

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Approved in part; Denied in part	<b>Appeal Number:</b>	2413417
<b>Decision Date:</b>	11/14/2024	<b>Hearing Date:</b>	09/30/2024
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, RN – Optum Rep.



*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; Approved in part; Denied in part	<b>Issue:</b>	Prior Authorization; PCA
<b>Decision Date:</b>	11/14/2024	<b>Hearing Date:</b>	09/30/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Telephonic	<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 August 12, 2024, MassHealth modified the appellant's request for personal care attendant services, allowing 61 hours and 15 minutes per week. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on August 29, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining that the appellant should be allowed less time for PCA assistance than requested.

### Summary of Evidence

On or around August 8, 2024, the appellant's personal care management ("PCM") agency, Tri-Valley, Inc., submitted an initial evaluation for personal care attendant ("PCA") services. This request sought 76 hours and 30 minutes per week of PCA services (4,589 minutes per week,

including 840 nighttime minutes). The prior authorization period for this request runs from August 12, 2024, through August 11, 2025. The appellant is a [REDACTED] who suffered a stroke in the [REDACTED]. The appellant was evaluated in a rehabilitation facility and was expected to be discharged with a Foley catheter due to bilateral lower leg atrophy and incontinence. The request also documented that the appellant had shortness of breath, weakness, double vision, bed sores, hyper-granulated skin around j-peg, and a history of migraines, spinal fusion, hand tremors, dysphagia, vertigo, and general weakness.

MassHealth made eight modifications and allowed 61 hours and 15 minutes of PCA services per week (3,675 total minutes per week). MassHealth and the appellant resolved their disagreements regarding the following six modifications:

- For mobility, the appellant requested three minutes six times per day. MassHealth modified this request to two minutes per instance of assistance, but MassHealth restored the requested time in full at the hearing (42 minutes per week restored).
- For Passive Range of Motion ("PROM"), the appellant requested 10 minutes, three times per day per extremity. MassHealth allowed five minutes per upper extremity PROM and reduced all assistance by one day per week because a therapist should be coming in at least once per week. The appellant accepted this modification. While there were no therapy visits at the moment, a nurse was submitting a request to resume therapy visits.
- MassHealth restored all time requested for bathing, which had been reduced by five minutes per day for sponge baths (35 minutes per week restored).
- The appellant accepted MassHealth's reduction of time for bladder care from 25 minutes, three times per day down to 10 minutes, three times per day, because the bladder care was emptying the Foley catheter bag, which only took about 10 minutes.
- The appellant accepted a five-minute reduction to prefilling a medication planner, from 20 minutes to 15 minutes per week.
- MassHealth restored all time requested for providing medications through a G-tube, which had been reduced from six minutes, four times per day to five minutes, four times per day (28 minutes per week restored).

The two remaining modifications were to transfers and peri-area care. For transfers, the appellant requested seven minutes, six times per day, and MassHealth modified the time per transfer to five minutes. MassHealth's representative felt that seven minutes per transfer was more time than should be needed to help a person physically stand up out of bed. She noted that the time for transferring was just the time needed to move the appellant from furniture to a wheelchair or from the wheelchair to furniture.

The appellant's representative testified that the appellant has a shunt in his head, and he has a lot of dizziness and shakiness. The appellant's representative also testified that appellant's hospital bed is a hand-cranked bed, and it takes time to move the bed up or down to get the appellant into the appropriate position to get up or to get comfortable after he gets back into bed. The appellant's representative explained that the appellant cannot reposition himself in the bed, and he needs to be physically repositioned to prepare to stand up. The caregiver needs to move his legs over, help him turn and sit up, and then physically assist him with standing up from the bed. The appellant's representative also testified that his dizziness means that he needs breaks, and that he must be supported during these breaks, so that he does not fall over. MassHealth's representative felt that this time was non-covered supervision or waiting time.

Regarding peri-area cleaning, the appellant requested five minutes, three times per day for cleaning around the Foley catheter. MassHealth felt that any cleaning around the catheter would be considered as part of the appellant's bladder care. The appellant's representative testified that the peri-area is cleaned after every time the collection bag is emptied, and that the tube itself is also cleaned. She testified that this is only about a minute or two of additional cleaning, but that it was in addition to the 10 minutes to empty the Foley bag that she had agreed to during the discussion of the reduction in bladder care time. To the appellant's representative, it did not matter if this time was captured in the bladder care section or the "Other" category it was requested in.

## Findings of Fact

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

- 1) The appellant is a [REDACTED] who suffered a stroke in the [REDACTED]. The appellant was discharged from the rehabilitation facility with a Foley catheter, extremity atrophy, shortness of breath, general weakness, double vision, bed sores, hyper-granulated skin around j-peg, and a history of migraines, spinal fusion, hand tremors, dysphagia, and vertigo. (Exhibit 5, pp. 11-12.)
- 2) On or around August 8, 2024, the appellant's PCM agency Tri-Valley, Inc., submitted an initial evaluation for PCA services requesting 76 hours and 30 minutes (4589 minutes) per week for the time period of August 12, 2024, through August 11, 2025. (Exhibit 5, p. 2.)
- 3) Through a notice dated August 12, 2024, MassHealth approved 61 hours and 15 minutes (3,675 minutes) per week in PCA services. MassHealth made modifications in the categories of mobility, transfers, PROM, bathing, bladder care, medication prefilling, medication assistance, and peri-care. (Exhibit 5, pp. 3-5.)
- 4) The parties resolved their disputes regarding mobility, PROM, bathing, bladder care, medication prefilling, and medication assistance. MassHealth agreed to restore 105 minutes per week. (Testimony by MassHealth's representative and the appellant's representative.)

- 5) For transfers, the appellant requested seven minutes, six times per day. MassHealth allowed five minutes per transfer. (Exhibit 5, pp. 5, 16.)
- 6) It takes seven minutes per transfer because the appellant has severe dizziness and weakness that requires frequent pauses while the appellant must be physically stabilized by his caregivers. The appellant's hospital bed must also be physically cranked to reposition it. (Testimony by the appellant's representative.)
- 7) For peri-area cleaning, the appellant requested five minutes, three times per day for cleaning around the Foley catheter. MassHealth allowed no time for this task. (Exhibit 5, pp. 5, 30.)
- 8) The appellant's caregivers perform peri-area cleaning and cleaning of the Foley tube each time the bag is emptied. This is in addition to the 10 minutes that it takes to change the bag. This takes about one to two minutes. (Testimony by the appellant's representative.)

## **Analysis and Conclusions of Law**

MassHealth generally covers personal care attendant ("PCA") services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

(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.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover time waiting or downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

This appeal is DISMISSED in part with regards to mobility, PROM, bathing, bladder care, medication prefilling, and medication assistance. MassHealth agreed to restore 105 minutes per week, and the appellant otherwise accepted the modifications made by MassHealth. Therefore, no dispute remains with regards to MassHealth's action in these categories of assistance. (130 CMR 610.035; 610.051.)

This appeal is APPROVED in part with regard to the time requested for transferring. I credit the appellant's representative's testimony that the appellant requires physical assistance for seven minutes during each transfer. She described the lengthy process of adjusting the appellant's hospital bed before the appellant himself could be physically assisted to transfer. Further, the assistance the appellant requires while he is sitting up is "physical assistance" and not supervision or guiding. The appellant's clinical record documents his dizziness, vertigo, and generalized weakness. The appellant requires physical stabilization by his caregivers during the pauses necessitated by his medical condition. This is not downtime during which the PCA could perform another task because the PCA must be physically stabilizing the appellant. This is an additional 84 minutes per week restored.

This appeal is APPROVED in part and DENIED in part with regard to peri-care. The appellant's representative agreed that the additional time needed to clean the area around the appellant's catheter did not take the five minutes requested, but she did testify that it took one or two minutes. This time was in addition to the 10 minutes she agreed it took to change the Foley bag. I credit the appellant's representative's testimony. The parties had agreed that changing the Foley bag takes around 10 minutes, but they had not discussed the additional need to clean the appellant's peri-area at that time. The requested 2 minutes per cleaning is reasonable, and this restores an additional 42 minutes per week.<sup>1</sup>

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<sup>1</sup> During the appellant's reevaluation, this time should be captured in the bladder care category. This decision could have reopened the agreed time for bladder care and added the time back there instead of allowing it under the "Other" category. It was allowed as "Other" assistance to simplify the discussion of issues in dispute.

This brings the appellant's total approved time up to 3,906 minutes per week (3,675 + 105 + 84 + 42). This is equivalent to 65 hours and 15 minutes per week.

## **Order for MassHealth**

Authorize the appellant for 65 hours and 15 minutes per week of PCA services, starting as of August 12, 2024, running through August 11, 2025.

## **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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Christopher Jones  
Hearing Officer  
Board of Hearings

CC: [REDACTED]

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