

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part Denied in part	Appeal Number:	2413482
Decision Date:	12/16/2024	Hearing Date:	10/25/2024
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN

Interpreter: Spanish



*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:	Approved in part Denied in part	Issue:	Prior Authorization - PCA
Decision Date:	12/16/2024	Hearing Date:	10/25/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Daughter
Hearing Location:	Quincy	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated there under.

Jurisdiction

Through notice dated August 22, 2024, MassHealth modified a request for prior authorization (PA) for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed this appeal in a timely manner on August 29, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth acted in accordance with the controlling regulations when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. Prior to hearing, MassHealth filed a packet of documents including a copy of the subject PA request and the supporting nurse's PCA evaluation (Exhibit B).

The MassHealth representative testified that documentation submitted with the PA request indicates Appellant is a woman in her early ■■■ with primary diagnoses of Parkinson's disease and dementia. She has mixed incontinence, neuropathy, and a history of vertigo and constipation. Appellant lives with her adult daughter who serves as her PCA. The daughter also has a part-time job.

The subject PA request and accompanying written nurse's re-evaluation were submitted to MassHealth on August 20, 2024 by Northeast ILP requesting 100 hours and 45 minutes/week of PCA assistance for one year. MassHealth modified the request on August 22, 2024, to 87 hours and 30 minutes/week for one year for the period on and between September 8, 2024 and September 7, 2025.

MassHealth modified seven areas of requested assistance citing reliance on regulations 130 CMR 422.410: Activities of Daily Living and Independent Activities of Daily Living and 130 CMR 450.204: Medical Necessity (A)(1)(2) and (B).

After exchanging testimony, Masshealth restored all time requested for meal preparation (75 minutes per day). By the end of the hearing, the following six modifications remained in dispute:

Passive Range of Motion (PROM)

The MassHealth representative testified that Appellant requested 15 minutes, twice per day, seven days a week to perform passive range of motion on each of the four extremities. MassHealth approved 10 minutes, twice per day, seven days per week for each extremity. The MassHealth representative explained that there was no documentation to support an increase from last year which was approved at five minutes, twice per day seven days per week. Despite the lack of documentation, MassHealth allowed the extra five minutes per incident of assistance.

Appellant's daughter testified that she massages Appellant's hands and arms four times a day. She does the same with Appellant's feet. The daughter testified that it takes five minutes each time.

PM Quick Wash

The MassHealth representative testified that Appellant requested 20 minutes, once per day, seven days per week to assist with an evening quick wash. MassHealth approved 15 minutes, once per day, seven days per week as this was the same amount that was approved last year and there was no reason or documentation provided to support an increase.

Appellant's daughter testified that the evening wash is not a quick wash, but a complete body wash. She explained that Appellant wears diapers and her private area needs to be thoroughly cleaned before bed.

In response, the MassHealth representative testified that Appellant has been approved for a significant amount of time for toileting and diaper changes, which includes time for cleaning up after each episode.

Appellant's daughter testified that Appellant's functioning has deteriorated insofar as she is no longer able to walk to the bathroom by herself. Now Appellant has to be taken to the bathroom and have her diaper removed. In response, the MassHealth representative explained that time to assist with this activity does not include time to assist with ambulating. This activity only includes the hands-on assistance with the wash itself.

Bathing – Special Transfer

The MassHealth representative testified that Appellant requested 10 minutes, twice per day seven days per week to assist Appellant in and out of the shower. MassHealth approved 10 minutes, once per day, seven days per week in so far as this was the same amount of time that was approved last year and there was no reason or documentation provided to support an increase in frequency.

Appellant's daughter acknowledged that Appellant used to only shower once a day, but now she is showering twice a day. The daughter acknowledged that she cleans Appellant with each diaper change four times per day. In response, the MassHealth representative testified that Appellant has been approved for eight diaper changes per day.

Grooming – Oral Care

The MassHealth representative testified that Appellant requested five minutes, twice per day, seven days per week to assist with oral care. MassHealth approved three minutes, twice per day, seven days per week insofar as this was the amount that was approved last year and there were no reasons or documentation provided to support an increase in the time to assist with each incidence of oral care.

Appellant's daughter testified that she is now assisting Appellant with oral care three times per

day. She explained that Appellant has something going on in her mouth causing a burning sensation and excessive drooling. According to the daughter, this has resulted to the need to have Appellant brush more often and to clean up her saliva.

Eating

The MassHealth representative testified that Appellant requested 30 minutes, three times per day, seven days per week to assist with eating. MassHealth approved 20 minutes, three times per day, seven days per week as this was the same amount that was approved last year and there were no reasons or documentation provided to support an increase. The MassHealth representative further explained that time to assist with this activity includes only the time for hands-on assistance in helping Appellant to ingest her food and does not include any time for waiting or cueing.

Appellant's daughter testified that Appellant had surgery this past year and she can no longer swallow normally. She testified that all of Appellant's food must be pureed or be prepared very wet and eating takes longer than 30 minutes.

In response, the MassHealth representative noted that last year's documentation indicated that Appellant required maximum assist with feeding due to right-sided weakness and weakness in both hands related to Parkinson's disease. It was noted that Appellant was also on a soft diet/liquid diet due to difficulty swallowing foods related to muscle weakness secondary to Parkinson's disease.

Toileting – Special Transfer

The MassHealth representative testified that Appellant requested 10 minutes, eight times per day, seven days per week to assist with special toileting transfers. MassHealth approved 10 minutes, six times per day, seven days per week as this was the same amount that Appellant had last year and there were no reasons or documentation provided to support an increase in frequency.

Appellant's daughter testified that she has lost track of how many times Appellant must be taken to the bathroom each day. She testified that Appellant often thinks she has to have a bowel movement, but then doesn't so she is on and off the toilet all day long even though she is wearing a diaper.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. The subject PA request and accompanying written nurse's re-evaluation were submitted to MassHealth on August 20, 2024 by Northeast ILP requesting 100 hours and 45 minutes/week of PCA assistance for one year.
2. Documentation submitted with the PA request indicates Appellant is a woman in her early [REDACTED] with primary diagnoses of Parkinson's disease and dementia.
3. Appellant has mixed incontinence, neuropathy and a history of vertigo and constipation.
4. Appellant lives with her adult daughter who serves as her PCA; the daughter also has a part-time job.
5. MassHealth modified the request on August 22, 2024, to 87 hours and 30 minutes/week for one year for the period on and between September 8, 2024 and September 7, 2025.
6. MassHealth modified seven areas of requested assistance citing reliance on regulations 130 CMR 422.410: Activities of Daily Living and Independent Activities of Daily Living and 130 CMR 450.204: Medical Necessity (A)(1)(2) and (B).
7. After exchanging testimony, Masshealth restored all time requested for meal preparation (75 minutes per day). By the end of the hearing, six modifications remained in dispute.
8. Appellant requested 15 minutes, twice per day, seven days a week to perform passive range of motion on each of the four extremities.
9. MassHealth approved 10 minutes, twice per day, seven days per week for each extremity.
10. There was no documentation to support an increase from last year which was approved at five minutes, twice per day seven days per week.
11. Despite the lack of documentation, MassHealth approved an extra five minutes per incident of assistance.
12. Appellant's daughter massages Appellant's hands and arms four times a day and does the same with Appellant's feet; it takes five minutes each time.

13. Appellant requested 20 minutes, once per day, seven days per week to assist with an evening quick wash.
14. MassHealth approved 15 minutes, once per day, seven days per week to assist with an evening quick wash as this was the same amount that was approved last year and there was no reason or documentation provided to support an increase.
15. MassHealth has approved time to assist with eight diaper changes per day plus time for toileting which includes time for cleaning up after each episode.
16. Time to assist with the evening quick wash does not include time to assist with ambulating; it includes only the hands-on assistance with the wash itself.
17. Appellant requested 10 minutes, twice per day seven days per week to assist Appellant in and out of the shower.
18. MassHealth approved 10 minutes, once per day, seven days per week to assist Appellant in and out of the shower insofar as this was the same amount of time that was approved last year and there were no reasons or documentation provided to support an increase in frequency.
19. The daughter cleans Appellant with each diaper change four times per day; MassHealth has approved the requested eight diaper changes per day.
20. Appellant requested five minutes, twice per day, seven days per week to assist with oral care.
21. MassHealth approved three minutes, twice per day, seven days per week to assist with oral care insofar as this was the amount that was approved last year and there were no reasons or documentation provided to support an increase in the time to assist with each incidence of oral care.
22. Appellant requested 30 minutes, three times per day, seven days per week to assist with eating.
23. MassHealth approved 20 minutes, three times per day, seven days per week to assist with eating as this was the same amount that was approved last year and there were no reasons or documentation provided to support an increase.
24. Time to assist with eating includes only the time for hands-on assistance in helping Appellant to ingest her food and does not include any time for waiting or cueing.
25. Due to difficulty swallowing, Appellant's food must be pureed or be prepared very wet.

26. Documentation supporting last year's PA request indicated that Appellant was at that time on a soft diet/liquid diet due to difficulty swallowing foods related to muscle weakness secondary to Parkinson's disease.
27. Appellant requested 10 minutes, eight times per day, seven days per week to assist with special toileting transfers.
28. MassHealth approved 10 minutes, six times per day, seven days per week as this was the same amount that Appellant had last year and there were no reasons or documentation provided to support an increase in frequency.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). On this record, Appellant has not met her burden relative to any of the six modifications that remained in dispute by the end of the hearing.

PROM – modification upheld

There was no documentation to support an increase from last year which was approved at five minutes, twice per day seven days per week. Nevertheless, MassHealth allowed an extra five minutes per incident of assistance for PROM for a total of ten minutes for each extremity twice per day. Appellant's daughter testified that she massages Appellant's hands, arms and feet four times a day it takes five minutes each time for each extremity (5 minutes, 4 times per day for each of the four extremities (5x4x4=80)). This is equivalent to the time MassHealth has approved which is 10 minutes twice per day for each extremity (10x2x4=80). According to the daughter's own testimony, the approved time is sufficient. The modification is upheld based on a lack of medical necessity 130 CMR 450.204(A)(1).

PM Quick Wash – modification upheld

Appellant's daughter asserted that time was needed for a full body wash in the evening before bed, but this is not what was requested by her PCA agency. The request is for a specific thing - a "PM Quick Wash" - which is not a full body wash. If Appellant requires a full PM body wash, then it needs to be requested as such. Appellant can approach her PCA agency to file an adjustment seeking time for this activity. On appeal, this Board cannot act on matters that have not yet been requested and acted upon by MassHealth.

Bathing – Special Transfer – modification upheld

There was no documentation or reasons provided in the PA request to support increasing the frequency of showering from once to twice per day. Additionally, Appellant's daughter indicated that she cleans Appellant after each diaper change four times per day, yet MassHealth has approved Appellant for a requested eight diaper changes per day. This apparent extra unused time of four extra diaper changes can be used toward Appellant's cleaning and hygiene needs. The modification is upheld based on a lack of medical necessity 130 CMR 450.204(A)(1).

Grooming – Oral Care – modification upheld

There were no reasons or documentation provided to support an increase in the time to assist with each incidence of oral care. Appellant's daughter explained that Appellant has been experiencing a burning sensation in her mouth that has led to increased drooling. The daughter has failed to demonstrate how increasing the number of times Appellant's teeth are brushed would be responsive to or alleviate increased drooling. In fact, one might reasonably expect that increased brushing would further aggravate an already sensitive mouth. The modification is upheld based on a lack of medical necessity 130 CMR 450.204(A)(1).

Eating – modification upheld

There were no reasons or documentation provided to support an increase to time to assist with eating.

Appellant's daughter testified that Appellant had surgery this past year and she can no longer swallow normally. She testified that all of Appellant's food must be pureed or be prepared very wet and eating takes longer than 30 minutes. This testimony fails to acknowledge that time to assist with eating does not include time for waiting while the member chews and/or swallows. Time to assist with eating includes only the hands-on assist of bringing the food from the plate/bowl to Appellant's mouth to be ingested. Additionally, Appellant's difficulty was already known and accounted for in last year's PA request and authorization which at that time indicated that Appellant was on a soft diet/liquid diet due to difficulty swallowing foods related to muscle weakness secondary to Parkinson's disease. Accordingly, there is no new basis in fact to warrant an increase in time to assist Appellant with eating. The modification is upheld based on a lack of medical necessity 130 CMR 450.204(A)(1).

Toileting – Special Transfer – modification upheld

There were no reasons or documentation provided to support an increase in frequency. Appellant's daughter testified that Appellant often thinks she has to have a bowel movement, but then doesn't so she is on and off the toilet all day long even though she is wearing a diaper. PCA time is not warranted for toileting transfer when toileting is not in fact occurring. The modification is upheld based on a lack of medical necessity 130 CMR 450.204(A)(1).

For the foregoing reasons, the appeal is APPROVED as to restoring time as requested to assist with meal preparation and DENIED as to the remaining six modifications.

Order for MassHealth

Remove AID PENDING and restore time to assist with meal preparation to time requested as agreed at hearing.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact Optum. 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.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

CC: [REDACTED]

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