

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2415081
<b>Decision Date:</b>	11/15/2024	<b>Hearing Date:</b>	10/30/2024
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Robin Brown, OTR/L, 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

<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Issue:</b>	Prior Authorization – Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	11/15/2024	<b>Hearing Date:</b>	10/30/2024
<b>MassHealth’s Rep.:</b>	Robin Brown, OTR/L, Optum	<b>Appellant’s Rep.:</b>	Pro se
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 09/19/2024, Optum, a MassHealth contractor, modified a request for an increase of personal care attendant (PCA) time requested on behalf of the appellant by his PCA provider, [REDACTED] (130 CMR 422.410, 412; Exhibit 1). The appellant filed this appeal with the Board of Hearings in a timely manner on 09/30/2024 (130 CMR 610.015(B); Exhibit 2). Individual MassHealth agency determinations regarding scope and amount of assistance are grounds for appeal (130 CMR 610.032(A)(5)).

## Action Taken by MassHealth

MassHealth modified the appellant’s request for an increase in PCA services from a requested 41 hours and 30 minutes (41:30) to 22:15 weekly day/evening hours.

## Issue

Was MassHealth correct in modifying the appellant’s request for an increase in PCA services from a

requested 41 hours and 30 minutes (41:30) to 22:15 weekly day/evening hours?

## Summary of Evidence

A fair hearing was held before the Board of Hearings on 10/30/2024. The appellant appeared telephonically, as did the MassHealth representative. Exhibits 1-4 were admitted into the hearing record.

The MassHealth representative testified that she is a registered occupational therapist who is employed by Optum, the contractor that makes the PCA decisions for MassHealth. She testified that the instant prior authorization (PA) request was submitted on the appellant's behalf by his PCA provider, [REDACTED] (Provider). It is an increase request for the dates of service from 09/18/2024 to 12/25/2024. Prior to the PA request, the appellant was approved for, and received, 20:15 per week of PCA assistance. The PA is for an adjustment from 20:15 hours of assistance per week to 41:30 hours.

The appellant is in his 50's, and has primary diagnoses of multiple sclerosis, pre-diabetes, impaired vision, osteo-bone disorder, and neuropathy. He lives independently in the community and receives home-delivery of his meals.

On 09/19/2024, MassHealth modified the request for an increase to 22:15 hours per week. Modifications were made in the tasks of mobility, bathing, daytime bladder care, and nighttime bladder care.

### Mobility

In the task of mobility, the appellant currently has been approved for 2 minutes, 6 times per day, 7 days per week (2 X 6 X 7). The PA provider requested an increase of PCA time to 4 X 6 X 7. The provider noted that the appellant "now requires assistance with mobility in the form of ambulating from room to room as [his] MS has progressed with increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to diabetes mellitus (DM) and high fall risk" (Exhibit 4).

MassHealth modified the request for assistance with mobility to 3 X 6 X 7. The Optum representative asked questions of the appellant and, after hearing his responses, restored all time requested for mobility.

### Bathing

The appellant has a current approval for 30 X 1 X 7 of PCA assistance for bathing. His PCA provider requested on the appellant's behalf an increase to 40 X 1 X 2 for assistance with showering and 60

X 1 X 5 for assistance with a sponge bath. The provider noted that the appellant “now requires assistance with bathing in the form of showers 2 days/week and bed baths 5 days/week as MS has progressed w/increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, and high fall risk. Time for bed baths include set up, bathing, rinsing, and cleaning up” (Exhibit 4).

MassHealth modified the increase request to 40 X 1 X 7 for all bathing. The MassHealth representative testified that the time requested is longer than ordinarily require for a person with the appellant’s abilities. She testified that in her experience as an occupational therapist, a sponge bath always takes less time than a shower.

The appellant testified that he can sit on the edge of a chair during his sponge bath. If he has to stand, it takes a longer time to position his legs and his body. He stated he “wishes he could bathe in a tub.”

#### Bladder Care

The appellant has a current authorization for 1 X 6 X 7 for assistance with bladder care (daytime). His PCA provider requested an increase to 3 X 6 X 7, noting that he requires additional time for bladder care in the form of emptying the urinals/cleaning as consumer urinate frequently due to being on a diuretic and hygiene after urinating as MS has progressed w/ increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, legally blind, and high fall risk” (Exhibit 4).

MassHealth denied the increase request for daytime bladder care. The MassHealth representative testified that the time request for assistance with bladder care is longer than ordinarily required for someone with the appellant’s abilities. The documentation states the appellant uses a urinal. This time is to empty and rinse the urinal.

The appellant testified that he uses a urinal and a bucket. He empties his urinal into a bucket and the PCA empties and rinses both the urinal and the bucket. He testified that the bucket needs to be emptied three times a day. He stated he did not know much time it takes the PCA to perform this task, since he “doesn’t have a stopwatch.”

#### Nighttime Bladder Care

The appellant currently has no time approved for nighttime bladder care. His PCA provider requested 3 X 3 X 7 for assistance with this task. His provider noted that the appellant “requires nighttime hours for bladder care in the form of emptying the urinals/cleaning as [he] urinates frequently due to being on a diuretic and hygiene after urinating as MS has progressed w/increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, legally blind, and high fall risk” (Exhibit 4).

MassHealth denied the request for assistance with nighttime bladder care. The MassHealth representative testified that it is not medically necessary for the urinal to be emptied at nighttime. The appellant can empty his own urinal into a bucket and there is no documentation to show that the bucket must be emptied during the nighttime hours.

The appellant testified that he sometimes has “accidents” at night. Someone must assist him with a towel and to help him clean himself when an accident happens.

## Findings of Fact

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

1. The appellant is a MassHealth member. He is in his 50’s and has diagnoses including multiple sclerosis (MS), pre-diabetes, impaired vision, osteo-bone disorder, and neuropathy. He lives independently in the community and receives home-delivery of his meals.
2. The appellant is currently authorized for 20 hours and 15 minutes (20:15) per week of PCA services.
3. On 12/07/2024, the appellant’s PCA provider, [REDACTED] submitted a PA or for an adjustment from 20:15 hours of assistance per week to 41:30 hours (increase request).
4. On 09/19/2024, MassHealth modified the request for an increase to 22:15 hours per week. Modifications were made in the tasks of mobility, bathing, daytime bladder care, and nighttime bladder care.
5. For the PCA task of mobility, the appellant currently has been approved for 2 minutes, 6 times per day, 7 days per week (2 X 6 X 7).
6. The PA requested an increase of PCA time to 4 X 6 X 7 for assistance with mobility. The provider noted that the appellant “now requires assistance with mobility in the form of ambulating from room to room as [his] MS has progressed with increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to diabetes mellitus (DM) and high fall risk.”
7. MassHealth initially modified the request for assistance with mobility to 3 X 6 X 7; however, after hearing testimony from the appellant, restored all time as requested for mobility (The Optum representative asked questions of the appellant and, after hearing his responses, restored all time requested for mobility (4 X 6 X 7).

8. The appellant has a current approval for 30 X 1 X 7 of PCA assistance for bathing.
9. The appellant's PCA provider requested on the appellant's behalf an increase to 40 X 1 X 2 for assistance with showering and 60 X 1 X 5 for assistance with a sponge bath. The provider noted that the appellant "now requires assistance with bathing in the form of showers 2 days/week and bed baths 5 days/week as MS has progressed w/increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, and high fall risk. Time for bed baths include set up, bathing, rinsing, and cleaning up."
10. MassHealth modified the increase request to 40 X 1 X 7 for all bathing.
11. The appellant is able to sit on the side of a chair for sponge baths.
12. The MassHealth representative is a registered occupational therapist.
13. The MassHealth representative testified that a sponge bath takes less time than a shower.
14. The appellant has a current authorization for 1 X 6 X 7 for assistance with bladder care (daytime).
15. The appellant's PCA provider requested an increase to 3 X 6 X 7, noting that he requires additional time for bladder care in the form of emptying the urinals/cleaning as consumer urinate frequently due to being on a diuretic and hygiene after urinating as MS has progressed w/increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, legally blind, and high fall risk."
16. MassHealth denied the increase request for daytime bladder care.
17. The appellant can use his urinal and empty the urinal into a bucket. The PCA time requested is to empty and clean the bucket.
18. The appellant currently has no time approved for nighttime bladder care.
19. The appellant's PCA provider requested 3 X 3 X 7 for assistance with nighttime bladder care. His provider noted that the appellant "requires nighttime hours for bladder care in the form of emptying the urinals/cleaning as [he] urinates frequently d/t being on a diuretic and hygiene after urinating as MS has progressed w/ increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, legally blind, and high fall risk."
20. MassHealth denied the request for assistance with nighttime bladder care.

21. The appellant filed his timely appeal with the Board of Hearings on 09/30/2024.

22. A fair hearing was held before the Board of Hearings on 10/30/2024. The appellant appeared telephonically, as did the MassHealth representative.

## **Analysis and Conclusions of Law**

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

(A) 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 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

MassHealth does not cover any of the following as part of the PCA program or the transitional living 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;
- (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; or
- (G) surrogates, as defined in 130 CMR 422.402.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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 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 type of PCA services available are described in 130 CMR 422.410 below:

- (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/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 tubefeeding 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.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333, 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386, 390 (1998).

The appellant, a MassHealth member, has a current authorization for 20:15 hours of weekly PCA

services. His PCA provider submitted an adjustment, or increase request, for 41:30 hours per week of PCA assistance. MassHealth modified the request in the tasks of mobility, bathing, daytime bladder care, and nighttime bladder care.

### Mobility

In the task of mobility, the appellant currently has been approved for 2 X 6 X 7. The PA requested an increase of PCA time to 4 X 6 X 7 for assistance with mobility. The provider noted that the appellant “now requires assistance with mobility in the form of ambulating from room to room as [his] MS has progressed with increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to diabetes mellitus (DM) and high fall risk.” MassHealth initially modified the request for assistance with mobility to 3 X 6 X 7; however, after hearing testimony from the appellant, restored all time as requested for mobility (4 X 6 X 7). This portion of the appeal is therefore dismissed, as MassHealth has adjusted its modification to the full time requested for assistance with mobility.

### Bathing

The appellant has a current approval for 30 X 1 X 7 of PCA assistance for bathing. The appellant’s PCA provider requested on the appellant’s behalf an increase to 40 X 1 X 2 for assistance with showering and 60 X 1 X 5 for assistance with a sponge bath. The provider noted that the appellant “now requires assistance with bathing in the form of showers 2 days/week and bed baths 5 days/week as MS has progressed w/ increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, and high fall risk. Time for bed baths include set up, bathing, rinsing, and cleaning up.”

MassHealth modified the increase request to 40 X 1 X 7 for all bathing. The MassHealth representative testified that in her professional opinion as an occupational therapist, a sponge bath should take no longer than a shower because the appellant is able to sit on the side of a chair for sponge baths. The appellant provided no evidence to show that the time, as modified by MassHealth, will not meet his needs. Accordingly, this portion of the appeal is denied.

### Bladder Care (Daytime)

The appellant has a current authorization for 1 X 6 X 7 for assistance with bladder care (daytime). His PCA provider requested an increase to 3 X 6 X 7, noting that he requires additional time for bladder care in the form of emptying the urinals/cleaning as consumer urinate frequently due to being on a diuretic and hygiene after urinating as MS has progressed w/ increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, legally blind, and high fall risk.”

MassHealth denied the increase request for daytime bladder care because the appellant can use his

urinal and empty the urinal into a bucket. The PCA time requested is to empty and clean the bucket. There is no documentation in the hearing record that indicates that the appellant's decreased abilities add any time to the assistance he needs to empty and clean the urinal and the bucket. This portion of the appeal is denied.

### Bladder Care (Nighttime)

The appellant currently has no time approved for nighttime bladder care. His PCA provider requested 3 X 3 X 7 for assistance with nighttime bladder care. His provider noted that the appellant "requires nighttime hours for bladder care in the form of emptying the urinals/cleaning as [he] urinates frequently d/t being on a diuretic and hygiene after urinating as MS has progressed w/ increased muscle weakness, limited mobility, neuropathy of bilateral lower extremities due to DM, legally blind, and high fall risk."

MassHealth denied the request for assistance with nighttime bladder care, referencing the medical necessity regulations and questioning why the appellant requires his bucket to be emptied during the nighttime hours, rather than waiting until the morning. The appellant asserted that he "sometimes" has accidents at night. MassHealth's denial of time for assistance with bladder care is supported by the regulations and the facts in the hearing record. PCA time cannot be anticipatory in nature, as a "just in case" situation. This portion of the appeal is therefore denied.

For the foregoing reasons, this appeal is dismissed in part; denied in part.

## **Order for MassHealth**

Regarding the request for increased time for assistance with mobility, approve 4 X 6 X 7 for the dates of service from 09/18/2024 to 12/25/2024. Regarding the other modifications, none.

## **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, Division of Medical Assistance, 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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

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