

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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| Appeal Decision: | Approved in part; Denied in part; Dismissed in part | Appeal Number: | 2413970 |
| Decision Date: | 12/2/2024 | Hearing Date: | 10/08/2024 |
| Hearing Officer: | Casey Groff | | |

Appearance for Appellant:

Pro se

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

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|---------------------------|---|--------------------------|--|
| Appeal Decision: | Approved in part; Denied in part; Dismissed in part | Issue: | Personal Care Attendant (PCA) Services |
| Decision Date: | 12/2/2024 | Hearing Date: | 10/08/2024 |
| MassHealth's Rep.: | Kelly Rayen, R.N. | Appellant's Rep.: | <i>Pro se</i> |
| Hearing Location: | Board of Hearings (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 8/22/2024, MassHealth informed Appellant that it modified her prior authorization (PA) request for personal care attendant (PCA) services. See 130 CMR 450.204(A)(1) and Exhibit 2. Appellant filed a timely appeal on 9/6/24. See Exh. 1 and 130 CMR 610.015(B). Modification of a PA request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's prior authorization request for PCA services.

Issue

The issue on appeal is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant represented herself, appearing *pro se*. All parties appeared by telephone.

Through testimony and documentary submissions, the MassHealth representative presented the following evidence: Appellant is an adult female under the age of 65 and is enrolled as a consumer in MassHealth's Personal Care Attendant (PCA) program. She lives with her granddaughter and [REDACTED] great-granddaughter. Appellant's diagnoses include, but are not limited to, degenerative disc disease, spinal stenosis, L4-L5 disc herniation, sciatica, decreased range of motion in her right shoulder, panic attacks with shortness of breath, and depression with a history of suicidal thoughts. See Exh. 4, p. 3-6. She has a history of falls and experiences frequent dizziness when bending over. See id. at 4.

On 5/30/24, a registered nurse from Appellant's personal care management (PCM) agency, [REDACTED] (also referred to herein as "provider") performed a PCA re-evaluation of Appellant at her home. See id. at 6. Based on the nurse's evaluation findings, the PCM agency submitted a prior authorization (PA) request to MassHealth on behalf of Appellant seeking 33 hours and 30 minutes per week of PCA services for dates of service beginning 9/3/24 and ending 9/2/25. See Exh. 1, p. 3.

Through a notice dated 8/22/2024, MassHealth informed Appellant that it modified her request for PCA services by approving a total of 17 hours per week. Id. The modification was based on MassHealth's decision to reduce and/or deny the requests for assistance with the following activities of daily living (ADLs) and instrumental activity of daily living (IADL): (1) mobility, (2) hair wash, (3) bladder care, (4) overnight toileting, (5) shopping, (6) and completing required PCA paperwork. See id.

At hearing, the parties reviewed each modification individually.

Resolved Modifications

The parties were able to resolve the modifications to mobility, bladder care, and overnight toileting, as follows:

Mobility

Appellant's PCM agency requested 3 minutes, 3x per day, 7 days per week (3x3x7) for assistance with mobility. See Exh. 4 at 11. MassHealth approved the frequency but modified the time to one minute per episode (1x3x7). At hearing, MassHealth offered, and Appellant accepted, 2 minutes for each episode of mobility assistance (2x3x7).

Bladder Care (Daytime)

Appellant's PCM agency requested 3 minutes, 3x per day, 7 days per week for assistance with daytime bladder care (3x3x7). *Id.* at 19. MassHealth modified the frequency to 1 episode of bladder care assistance per day (3x1x7) due to documentation suggesting Appellant's needs were only anticipatory. After Appellant testified that she requires routine general toileting assistance, such as transfers on/off the toilet and hygiene, MassHealth offered to adjust the authorized time to 2 minutes per episode, 3 times per day, 7 days per week (2x3x7), which Appellant accepted.

Nighttime Toileting

Appellant's PCM agency requested 5 minutes per night for assistance with nighttime toileting (5x1x7). MassHealth denied the request for the same reason it reduced Appellant's request for daytime bladder care. Based on the testimony provided at hearing, the MassHealth representative agreed to approve, in full, the time requested for nighttime toileting at 5x1x7.

Hair Wash

Under the ADL category of bathing, Appellant's provider requested 5 minutes daily (5x1x7) for assistance with hair wash, as well as 20 minutes daily (20x1x7) for assistance to perform a daily bath. *Id.* at 14-15. In support thereof, the evaluating PCM nurse noted that Appellant requires moderate assistance for safety with bathing transfers due to poor coordination; she requires maximum assistance to help with shampoo, back, upper body and drying due to back and sciatica pain; she has limited bending and reach ability; and a self-care deficit related to depression. *Id.*

MassHealth approved the request for 20 minutes of assistance for the bath but denied the additional 5 minutes requested for hair washing assistance. The MassHealth representative testified that the modification was made because the requested time was longer than ordinarily required for someone with Appellant's physical capabilities, and because assistance with hair wash was included in the 20 minutes already approved for bathing. MassHealth testified that there was no documentation to support why Appellant could not wash her hair as part of the general bathing process. MassHealth testified that in the prior PA period, Appellant was approved for a total of 20 minutes for all showering activity, including hair and body wash. The documentation also reflected that Appellant had some ability to contribute to by washing her frontal area and body parts that she could reach. MassHealth testified that 20 minutes was more than sufficient for the PCA to assist with all bathing tasks.

Appellant testified that although she was approved for 20 minutes last year, it was not enough time for the PCA to help perform all bathing activities. Appellant testified that she does not shower standing up due to her physical limitations, but instead, bathes sitting down in the tub.

She testified that the PCM agency requested assistance with hair washing individually because it is a separate process from bathing and done before getting into the bathtub. Appellant testified that she uses her walker to position herself with her head over the tub so that the PCA can shampoo and rinse her hair using the shower head. Appellant testified that her hair is very curly, so the PCA has to spend extra time detangling her hair. After her hair is rinsed and dried, the PCA will physically assist Appellant into the bathtub. Appellant explained that she prefers washing out the shampoo before her bath, so she does not have to bathe in water with leftover soap residue. She feels this is cleaner and is something she has always done. Appellant testified that her functional capabilities fluctuate day-to-day, but once in the shower, her PCA will typically wash her underarms, backside, and lower and upper body extremities. The PCA then transfers her out of the shower to dry her off. Appellant testified that she has had worsening bowel incontinence related to irritable bowel syndrome (IBS). As a result, the PCA has to ensure she is washed more thoroughly. Appellant testified that it takes the PCA at least 35 minutes to assist in completing all bathing tasks, including hair wash.

In response, MassHealth testified that there was no clinical documentation in the PA request to indicate Appellant had a diagnosis of IBS. Nor did the PCM agency request time for assistance with bowel care or incontinence. In addition, the MassHealth representative testified that the time for detangling hair fell under “grooming” activities, not bathing, and that MassHealth had already approved Appellant’s request for 5 minutes per day of hair care grooming assistance. Id. at 16.

Shopping

Appellant requested 60 minutes per week for assistance with shopping, which is considered an IADL. Id. at 29. Under the section of the PA report, the PCM agency indicated that Appellant did not live with a legally responsible relative. Id. at 24. According to evaluating PCM nurse, Appellant is totally dependent for assistance with all shopping tasks due to her inability to bend, reach, twist, stretch, or grasp to retrieve supplies from shelves or displays; she is unable to load and unload a carriage; she is unable to put away supplies into cupboards or the refrigerator; and she is unable to drive due to pain. Id. at 29.

MassHealth modified the request by approving 45 minutes per week. The modification was based on MassHealth’s determination that the time requested was longer than ordinarily required, and because Appellant lives with family members who, pursuant to regulation, are responsible for performing IADLs that are shared household tasks. Here, Appellant lives with her granddaughter who is also her PCA. Any IADLs that do not relate solely to Appellant’s needs are noncovered PCA services.

Appellant testified that it takes her PCA at least 60 minutes to assist her with needed shopping activities. Appellant explained that she uses her own money to pay for her groceries and household supplies. The PCA makes separate purchases and shopping trips for Appellant, going

to more than one store, on average, each week. Appellant's PCA, who is her granddaughter, has a young child. Because of their individual needs, the PCA shops separately for herself and daughter. Appellant testified that she is capable of making a shopping list, but otherwise depends totally on the PCA to do everything else, including driving to the store, retrieving and buying groceries, medications, and household supplies, the putting purchased items away in locations that Appellant can access. Appellant testified that 45 minutes is not enough time for her PCA to perform shopping IADLs that are related to her needs alone.

PCA Paperwork

Under the IADL category of "special needs," Appellant's PCM agency requested 15 minutes per week of assistance to complete required paperwork related to the PCA program. Id. at 30. MassHealth denied the request, and therefore no time was granted for this IADL. The MassHealth representative testified that there was no documentation by the PCM agency to support the request, or to explain why Appellant was unable to review and complete paperwork independently. Id. The provider did, however, submit its annual PCA Consumer Assessment, through which it found Appellant capable of managing her PCA services independently, including her ability to manage employees and finances, review and submit timesheets, and complete other PCA-related paperwork. Id. at 35-42.

In response, Appellant testified that she has difficulty reviewing and filling out paperwork. She has difficulty focusing and cannot understand what she is reading unless she reviews it three or four times. As a result, her PCA assists in reviewing and filling out PCA paperwork.

Findings of Fact

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

1. Appellant is an adult female under the age of 65 and is enrolled as a consumer in MassHealth's Personal Care Attendant (PCA) program.
2. Appellant lives with her granddaughter, who is her PCA, and her [REDACTED] great-granddaughter; however, Appellant does not live a legally responsible relative.
3. Appellant's diagnoses include, but are not limited to degenerative disc disease, spinal stenosis, L4-L5 disc herniation, sciatica, decreased range of motion in her right shoulder, panic attacks with shortness of breath, and depression with a history of suicidal thoughts; she has a history of falls and experiences frequent dizziness when bending over.
4. Based on its annual re-evaluation of Appellant on 5/30/24, the PCM agency submitted a

PA request to MassHealth on behalf of Appellant seeking 33 hours and 30 minutes per week of PCA services for dates of service beginning 9/3/24 and ending 9/2/25.

5. Through a notice dated 8/22/2024, MassHealth informed Appellant that it modified her request to 17 hours of PCA services per week based on reductions to the times approved for the following ADLs and IADLs: (1) mobility, (2) hair wash, (3) bladder care, (4) overnight toileting, (5) shopping, (6) and completing required PCA paperwork.

Resolved Modifications

6. At hearing, the parties resolved 3 of the 6 modifications based on MassHealth's agreement to increase the authorized time for mobility to 2x3x7, bladder care to 2x3x7, and nighttime toileting to 5 minutes per night.

Hair Care

7. Under the ADL category of bathing, Appellant's provider requested 5 minutes daily (5x1x7) for assistance with hair wash, as well as 20 minutes daily (20x1x7) for assistance for all other bathing tasks, including routine transfers and drying.
8. MassHealth approved the request for 20 minutes of assistance for the bath but denied the additional 5 minutes requested for hair washing assistance.
9. Appellant requires moderate assistance for safety with transfers due to poor coordination; she requires maximum assistance to help with shampoo, back, upper body and drying due to back and sciatica pain; she has limited bending and reach ability; and a self-care deficit related to depression.
10. Appellant has some ability to contribute to by washing her frontal area and body parts that she can reach but requires assistance for all other bathing tasks.

Shopping

11. Appellant requested 60 minutes per week for assistance with shopping.
12. MassHealth modified the request by approving 45 minutes per week based on its determination that the time requested was longer than ordinarily required, and because Appellant lives with family members, including her PCA.
13. Appellant is totally dependent for shopping needs due to her inability to bend, reach, twist, stretch, or grasp to retrieve supplies from shelves or displays; she is unable to load

and unload a carriage; she is unable to put away supplies into cupboards or the refrigerator; and she is unable to drive due to pain.

14. Appellant's PCA makes separate purchases and shopping trips for Appellant, going to more than one store, on average, each week to purchase her groceries, medications, and household supplies.

PCA Paperwork

15. Under the IADL category of "special needs," Appellant's PCM agency requested 15 minutes per week of assistance to complete required paperwork related to the PCA program; however, the provider did not include any comments or explanation to support its request.
16. MassHealth denied the request for assistance with PCA paperwork assistance.
17. In its annual PCA Consumer Assessment, the PCM agency determined that Appellant was capable of managing her PCA services independently, including her ability to manage employees and finances, review and submit timesheets, and complete other PCA-related paperwork.

Analysis and Conclusions of Law

MassHealth covers personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:¹ First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." See 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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

¹ PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

(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.

See 130 CMR 450.204(A).

Additionally, medically necessary services must be substantiated by records including evidence of such medical necessity, as well as evidence that the service meets professionally recognized standards of health care. See 130 CMR 450.204(B).

Here, there is no dispute that Appellant meets all the prerequisites to qualify for PCA services. The issue on appeal is whether MassHealth allotted sufficient time for PCA assistance, in accordance with program regulations, to meet Appellant's needs.

The MassHealth PCA program covers medically necessary assistance with the following ADLs:

- (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 bathing, personal hygiene, or grooming;***
 - (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.

See 130 CMR 422.410 (emphasis added).

In addition, MassHealth will reimburse the PCA to assist the consumer in performing instrumental activities of daily living (IADLs). IADLs include activities that are "instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, **shopping**, maintenance of medical equipment, transportation

to medical providers, and ***completion of paperwork required for the member to receive PCA services.*** 130 CMR §§ 422.402 and 422.410(B) (emphasis added). When determining the amount of time needed to assist a consumer in completing an IADL, MassHealth requires that the PCM agency presume the following:

- (1) When a member is living with family members, the family member 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.

See 130 CMR 422.410(C).

With respect to both ADLs and IADLs, MassHealth will approve time in accordance with the “activity time performed by a PCA in providing assistance with the [task].” See 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with their ADL/IADL. See 130 CMR 422.402. MassHealth does not pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412. Additionally, MassHealth will not cover PCA assistance that is otherwise available to the member from other MassHealth providers, such as a physician, pharmacy, or community health center services. Id.

Hair Wash

Appellant requested 5 minutes per day (5x1x7) for assistance with hair washing, as well as 20 minutes per day for a daily bath (20x1x7) for a combined total of 25 minutes per day for all bathing activities. MassHealth denied the request for 5 minutes and approved only 20 minutes, which, according to MassHealth, was sufficient to perform all bathing tasks, including hair wash. According to Appellant, the PCM agency split the request as two separate line items to reflect the fact that she first washes her hair (with her head positioned over the tub using a shower head) before washing her body, so that she does not have to bathe in water that contains leftover shampoo residue. By splitting the request in this manner, the provider intentionally did not allocate time for hair wash in line item for 20x1x7. Thus, the additional 5 minutes should not be denied as if it were a duplicative request. At hearing, Appellant testified that her PCA was unable to complete all bathing tasks within 20 minutes as had been approved in the last PA period. Corroborating this testimony is documentation from the evaluating nurse, indicating that Appellant requires moderate assistance with transferring to/from the bath and that she requires maximum assistance washing her hair and areas of her body that she cannot reach, as

well as assistance with drying. *Id.* at 14-15. Given that she requires help at all stages of the bathing process, the request for an additional 5 minutes of assistance for hair washing – regardless of whether performed before or during her bath – is appropriate and within the scope of payable PCA services. Accordingly, the appeal is APPROVED with respect to hair wash at 5x1x7 (in addition to the time already approved for bathing at 20x1x7).

Shopping

Next, Appellant's PCM agency requested a 60 minutes per week for assistance with shopping. *See* Exh. 4. MassHealth modified the request to 45 minutes. The modifications were based, in part, on § 422.410(C)(1), cited above, which reflects MassHealth's presumption that live-in family members will assist the member in performing household IADLs, such as housekeeping, meal preparation and shopping. MassHealth PCA regulations define "family member" as the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative." 130 CMR 422.401. While Appellant does live with her granddaughter and great-granddaughter, neither are legally responsible for Appellant, and thus not within the scope of § 422.410(C)(1). Moreover, Appellant provided detailed testimony explaining that the requested time for shopping was limited to only those tasks that the PCA made on behalf of Appellant and did not include time shopping for other household members. According to the clinical documentation, Appellant is totally dependent on her PCA for driving to the store, loading/unloading shopping carriages, and putting away purchased items so that they are accessible to the Appellant. *Id.* at 29. The evidence supports Appellant's position that 45 minutes is insufficient for her PCA to complete all shopping tasks. On this basis, the appeal is APPROVED with respect to shopping at 60x1x1.

PCA paperwork

Appellant did not sufficiently demonstrate that MassHealth erred in denying her request for 15 minutes per week for assistance completing required PCA program paperwork. In submitting this request, which fell under the IADL category related to "special needs," the PCM agency did not include any comments to explain or support the need for assistance with this task. Rather, in its annual PCA Consumer Assessment, the PCM agency found that Appellant had "the ability to manage PCA services independently" including managing finances, reviewing and submitting timesheets in a timely manner, and completing other PCA-related paperwork. *Id.* at 35-42. Although Appellant testified that she has difficulty reading through all the paperwork, MassHealth only covers services when there is evidence of medical necessity which is substantiated through clinical documentation. *See* 130 CMR 450.204(B), *supra*. Absent such evidence to corroborate Appellant's testimony, there was no error by MassHealth in denying this request. On this basis, the appeal is DENIED with respect to PCA paperwork.

Resolved Modifications

The appeal is DISMISSED with respect to the remaining modifications, which the parties were able to resolve at hearing through the agreed-upon stipulations:

- **Mobility:** Approved at 2x3x7 (originally modified as 1x3x7);
- **Bladder care:** Approved at 2x3x7 (originally modified as 3x1x7);
- **Nighttime toileting:** Approved at 5 minutes per night, as requested by Appellant (originally modified to 0x0)

Order for MassHealth

For the PA period 9/3/24 through 9/2/25, approve the modified ADLs/IADLs, as follows:

1. Mobility: 2x3x7, as agreed upon at hearing.
2. Hair Wash: 5x1x7 (in addition to 20x1x7 already approved for bathing);
3. Bladder Care: 2x3x7, as agreed upon at hearing;
4. Nighttime toileting: 5 minutes per night, as MassHealth agreed to restore at hearing;
and
5. Shopping: 60 minutes per week.

The modification to PCA paperwork (0x0) may remain in place.

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.

Casey Groff
Hearing Officer
Board of Hearings

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