

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2413925
Decision Date:	12/3/2024	Hearing Date:	10/9/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, OT, 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:	Approved in part; denied in part	Issue:	Prior authorization, PCA services
Decision Date:	12/3/2024	Hearing Date:	10/9/2024
MassHealth's Rep.:	Robin Brown, OT	Appellant's Rep.:	Pro se
Hearing Location:	Quincy (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

By notice dated August 20, 2024, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on September 9, 2024. Exhibit 2. 130 CMR 610.015(B). Denial or modification of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of PCA 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 PCA services.

Summary of Evidence

An occupational therapist/clinical appeals reviewer represented MassHealth by phone and provided documents in support, Exhibit 4. Appellant appeared by phone and submitted records in support, Exhibit 5. A summary of testimony and documentation follows. Appellant is in his [REDACTED] with diagnoses and medical history including obesity, neuropathy, arthritis, visual deficits, kidney disease, borderline diabetes, and edema in lower extremities. Exhibit 4 at 7-8. Appellant has shortness of breath and cannot tolerate standing due to pain. He walks with a cane and recently fell down stairs, but was not hospitalized. *Id.* at 8. Appellant resides in the same house as his brother, who also receives PCA services. Appellant resides on the first floor and sleeps in a recliner in the living room because he cannot manage stairs. *Id.*

On August 19, 2024, [REDACTED] Appellant's Personal Care Management Agency (PCMA), submitted an initial evaluation for PCA services for appellant, requesting 18.75 hours of PCA assistance per week. On August 20, 2024, MassHealth modified the request, approving 16 hours per week. The dates of service for this request are August 20, 2024 through August 19, 2025.

MassHealth modified the requested PCA hours for bathing, an activity of daily living (ADL). MassHealth also modified the request for assistance for instrumental activities of daily living (IADLs): meal preparation, laundry, and shopping.

In the area of bathing, Appellant requested 40 minutes, 1 time per day, 7 days per week for a daily sponge bath. *Id.* at 19. MassHealth modified the request, approving 35 minutes, 1 time per day, 7 days per week. The notes indicate that Appellant's PCA assists with a sponge bath in the first floor half bathroom. *Id.* at 8, 19. The OT reviewer wrote that Appellant has the functional ability to wash his torso and face, but requires assistance for lower body and harder to reach areas. *Id.* at 8. Appellant requires assistance with set up, washing, rinsing, drying, clean up, and transfer from sitting. *Id.* Appellant can ambulate independently into and out of the bathroom.

Appellant testified that he needs additional time cleaning after incontinent episodes. The MassHealth representative testified that time requested for clean up after accidents was approved as requested at 10 minutes, 1 time per day, 3 days per week. Appellant testified that it takes at least 15 minutes to clean up in those instances. Appellant testified that the bathing task takes longer because he has to change positions from the seated position he is in during the sponge bath.

For meal preparation, Appellant requested 45 minutes daily, broken down as 10 minutes for breakfast, 15 minutes for lunch, and 20 minutes for dinner. Appellant requires maximum assistance for this task. *Id.* at 33. MassHealth modified the request to 30 minutes daily. MassHealth did not dispute that Appellant requires maximum assistance for meal preparation, but modified the time because Appellant lives with his brother who is also a PCA consumer. Appellant's brother has been approved for 60 minutes for meal preparation. MassHealth approves a maximum of 90 minutes per week per household.

Appellant testified that his brother and he are functionally in separate households. Appellant testified that his brother primarily lives on the second floor of the residence, and Appellant lives on the first floor. There is a shared kitchen. Appellant and his brother each have a different PCA. Appellant and his brother do not share meals and do not eat together. Appellant is on a special low-salt diet different than his brother's diet. Appellant argued that his needs are being shortchanged because his brother was already approved for time.

For laundry, Appellant requested 45 minutes weekly. MassHealth approved 30 minutes because Appellant lives with his brother and his brother has been approved for 60 minutes. The washer and dryer are located in the home in the basement. Appellant testified that his laundry is separate from his brother's. Appellant is not able to fold or put away clothes as his dresser is upstairs. Appellant's left arm does not function properly to assist with the task. Appellant typically generates 2 loads of laundry, and more if he has accidents.

For shopping, Appellant requested 45 minutes per week. MassHealth approved 30 minutes because his brother has been approved for 60 minutes for shopping. Appellant testified that he requires 60 minutes for shopping per week, but Tempus only requested 45 minutes anticipating that MassHealth would not approve 60. Appellant argued that once again he was shortchanged. Appellant's PCA and his brother's PCA shop at different times for different items.

The MassHealth representative suggested that Appellant and his brother coordinate care through the same PCMA in order to address some of these shortcomings in Appellant's hours. If the brothers use the same agency, the division of hours can be coordinated so neither brother is at a disadvantage.

Findings of Fact

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

1. On August 19, 2024, [REDACTED] Appellant's Personal Care Management Agency (PCMA), submitted an initial evaluation for PCA services, requesting 18.75 hours of PCA assistance per week.
2. On August 20, 2024, MassHealth modified the request, approving 16 hours per week for dates of service August 20, 2024 through August 19, 2025. Exhibit 1.
3. Appellant filed this timely appeal on September 9, 2024. Exhibit 2.
4. Appellant is in his [REDACTED] with diagnoses and medical history including obesity, neuropathy, arthritis, visual deficits, kidney disease, borderline diabetes, and edema in lower

extremities. Appellant has shortness of breath and cannot tolerate standing due to pain. He walks with a cane and recently fell down stairs, but was not hospitalized. Appellant resides in the same house as his brother, who also receives PCA services. Exhibit 4 at 7-8.

5. Appellant resides on the first floor and sleeps in a recliner in the living room because he cannot manage stairs. *Id.* at 8.
6. For assistance with a daily sponge bath, Appellant requested 40 minutes, 1 time per day, 7 days per week. Exhibit 4 at 19.
7. MassHealth modified the request, approving 35 minutes, 1 time per day, 7 days per week.
8. The OT reviewer wrote that Appellant has the functional ability to wash his torso and face, but requires assistance for lower body and harder to reach areas. Appellant requires assist with set up, washing, rinsing, drying, clean up, and transfer from sitting. Appellant can ambulate independently into and out of the bathroom. *Id.* at 8.
9. For meal preparation, Appellant requested 45 minutes daily, broken down as 10 minutes for breakfast, 15 minutes for lunch, and 20 minutes for dinner. Appellant requires maximum assistance for this task. *Id.* at 33.
10. MassHealth modified the request to 30 minutes daily.
11. Appellant and his brother do not share meals and do not eat together. Appellant is on a special low-salt diet different than his brother's diet.
12. For laundry, Appellant requested 45 minutes weekly.
13. MassHealth approved 30 minutes weekly.
14. The washer and dryer are located in the home in the basement.
15. Appellant's PCA does laundry separately from his brother's PCA, and does at least 2 loads per week. Appellant is not able to fold or put away clothes as his dresser is upstairs, and his left arm cannot fold clothes.
16. For shopping, Appellant requested 45 minutes per week.
17. MassHealth approved 30 minutes per week.
18. Appellant's PCA and his brother's PCA shop at different times for different items.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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 requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program (emphasis added):

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(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 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.

(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.

Here, it is undisputed that Appellant qualifies for PCA services. The only issues in dispute are MassHealth's modifications of bathing, meal preparation, laundry, and shopping.

Regarding bathing, this appeal is denied. The record shows that Appellant has the functional ability to participate in some of the sponge bath task. Additionally, an extra 30 minutes per week was approved to address additional bathing needs that arise from incontinence. Based on the documents submitted, Appellant has not established the need for 40 minutes daily for bathing.

For meal preparation, this appeal is approved. It was undisputed that Appellant requires maximum assistance for meal preparation. Though MassHealth modified the approved time due to Appellant living with another PCA consumer, Appellant testified credibly that his PCA prepares meals separately from his brother's PCA. Additionally, Appellant's medical conditions require a separate, low-salt diet. For these reasons, Appellants' request for 45 minutes for meal preparation is approved.

For laundry, this appeal is approved. Again, Appellant's PCA performs this task separately from his brother's PCA, and the record established that Appellant's laundry needs are greater than ordinarily necessary due to his medical conditions. Accordingly, Appellant's request for 45 minutes for laundry is approved.

For shopping, this appeal is approved. Given Appellant's special diet and separate grocery needs from his brother, 45 minutes per week for shopping is appropriate. Appellant's request for 45 minutes for shopping is approved.

Appellant and his brother are encouraged to coordinate care with their PCMA's in order to ensure that appropriate care is being provided for both.

Order for MassHealth

Adjust the prior authorization approval to include a total of 45 minutes per day for meal preparation, 45 minutes per week for laundry, and 45 minutes per week for shopping for dates of

service August 20, 2024 through August 19, 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

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