's clothing at the end of the day. The appellant's daughter did not credibly explain why the extra two minutes for undressing are medically necessary. The time for undressing does not include periodic changes of clothes due to bladder or bowel hygiene; the MassHealth representative explained that the time for these changes was accounted for under the toileting category, which was not in dispute at the hearing. The category of undressing is meant to cover the time it takes the PCA to physically assist the appellant with removing his clothing at the end of the day. There is no

evidence to explain why two additional minutes are medically necessary for the appellant to get undressed. The appellant has not shown that additional time for undressing is medically necessary.

This portion of the appeal is therefore DENIED.

As to the appellant's request for PCA assistance with mobility, the appeal is denied. The appellant requested 8 minutes per episode, 7 times a day, 7 days a week (392 minutes per week) of PCA assistance with mobility. MassHealth approved 3 minutes per episode, 7 times per day, 7 days a week (147 minutes per week) of PCA assistance with mobility for the appellant. Mobility is physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment. Testimony. The testimony of the MassHealth representative in response to the appellant's daughter's description of how she assists the appellant with mobility was extremely persuasive. The MassHealth representative stated several times during the discussion of the mobility category that the mobility tasks that the appellant's daughter was describing sound "extremely dangerous." PCA assistance with tasks must be medically necessary, but also the activity must meet the standard of care to be performed safely. The appellant's daughter's testimony confirmed that she is not always performing functional ambulation when she is assisting the appellant with mobility, and that is the reason this task is so time-intensive. To her credit, the appellant's daughter is very focused on providing the appellant with as much independence and autonomy as she can during his current phase of life. However, the appellant cannot have extra time allotted for PCA tasks that do not meet the standard of care and that are unsafe. The appellant has not shown that additional time for mobility is medically necessary.

This portion of the appeal is therefore DENIED.

## **Order for MassHealth**

For the prior authorization period 8/19/2024-8/18/2025, approve the following amounts of PCA assistance for the appellant:

- Mobility: 3x7x7 (147 minutes per week);
- Grooming; nails 3x1x3 (9 minutes per week);
- Oral care 2x2x7 (28 minutes per week);
- Undressing 5x1x7 (35 minutes per week);
- Bladder care 7x6x7 (294 minutes per week);
- Meal preparation and cleanup 60x1x7 (420 minutes per week); and
- Housekeeping 60x1 (60 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.

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

cc: [REDACTED]

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