

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2413213
Decision Date:	11/12/2024	Hearing Date:	10/01/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, OTR/L, 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:	Denied	Issue:	Prior Authorization – Personal Care Attendant (PCA) Services
Decision Date:	11/12/2024	Hearing Date:	10/01/2024
MassHealth's Rep.:	Robin Brown, OTR/L, Optum	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South	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 07/31/2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 16 hours and 15 minutes (16:15) of day/evening hours per week plus 0 daily nighttime attendant hours to 14:30 day/evening hours per week plus 0 daily nighttime attendant hours for the dates of service from 07/31/2024 to 07/30/2025 (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 08/26/2024 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is a registered occupational therapist who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that on 07/03/2024, a prior authorization request (PA) for PCA services was received on appellant's behalf from her PCA provider, [REDACTED] ("provider"), and is a re-evaluation request for the dates of service of 07/31/2024 to 07/30/2025. In the PA request for PCA services (Exhibit 4), the provider requested 16:15 day/evening hours per week plus 0 daily nighttime attendant hours. The appellant is an adult who lives in the community. His primary diagnoses are throat cancer, chronic pain, and impaired balance. The appellant has a medical history that includes chronic back and shoulder pain, poor standing tolerance, limited bending and reaching, status post fall with lung puncture, rib fractures, decreased cervical rotation, status post surgery and radiation, and neuropathy in left foot (Exhibit 4).

The Optum representative testified that on 07/31/2024 MassHealth modified the PCA request to 14:30 day/evening hours per week. MassHealth modified the request for PCA services in the activities of daily living (ADL) tasks of bathing and dressing; and in the instrumental activity of daily living (IADL) tasks of meal preparation/clean-up, and shopping.

Bathing

The appellant's provider requested 30 minutes per day, 1 time per day, 7 days per week (30 X 1 X 7) for assistance with bathing. The provider noted that the appellant "reports needing assistance with bathing, transfers in/out of shower, washing/rinsing/drying hair and back due to impaired balance, poor standing tolerance, decreased cervical rotation, poor range of motion to upper extremities, limited/bending reaching due to status post fall and chronic back/shoulder pain, [and] neuropathy in left foot" (Exhibit 4, pp. 11-12).

MassHealth modified the request for bathing to 25 X 1 X 7. The MassHealth representative testified that the time requested is longer than ordinarily required for someone with the appellant's documented abilities. She referenced a note in the PA request that states the appellant is independent with all forms of mobility with no assistive device. She stated that if the appellant were to obtain a shower chair and a grab bar, he could be more independent with this task. The documentation in the PA request states the appellant can feed himself, which means he should be able to wash his face and front upper body independently. The information in the PA request state the appellant has 60 degrees of motion at his shoulder.

The appellant responded that he worked in construction his "whole life." He suffers from

impaired balance. He testified that he cannot put on a shirt because he cannot raise his arms enough due to “bad arthritis.” He cannot reach above his head or wash his back. He needs to have both shoulders replaced. When asked how much time the PCA spends with hands-on assistance to bathe the appellant, he responded, “I don’t pay attention to time,” but he estimated it takes “at least a half an hour.” He testified that he can step into the shower, but cannot step out – he needs help. He needs his PCA to “make sure I don’t fall.”

Dressing

The appellant’s provider requested on the appellant’s behalf 12 X 1 X 7 per week for assistance with dressing. The provider noted that the appellant reports needing assistance with dressing/undressing of overhead shirt, socks, and shoes due to impaired balance, poor standing tolerance, decreased cervical rotation, limited range of motion to upper extremities, limited bending/reaching and chronic back/shoulder pain.

MassHealth modified the request for assistance with dressing to 10 X 1 X 7. The MassHealth representative testified that according to the PA request, the appellant needs moderate assistance with dressing. Moderate assistance means that a member is able to assist with 50 % of the task. In this case, 10 minutes of assistance should be adequate for someone with the appellant’s abilities. The MassHealth representative told the appellant that he should consider occupational therapy to learn to make it easier for him to dress himself. There is also adaptive equipment available that would help the appellant dress himself.

The appellant testified that he is able to put on his own underwear, socks, and pants. When asked by the hearing officer how long the PCA takes to assist him with hands-on assistance with dressing, he responded that “I don’t know how to answer that. I never thought about it.” He stated that his shoulder “pops out” sometimes when he does “push-pull weights at the gym.” Because of the pain in his shoulder, he is not able to put on shirts that require him to reach over his head.

Meal Preparation and Clean-up

The appellant’s provider requested 15 X 1 X 7 of assistance for breakfast, 20 X 1 X 7 for lunch, 25 X 1 X 7 for dinner, and 5 X 1 X 7 for snacks. The total is 65 minutes per day. The provider noted that the appellant is “dependent for all IADLs due to impaired balance, poor standing balance, decreased cervical rotation, poor range of motion to upper extremities, limited bending/reaching and chronic back/shoulder pain. Meal preparation consists of making nutrient rich drinks with blender and juicing veggies/fruits to meet nutritional needs of consumer due being on full liquid diet due throat cancer and surgery” (Exhibit 4, pp 28-29).

MassHealth modified the request for assistance with meal preparation and clean-up to a total of 60 minutes per day for all meals. The MassHealth representative testified that the documentation included with the PA that the appellant is “dependent” for this task sounds

“incorrect” because it states the appellant is able to use his hands and can reach up to his head. Additionally, he lives with his partner. A liquid diet should not take as long to prepare or clean-up as solid food.

The appellant responded that all reaching or “picking up” things is dangerous. “That is all I can say.”

Shopping

The appellant’s PCA provider requested 45 X 1 X 1 (45 minutes per week) for assistance with shopping. The provider noted that he is “dependent for all IADLs due to impaired balance, poor standing balance, decreased cervical rotation, poor ROM to upper extremities, limited bending/reaching and chronic back/shoulder pain.”

MassHealth modified the request for assistance with shopping to 30 X 1 X 1. The MassHealth representative testified that the comments included with the PA request are inconsistent, because the appellant is documented to be independent with ambulation and is able to use his hands to wash himself from his head down. A note from the appellant’s physician states he can lift no more than 30 lbs. The MassHealth representative questioned why the appellant is not able to shop for himself and carry light bundles.

The appellant responded that he can lift things, but he needs assistance “just in case something goes wrong.” He testified that sometimes when he turns his head, his shoulder “pops out.” He stated he can “possibly do” the shopping.

Findings of Fact

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

1. On 07/03/2024, MassHealth received a prior authorization (PA) request for PCA services on appellant’s behalf from the PCA provider, [REDACTED] (“provider”). It is a re-evaluation request for the dates of service of 07/31/2024 to 07/30/2025 (Testimony; Exhibit 4).
2. In the PA request for PCA services, the provider requested 16:15 day/evening hours per week (Testimony; Exhibit 4).
3. No nighttime attendant hours were requested (Testimony; Exhibit 4).
4. The appellant is an adult who lives in the community. His primary diagnoses are throat cancer, chronic pain, and impaired balance. The appellant has a medical history that

includes chronic back and shoulder pain, poor standing tolerance, limited bending and reaching, status post fall with lung puncture, rib fractures, decreased cervical rotation, status post surgery and radiation, and neuropathy in left foot (Testimony; Exhibit 4).

5. On 07/31/2024 MassHealth modified the PCA request to 14:30 day/evening hours per week (Testimony; Exhibits 1 and 4).
6. The appellant filed his timely request for a fair hearing with the Board of Hearings on 08/26/2024. A fair hearing was held on 10/01/2024 (Exhibits 2 and 3).
7. The appellant's provider requested 30 minutes per day, 1 time per day, 7 days per week (30 X 1 X 7) for assistance with bathing. The provider noted that the appellant "reports needing assistance with bathing, transfers in/out of shower, washing/rinsing/drying hair and back due to impaired balance, poor standing tolerance, decreased cervical rotation, poor range of motion to upper extremities, limited/bending reaching due to status post fall and chronic back/shoulder pain, [and] neuropathy in left foot" (Testimony; Exhibit 4).
8. MassHealth modified the request for bathing to 25 X 1 X 7.
9. According to the documentation included with the PA, the appellant is independent with all forms of mobility with no assistive device (Testimony; Exhibit 4).
10. According to the documentation included with the PA, the appellant can independently feed himself (Testimony; Exhibit 4).
11. According to the documentation included with the PA, the appellant has 60 degrees of motion at his shoulder (Testimony; Exhibit 4).
12. The appellant's provider requested on the appellant's behalf 12 X 1 X 7 per week for assistance with dressing. The provider noted that the appellant reports needing assist with dressing/undressing of overhead shirt, socks, and shoes due to impaired balance, poor standing tolerance, decreased cervical rotation, limited range of motion to upper extremities, limited bending/reaching and chronic back/shoulder pain (Testimony; Exhibit 4).
13. MassHealth modified the request for assistance with dressing to 10 X 1 X 7 (Testimony; Exhibit 4).
14. According to the PA request, the appellant needs moderate assistance with dressing (Testimony; Exhibit 4).
15. Moderate assistance means that a member is able to assist with 50% of the task (Testimony).

16. There is adaptive equipment available from MassHealth to assist the appellant to dress himself more independently (Testimony).
17. The appellant's provider requested 15 X 1 X 7 of assistance for breakfast, 20 X 1 X 7 for lunch, 25 X 1 X 7 for dinner, and 5 X 1 X 7 for snacks. The total is 65 minutes per day. The provider noted that the appellant is "dependent for all IADLs due to impaired balance, poor standing balance, decreased cervical rotation, poor range of motion to upper extremities, limited bending/reaching and chronic back/shoulder pain. Meal preparation consists of making nutrient rich drinks with blender and juicing veggies/fruits to meet nutritional needs of consumer due being on full liquid diet due throat cancer and surgery" (Testimony).
18. MassHealth modified the request for assistance with meal preparation and clean-up to a total of 60 minutes per day for all meals (Testimony; Exhibit 4).
19. According to the documentation included with the PA request, the appellant is able to use his hands and can reach up to his head (Testimony; Exhibit 4).
20. The appellant's PCA provider requested 45 X 1 X 1 (45 minutes per week) for assistance with shopping. The provider noted that he is "dependent for all IADLs due to impaired balance, poor standing balance, decreased cervical rotation, poor ROM to upper extremities, limited bending/reaching and chronic back/shoulder pain (Testimony).
21. MassHealth modified the request for assistance with shopping to 30 X 1 X 1. The MassHealth representative testified that the comments included with the PA request are inconsistent, because the appellant is documented to be independent with ambulation and able to use his hands to wash himself from his head down. A note from the appellant's physician states he can lift no more than 30 lbs. The MassHealth representative questioned why the appellant is not able to shop for himself and carry light bundles (Testimony; Exhibit 4).
22. The appellant responded that he can lift things, but he needs assistance "just in case something goes wrong" (Testimony; Exhibit 4).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

(Emphasis added.)

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

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

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *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).

MassHealth modified the appellant's request for PCA time in the areas of bathing, dressing, meal preparation/clean-up, and shopping. The appellant disputed all of the modifications.

Bathing:

The appellant's provider requested 30 minutes per day, 1 time per day, 7 days per week (30 X 1 X 7) for assistance with bathing. The provider noted that the appellant "reports needing assistance with bathing, transfers in/out of shower, washing/rinsing/drying hair and back due to impaired balance, poor standing tolerance, decreased cervical rotation, poor range of motion to upper extremities, limited/bending reaching due to status post fall and chronic back/shoulder pain,

[and] neuropathy in left foot.” MassHealth modified the request for bathing to 25 X 1 X 7. According to the documentation included with the PA, the appellant is independent with all forms of mobility with no assistive device, he can independently feed himself, and he has 60 degrees of motion at his shoulder. When asked how much time the PCA spends with hands-on assistance to bathe the appellant, he responded, “I don’t pay attention to time,” but he estimated it takes “at least a half an hour.” He testified that he can step into the shower, but cannot step out – he needs help. He needs his PCA to “make sure I don’t fall.”

MassHealth’s modification in the area of bathing is supported by the facts in the hearing record and the above regulations. The documentation included in the PA request indicates the appellant is able to do much of his own bathing independently, with assistance to bathe his back and reaching above his head. The time requested by the appellant includes anticipatory supervision, which is not a covered service under the PCA program. Additionally, the appellant’s testimony does not meet the burden of showing MassHealth’s decision is incorrect because he has not shown that more time is necessary by the necessary quantum of proof. Accordingly, this portion of the appeal is denied.

Dressing:

The appellant’s provider requested on the appellant’s behalf 12 X 1 X 7 per week for assistance with dressing. The provider noted that the appellant reports needing assist with dressing/undressing of overhead shirt, socks, and shoes due to impaired balance, poor standing tolerance, decreased cervical rotation, limited range of motion to upper extremities, limited bending/reaching and chronic back/shoulder pain. MassHealth modified the request for assistance with dressing to 10 X 1 X 7. According to the PA request, the appellant needs moderate assistance with dressing. Moderate assistance means that a member is able to assist with 50% of the task. Additionally, there is adaptive equipment available from MassHealth to assist the appellant to dress himself more independently.

The appellant testified that he is able to put on his own underwear, socks, and pants. When asked by the hearing officer how long the PCA takes to assist him with hands-on assistance with dressing, he responded that “I don’t know how to answer that. I never thought about it.” The evidence shows the appellant needs assistance with dressing, especially for clothing that needs him to reach over his head; however, the appellant has not shown that 10 minutes of assistance does not meet his needs. Accordingly, this portion of the appeal is denied.

Meal Preparation/Clean-up:

The appellant’s provider requested 15 X 1 X 7 of assistance for breakfast, 20 X 1 X 7 for lunch, 25 X 1 X 7 for dinner, and 5 X 1 X 7 for snacks. The total is 65 minutes per day. The provider noted that the appellant is “dependent for all IADLs due to impaired balance, poor standing balance, decreased cervical rotation, poor range of motion to upper extremities, limited bending/reaching

and chronic back/shoulder pain. Meal preparation consists of making nutrient rich drinks with blender and juicing veggies/fruits to meet nutritional needs of consumer due being on full liquid diet due throat cancer and surgery.” MassHealth modified the request for assistance with meal preparation and clean-up to a total of 60 minutes per day for all meals. According to the documentation included with the PA request, the appellant is able to use his hands and can reach up to his head.

The appellant testified that all reaching or “picking up” things is dangerous. “That is all I can say.” The appellant’s testimony is credible; however, he has not shown that the time approved by MassHealth for assistance with meal preparation/clean-up does not meet his needs. Even taking into consideration the appellant’s disabilities, there is nothing to show that he cannot prepare his meals within the time approved with some assistance. This portion of the appeal is therefore denied.

Shopping:

The appellant’s PCA provider requested 45 X 1 X 1 (45 minutes per week) for assistance with shopping. The provider noted that he is “dependent for all IADLs due to impaired balance, poor standing balance, decreased cervical rotation, poor ROM to upper extremities, limited bending/reaching and chronic back/shoulder pain.” MassHealth modified the request for assistance with shopping to 30 X 1 X 1. The MassHealth representative testified that the comments included with the PA request are inconsistent, because the appellant is documented to be independent with ambulation and able to use his hands to wash himself from his head down. A note from the appellant’s physician states he can lift no more than 30 lbs. The MassHealth representative questioned why the appellant is not able to shop for himself and carry light bundles. The appellant responded that he can lift things, but he needs assistance “just in case something goes wrong.”

MassHealth’s modification in the area of shopping is supported by the facts in the hearing record as well as the regulations. Some of the time requested for assistance with this task is anticipatory and supervisory in nature, which is time not included by the PCA program. Additionally, the evidence shows, and the appellant confirmed, that he can lift up to 30 lbs and can reach up to his head. He can assist with preparing shopping lists, shopping, and putting away groceries. This portion of the appeal is therefore denied.

For the foregoing reasons, 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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