

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2413713
Decision Date:	10/11/2024	Hearing Date:	10/08/2024
Hearing Officer:	Sharon Dehmand		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, R.N., 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

Appeal Decision:	Dismissed in part; Denied in part	Issue:	Prior Authorization; PCA Services
Decision Date:	10/11/2024	Hearing Date:	10/08/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	
Hearing Location:	Remote	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 August 28, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. See 130 CMR 450.303; 130 CMR 422.410; 130 CMR 422.412; and Exhibit 1. The appellant filed a timely appeal on September 5, 2024. See 130 CMR 610.015(B) and Exhibit 2. A decision regarding the scope or amount of assistance is valid ground for appeal before the Board of Hearings. See 130 CMR 610.032(A)(3).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

Whether MassHealth was correct in modifying the appellant's request for PCA services pursuant to 130 CMR 422.410 and 130 CMR 422.412.

Summary of Evidence

All parties participated telephonically. MassHealth was represented by a registered nurse and

clinical appeals reviewer. The appellant's brother who is also his guardian appeared on his behalf and verified his identity. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that the documentation submitted shows the appellant is over 65 years of age with primary diagnosis of anoxic brain injury (ABI) and chronic respiratory failure from medication toxicity that occurred on October 21, 2023. The appellant has a history of schizophrenia, cardiac arrest, pneumonia, and loss of volition of muscle control. He has a G-tube for all nutrition and a tracheostomy. On August 23, 2024, the appellant's personal care management (PCM) agency, [REDACTED] submitted a prior authorization for PCA services requesting 109 hours and 45 minutes per week for dates of service of August 28, 2024 through August 27, 2025. On August 28, 2024, MassHealth modified the request to 79 hours and 30 minutes per week. MassHealth made fifteen (15) modifications related to PCA assistance, namely: mobility and transfers; assistance with repositioning; bathing (quick wash); oral care; grooming (skin check); bladder care (condom/catheter skin check); assistance with medication (nasal spray, glucometer check, tracheostomy care, tracheostomy cuff dressing change, cough assistance, and G-tube water flush); laundry; housekeeping; and other special needs. See generally Exhibit 5.

Based on testimony at hearing, MassHealth fully restored time as requested for PCA assistance with assistance with medication (cough assistance) and laundry. Id. at 30, 35.

The appellant's representative stated that his brother has been in a rehabilitation facility since November 24, 2023, and has around the clock care. He agreed with MassHealth's denial of time requested for PCA assistance with grooming (skin check) and bladder care (condom/catheter skin check). Id. at 22, 26.

The appellant's representative also stated that he agreed with MassHealth's modifications made to time requested for PCA assistance with mobility and transfers (15x2x7)¹; assistance with repositioning (10x10x7); bathing (quickwash-20x1x7); oral care (3x6x7); and assistance with medication (nasal spray-1x2x7), (glucometer check-3x2x7), (tracheostomy care-5x1x2), (tracheostomy cuff care-5x2x7), (G-tube water flush-2x4x7). Id. at 17, 18, 20, 22, 28, 30, and 31.

The following modifications remained in dispute during the hearing:

Housekeeping

The appellant requested 120 minutes per week for PCA assistance with housekeeping. MassHealth approved 60 minutes per week. The MassHealth representative stated that the PCA is compensated for sweeping, mopping, light vacuuming, and removal of trash from the appellant's room as the appellant lives with another PCA consumer. She said when a member is

¹ The notation (AxBxC) refers to A minutes per session, B times per day, C days per week.

living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks must be calculated on a shared basis. The appellant's representative confirmed that the appellant and his father will be living together. He added that the appellant has excessive amount of medical trash and that his floors are mopped every day at the facility. He said that the allowance of more time for housekeeping is justified based on his observations at the facility. See Exhibit 5, p. 36.

Other Special Needs

MassHealth representative stated that MassHealth denied the requested time of 240 minutes per week for the overnight monitoring of the appellant, but that MassHealth had already approved 14 hours per week for allowed PCA services for nighttime care. She added that the PCM agency had requested 57 minutes of PCA service hours nightly, 7 days a week. MassHealth allowed 2 hours per night which is usually the minimum time allowed for nighttime PCA care, 7 days a week, totaling 14 hours per week. She said that MassHealth does not cover supervision or overnight monitoring.

The appellant's representative contended consistent with the PCM agency's request that because the appellant requires nightly monitoring of his oxygen saturation, excess secretions, drooling, and physical signs of distress which requires immediate attention to prevent cardiac arrest, he should be allowed the requested monitoring time. See id. at 37.

The MassHealth representative stated that the requested time is strictly for supervision which is not covered by MassHealth. She added that the PCM agency's request for night time hours which included 12 episodes of suction per night was allowed in full. See id. at 30.

Findings of Fact

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

1. The appellant is over 65 years of age with primary diagnosis of anoxic brain injury (ABI) and chronic respiratory failure from medication toxicity. (Testimony and Exhibit 5).
2. On August 23, 2024, MassHealth received a prior authorization request for PCA services requesting 109 hours and 45 minutes per week for dates of service of August 28, 2024 through August 27, 2025. (Testimony and Exhibit 5).
3. On August 28, 2024, MassHealth informed the appellant that it had modified the request to 79 hours and 30 minutes per week. (Testimony and Exhibit 1).
4. MassHealth made fifteen (15) modifications related to PCA assistance, namely: mobility

and transfers; assistance with repositioning; bathing (quick wash); oral care; grooming (skin check); bladder care (condom/catheter skin check); assistance with medication (nasal spray, glucometer check, tracheostomy care, tracheostomy cuff dressing change, cough assistance, and G-tube water flush); laundry; housekeeping; and other special needs. (Testimony and Exhibit 1).

5. At the hearing, MassHealth fully restored time as requested for PCA assistance with medication (cough assistance) and laundry, which resolved the disputes related to PCA assistance with those tasks. (Testimony).
6. At the hearing, the appellant's representative agreed with MassHealth's denial of time requested for PCA assistance with grooming (skin check) and bladder care (condom/catheter skin check), which resolved the disputes related to PCA assistance with those tasks. (Testimony).
7. At the hearing, the appellant's representative agreed with MassHealth's modifications made to time requested for PCA assistance with mobility and transfers; assistance with repositioning; bathing (quick wash); oral care; and assistance with medication (nasal spray, glucometer check, tracheostomy care, tracheostomy cuff care, and G-tube water flush), which resolved the disputes related to PCA assistance with those tasks. (Testimony).
8. The appellant requested 120 minutes per week for PCA assistance with housekeeping. MassHealth approved 60 minutes per week. (Testimony and Exhibit 5).
 - a. The appellant will live with his father upon discharge from the rehabilitation facility. When a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks must be calculated on a shared basis. Id.
9. MassHealth denied the requested time of 240 minutes per week for the overnight monitoring of the appellant because MassHealth does not cover PCA service hours for supervision. (Testimony and Exhibit 5).
10. The appellant filed a timely appeal on September 5, 2024. (Exhibit 2).

Analysis and Conclusions of Law

Regulations concerning personal care attendant (PCA) services are found at 130 CMR 422.000, et seq. PCA is defined as a person who is hired by the member or surrogate to provide PCA services. See 130 CMR 422.402. 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. Id.

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 PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.²

See 130 CMR 422.403(C).

The regulations concerning ADLs and IADLs in 130 CMR 422.410 are as follows:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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

² 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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. See 130 CMR 450.204(A).

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.

(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 PCA 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 PCM 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 PCA 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.

Here, there is no dispute that the appellant meets all the requirements to qualify for PCA services. The issue is whether MassHealth allowed sufficient time in accordance with the program regulations.

The following are considered “non-covered services” in the PCA 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, 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 EVV as required by the MassHealth agency.

See 130 CMR 422.412.

MassHealth will approve “activity time performed by a PCA in providing assistance.” See 130 CMR 422.411. “Activity time” is defined as the “actual amount of time spent by a PCA physically assisting the member” with his ADLs/IADLs. See 130 CMR 422.402.

At issue in this appeal were modifications of time requested for PCA assistance for the appellant with both ADLs and IADLs. The following ADLs were the subject of modifications: mobility and transfers, repositioning, bathing (quick wash), grooming (oral care), grooming (skin check), toileting (bladder care/condom catheter skin check), assistance with medication (nasal spray and glucometer check), other health care needs (tracheostomy care and tracheostomy cuff dressing and cough assistance, G-tube water flush). The following IADLs were the subject of modifications: laundry, housekeeping, and other special needs.

At the hearing, the appellant’s representative agreed to the modifications that MassHealth made in the following categories:

Mobility and Transfers: MassHealth modified the requested time of 25 minutes, twice per day, 7 days per week to 15 minutes, twice per day, 7 days per week;

Repositioning: MassHealth modified the requested time of 15 minutes, 10 times per day, 7 days per week and 5 minutes, 8 times per day, 7 days per week³ to 10 minutes, 10 times per day, 7 days per week;

Bathing (quick wash): MassHealth modified the requested time of 20 minutes, twice per day, 7 days per week to 20 minutes, once per day, 7 days per week;

³ It was unclear from the record why the PCM agency requested two different times for this one ADL. The appellant’s representative was also unable to provide an explanation.

Grooming (oral care): MassHealth modified the requested time of 3 minutes, 8 times per day, 7 days week to 3 minutes, 6 times per day, 7 days per week;

Grooming (skin check): MassHealth denied the requested time of 2 minutes, once a day, 7 days a week;

Toileting (bladder care/condom catheter skin check): MassHealth denied the requested time of 5 minutes, twice per day, 7 days per week;

Assistance with medication (nasal spray): MassHealth modified the requested time of 3 minutes, twice per day, 7 days week to 1 minute, twice per day, 7 days per week;

Assistance with medication (glucometer check): MassHealth modified the requested time of 5 minutes, twice per day, 7 days per week to 3 minutes, twice per day, 7 days per week;

Other health care needs (tracheostomy care): MassHealth modified the requested time of 10 minutes, once per day, 2 days per week to 5 minutes, once per day, 2 days per week;

Other health care needs (tracheostomy cuff dressing): MassHealth modified the requested time of 10 minutes, twice per day, 7 days per week to 5 minutes, twice per day, 7 days per week;

Other health care needs (cough assistance): MassHealth restored the requested time;

Other health care needs (G-tube water flush): MassHealth modified the requested time of 5 minutes, 4 times per day, 7 days week to 2 minutes, 4 times per day, 7 days per week;

Laundry: MassHealth restored the requested time.

The appellant's representative accepted the modifications made by MassHealth as described above. Since the parties reached a resolution regarding these issues, these portions of the appeal are DISMISSED in accordance with 130 CMR 610.035(8).

Two modifications to the requested time for IADLs remained in dispute, namely: housekeeping and other special needs.

Housekeeping

MassHealth modified the requested time of 120 minutes per week to 60 minutes per week. The MassHealth representative stated that the PCA is compensated for sweeping, dusting, light vacuuming, and removal of trash from the appellant's room as the appellant lives with another PCA consumer. She stated that when a member is living with one or more other members who

are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis. See 130 CMR 422.410(C)(2).

The appellant's representative confirmed that the appellant and his father will be living together but argued that the appellant has excessive amount of medical trash that justifies the allowance of more time for housekeeping. This statement is without evidentiary support because the appellant is currently institutionalized, and the appellant's representative does not have any firsthand knowledge regarding the frequency and the amount of actual trash removal needed when the appellant returns home. 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). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983). Accordingly, appellant's request for additional time for this task is DENIED.

Other Special Needs

MassHealth representative stated that MassHealth denied the requested time of 240 minutes per week for the overnight monitoring of the appellant, but that MassHealth had already approved 14 hours per week for allowed PCA services for nighttime care. She added that the PCM agency had requested 57 minutes of PCA service hours nightly, 7 days a week. MassHealth allowed 2 hours per night which is usually the minimum time allowed for nighttime PCA care, 7 days a week, totaling 14 hours per week. She said that MassHealth does not cover supervision or overnight monitoring.

The appellant's representative contended consistent with the PCM agency's request that because the appellant requires nightly monitoring of his oxygen saturation, excess secretions, drooling, and physical signs of distress which requires immediate attention, he should be allowed the requested minutes. See Exhibit 5, p. 37.

MassHealth covers the "activity time performed by a PCA in providing assistance with ADLs and IADLs." See 130 CMR 422.411(A). It does not, however, cover assistance in the form of cueing, prompting, supervision, guiding, or coaching. See 130 CMR 422.412(C). Because monitoring the appellant during the night is considered supervision per regulations, it will not be covered by MassHealth. Accordingly, appellant's request for additional time for this task is DENIED.

Order for MassHealth

For the PA period beginning on August 28, 2024 ending on August 27, 2025 approve the following PCA service hours:

- Mobility and Transfers: 15 minutes, twice per day, 7 days per week;
- Repositioning: 10 minutes, 10 times per day, 7 days per week;
- Bathing (quick bath): 20 minutes, once per day, 7 days per week;
- Grooming (oral care): 3 minutes, 6 times per day, 7 days per week;
- Assistance with medication (nasal spray): 1 minute, twice per day, 7 days per week;
- Assistance with medication (glucometer check): 3 minutes, twice per day, 7 days per week;
- Other health care needs (tracheostomy care): 5 minutes, once per day, 2 days per week;
- Other health care needs (tracheostomy cuff dressing): 5 minutes, twice per day, 7 days per week;
- Other health care needs (cough assistance): 15 minutes, once per day, 7 days per week, and 5 minutes, twice per day, 7 days per week;
- Other health care needs (G-tube water flush): 2 minutes, 4 times per day, 7 days per week;
- Laundry: 120 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.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

cc: [REDACTED]

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

