

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part; Dismissed in Part	Appeal Number:	2414067
Decision Date:	12/19/2024	Hearing Date:	10/10/2024
Hearing Officer:	Mariah Burns	Record Open to:	11/18/2024

Appearance for Appellant:




Appearance for MassHealth:

Robin Brown, OTR/L for 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; Dismissed in Part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	12/19/2024	Hearing Date:	10/10/2024
MassHealth's Rep.:	Robin Brown, OTR/L	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 13, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on September 11, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

The appeal issue is whether MassHealth acted within the scope of the regulations in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is a MassHealth member under the age of 65. MassHealth was represented by a clinical appeals reviewer and licensed occupational therapist for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by telephone. The following is a summary of the testimony and evidence presented:

The appellant suffers from diagnoses of obesity, a right ankle fracture, several pinched nerves, arthritis of left knee with episodes of knee buckling, and an inability to bend or reach. On August 8, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 21 hours and 30 minutes of PCA assistance per week. On August 13, 2024, MassHealth modified the request and approved the appellant for 19 hours and 15 minutes of weekly assistance with dates of service from August 28, 2024, to August 27, 2025.

Modifications were made in the areas of bathing, evening wash, lotion application, laundry, housekeeping, and shopping. After the hearing, the parties agreed to the following modifications:

- **Bathing and PM Washing:** parties agree to 20 minutes, one time per day, 7 days per week for a shower, and 10 minutes, one time per day, 7 days per week for an evening wash;
- **Laundry:** MassHealth agrees to 70 minutes per week;
- **Shopping:** MassHealth agrees to 60 minutes per week.

Thus, after the hearing, disputes remained over assistance with lotion application and housekeeping.

Lotion Application

The appellant requested 5 minutes, one time per day, 7 days per week for assistance with lotion application. MassHealth modified this request to 3 minutes per day because the documentation indicates that the appellant does not require full assistance for this task and is able to do some of it herself. The appellant testified that she has Aquafor applied twice per day to keep her skin from drying out. She estimated that it takes approximately 10 minutes each time. When discussing bathing, the appellant reported that her PCA washes her hair, face, neck, back, private areas, legs, and her rear due to limited range of motion from a rotator cuff injury.

Housekeeping

The appellant requested 60 minutes per week for assistance with housekeeping. The MassHealth representative reported that this was modified because the appellant is living with her PCA, meaning that the PCA is responsible only for light cleaning of the appellant's sleeping space and

bathroom. The appellant testified that her apartment requires frequent cleaning because of an issue with significant dust, smog, and pollution on her street. She explained that there is an issue with the laundromat next door that has a vent blowing directly into her apartment that causes the space to get dirty very easily. She testified that, as a result, the walls must be washed two times per week, and the floors must be cleaned every day.

Findings of Fact

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

1. The appellant is an adult MassHealth member under the age of 65 who suffers from diagnoses of obesity, a right ankle fracture, several pinched nerves, arthritis of the left knee with episodes of knee buckling, and an inability to bend or reach. Exhibit 4, Exhibit 5 at 7-8.
2. On August 8, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 21 hours and 30 minutes of PCA assistance per week. Testimony, Exhibit 5 at 34. On August 13, 2024, MassHealth modified the request and approved the appellant for 19 hours and 15 minutes of weekly assistance with dates of service from August 28, 2024, to August 27, 2025. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of bathing, evening wash, lotion application, laundry, housekeeping, and shopping. Exhibit 1.
4. After the hearing, the parties agreed to the following modifications:
 - **Bathing and PM Washing:** parties agree to 20 minutes, one time per day, 7 days per week for a shower, and 10 minutes, one time per day, 7 days per week for an evening wash;
 - **Laundry:** MassHealth agrees to 70 minutes per week;
 - **Shopping:** MassHealth agrees to 60 minutes per week.

Testimony.

5. The appellant requested 5 minutes, one time per day, 7 days per week for assistance with lotion application. The appellant has Aquafor applied twice per day to keep her skin from drying out. When bathing, her PCA washes her hair, face, neck, back, private areas, legs, and her rear due to limited range of motion from a rotator cuff injury. Testimony. MassHealth reduced this to 3 minutes per instance after finding that the appellant does not require complete assistance for this task. Exhibit 1, Testimony.
6. The appellant requested 60 minutes per week for assistance with housekeeping. Exhibit 5 at 29. The appellant's apartment requires more cleaning than typical due to environmental pollutants in the areas surrounding the appellant's apartment. Testimony. MassHealth reduced

this to 45 minutes per week because the appellant resides with her PCA and would only be granted assistance for cleaning her sleeping space. Testimony.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹
- (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.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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 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...

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

...Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality.

130 CMR 450.204(A)-(B).

As part of the PCA program, MassHealth does not cover certain activities, including, but not limited to “medical services available from other MassHealth providers...assistance provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members.” 130 CMR 422.412(B), (C) and (F). When determining the appropriate amount of physical assistance required by a MassHealth member, the following assumptions:

(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.

...

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

130 CMR 422.410(C).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for assistance with bathing, shopping, and laundry, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant’s approved hours to include the following:

- **Bathing and PM Washing:** 20 minutes, one time per day, 7 days per week for a shower, and 10 minutes, one time per day, 7 days per week for an evening wash;
- **Laundry:** 70 minutes per week;
- **Shopping:** 60 minutes per week.

Thus, at issue in this case is whether the appellant met his burden of proof in establishing that she is entitled to more approved PCA time than MassHealth approved for assistance with housekeeping and lotion application.

Lotion Application

Lotion application falls under the category of grooming, the definition for which can be found at 130 CMR 422.410(A)(3) and involves “physically assisting a member with bathing, personal

hygiene, or grooming.” In this case, although the appellant only requested one instance of lotion per day and testified that she has lotion applied twice, she credibly explained why she requires more assistance than MassHealth approved for applying lotion. Her request for lotion is consistent with the testimony that she gave regarding her ability to wash herself, which I credit is limited due to issues with her rotator cuff and other physical ailments. I find that the appellant provided sufficient evidence that her PCA assists her with 5 minutes per day of lotion application, 7 days per week. For those reasons, the appeal with respect to lotion application is approved.

Housekeeping

The appellant argues that she requires 60 minutes of housekeeping assistance per week, despite the fact that she resides with her PCA. MassHealth correctly states that, because the appellant lives with her PCA, MassHealth does not find housekeeping for shared spaces to be medically necessary. See 130 CMR 422.410(C)(1). Therefore, MassHealth will only cover assistance with cleaning the appellant’s bedroom and any bathroom mess caused by the appellant. The appellant’s testimony of how dirty the apartment gets on a daily basis and how frequently it requires cleaning strains credulity. If the space is being cleaned every day, then sweeping and mopping should take no longer than several minutes. It is difficult to believe that, if the apartment truly is as dirty as she describes, even the requested 60 minutes per week would be sufficient. For those reasons, I find that the appellant has not demonstrated that she requires more PCA assistance with housekeeping than the 45 minutes that MassHealth has already approved. For those reasons, the appellant’s appeal with respect to assistance with housekeeping is denied.

For the foregoing reasons, the appeal is hereby approved in part, denied in part and dismissed in part.

Order for MassHealth

Modify the appellant’s approved PCA assistance to reflect the following hours, retroactive to the start date of service of August 28, 2024:

- **Bathing and PM Washing:** 20 minutes, one time per day, 7 days per week for a shower, and 10 minutes, one time per day, 7 days per week for an evening wash;
- **Lotion Application:** 5 minutes, one time per day, 7 days per week;
- **Laundry:** 70 minutes per week;
- **Shopping:** 60 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.

Mariah Burns
Hearing Officer
Board of Hearings

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