

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2415605
Decision Date:	12/16/2024	Hearing Date:	11/12/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se

Appearance for MassHealth:

Via telephone:

Kelly Rayen, RN

Interpreter:



*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 – PCA
Decision Date:	12/16/2024	Hearing Date:	11/12/2024
MassHealth’s Rep.:	Kelly Rayen, RN	Appellant’s Rep.:	Pro se
Hearing Location:	Quincy Harbor South, 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 September 19, 2024, MassHealth modified the appellant’s prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on October 9, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant’s prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant also appeared at hearing via telephone and was assisted by a Spanish interpreter.

The MassHealth representative testified that the documentation submitted shows the appellant is an adult under the age of 65 with a primary diagnosis of fibromyalgia. Relevant medical history also shows epilepsy, chronic migraines, asthma, type 2 diabetes, and a brain tumor that causes right-sided weakness. The appellant lives with her spouse and adult children. On September 18, 2024, the appellant's personal care management (PCM) agency, Northeast Arc, Inc., submitted a prior authorization request for PCA services (re-evaluation) requesting 28 hours and 45 minutes per week for dates of service of October 3, 2024 through October 2, 2025. On September 19, 2024, MassHealth modified the request to 23 hours per week. MassHealth made modifications related to PCA assistance with bathing; grooming, other: skin checks; bowel care; meal preparation; laundry; and housekeeping.

Based on hearing at testimony, MassHealth fully restored time as requested for PCA assistance with bathing (30 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week). Since parties resolved the dispute as to bathing, the appeal is dismissed as to that activity of daily living (ADL).

Grooming, Other: Skin Checks

The appellant requested 5 minutes, 1 time per day, 7 days per week for PCA assistance with skin checks. The document submitted states that the needs assistance with "grooming and skin checks due to right-sided weakness on dominate side." MassHealth did not approve any time for skin checks because the requested service does not meet professionally recognized standards of care.

The MassHealth representative explained that PCAs are not allowed to assess for any abnormalities. Any clinical assessment is a skilled task for a registered nurse and outside the scope of a PCA's responsibility. She testified that a PCA is not a replacement for a registered nurse's clinical assessment skills.

The appellant testified that she is seated for long periods of time and skin sores arise in areas of her back. She has a nurse who comes by for one hour but that time has been reduced and the nurse no longer has the time to look at the open sores on her back where the appellant cannot see.

Bowel Care

The appellant requested 10 minutes, 2 times per day, 7 days per week for assistance with bowel care. MassHealth modified it to 6 minutes, 2 times per day, 7 days per week because the time requested for assistance is longer than ordinarily required for someone with her physical needs.

The MassHealth representative testified that documentation provided notes that the appellant needs assistance with hygiene, clothing management, and transfers due to numbness in both hands and right-sided weakness. Her spouse assists with any transfers at nighttime when he is not at work. She was approved for 5 minutes, 6 times per day, 7 days per week for bladder care as requested.

The appellant stated that it can take some time because the PCA uses wipes so she does not smell. The PCA takes time to clean her intimate areas. She is right-handed and that is the side she has weakness on, so she needs the assistance. She did not know how long it takes, but thought maybe the whole process, including putting on her pajamas, could take 20 to 30 minutes, depending on her condition that day.

The MassHealth nurse noted that the time is for hands-on assistance, not any waiting time. Additionally, while clothing management (pulling down and back up pants and underwear) is included, dressing and undressing is a separate ADL.

Meal Preparation

The appellant requested 65 minutes per day, 7 days per week for PCA assistance with meal preparation. MassHealth modified it to 65 minutes per day, 5 days per week because she lives with her spouse who is legally responsible to provide assistance with instrumental activities of daily living (IADLs), such as meal preparation.

The MassHealth representative testified that documentation provided indicates that the spouse is not home during the day and works 12-hour shifts. The MassHealth representative explained that because the spouse works outside of the home, MassHealth will compensate the PCA for IADLs when the spouse is at work, but not when he is at home. For this reason, MassHealth approved the time five days per week.

The appellant testified that her spouse works five days per week but when he is on-call, it is seven days per week and he is on-call every other week. When he is on-call, he is at home, waiting to be called. He works maintenance for an apartment complex and helps when things get damaged.

Laundry

The appellant requested 60 minutes per week for PCA assistance with laundry. MassHealth approved 45 minutes per week because she lives with her spouse who is legally responsible to provide assistance with IADLs, such as laundry.

The MassHealth representative stated that documentation shows the laundry is in her residence. She explained that the time is for the hands-on assistance of putting clothes into and out of the machines and folding, not the time spent waiting while it is in the machine.

The appellant testified that she has accidents and the bed sheets and covers get washed every other day. Her husband will help if it is at night, but usually, the PCA comes to the house to start the laundry, but then the PCA will go back home and then drive back to finish it. But she understood that that driving time would not be covered. The laundry is in the basement.

Housekeeping

The appellant requested 60 minutes per week for PCA assistance with housekeeping. MassHealth approved 30 minutes per week because she lives with her spouse who is legally responsible to provide this assistance with IADLs.

The MassHealth representative explained that housekeeping includes light vacuuming, sweeping, mopping, and dusting of the appellant's personal areas. The PCA is only responsible for the appellant's spaces, not the entire household.

The appellant stated that her husband does not do any of those chores and does not know how to. She then stated that he physically was not capable of those chores because he has had multiple procedures to have a stent put in for his heart and has had bypass surgery. He also had a brain aneurysm. He cannot sweep or do laundry. When asked how he can work his maintenance job but not help with light housekeeping, she stated that at work he is mostly in a supervisory position, sitting behind a computer. While he works maintenance, he does not do anything heavy because he physically cannot do that anymore.

Findings of Fact

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

1. The appellant is an adult under the age of 65 with a primary diagnosis of fibromyalgia. Relevant medical history also shows epilepsy, chronic migraines, asthma, type 2 diabetes, and a brain tumor that causes right-sided weakness. (Testimony and Exhibit 5).

2. On September 18, 2024, MassHealth received a prior authorization request for PCA services requesting 28 hours and 45 minutes per week for dates of service of October 3, 2024 through October 2, 2025 (Testimony and Exhibit 5).
3. On September 19, 2024, MassHealth informed the appellant that it had modified the request to 23 hours per week (Testimony and Exhibit 5).
4. MassHealth made modifications related to PCA assistance with bathing; grooming, other: skin checks; bowel care; meal preparation; laundry; and housekeeping (Testimony and Exhibit 1).
5. At hearing, MassHealth fully restored the time as requested for bathing to 30 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week, which resolved the dispute related to PCA assistance with that task (Testimony).
6. The appellant seeks time for PCA assistance with grooming – skin checks as follows: 5 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 5).
7. MassHealth did not approve any time for skin checks because the requested service does not meet professionally recognized standards of care and clinical assessment is a skilled task for a registered nurse and outside the scope of a PCA's responsibility (Testimony and Exhibit 5).
8. The appellant has a nurse who comes and does skin checks, but the nurse's hours have been reduced (Testimony).
9. The appellant seeks PCA assistance with bowel care as follows: 10 minutes, 2 times per day, 7 days per week (Testimony and Exhibit 5).
10. MassHealth modified the request to 6 minutes, 2 times per day, 7 days per week (Testimony and Exhibit 5).
11. The appellant has right-sided weakness and that is her dominant hand. The PCA takes time to clean her intimate areas after a bowel movement (Testimony and Exhibit 5).
12. The appellant seeks PCA assistance with meal preparation as follows: 65 minutes per day, 7 days per week (Testimony and Exhibit 5).
13. MassHealth modified the request to 65 minutes per day, 5 days per week because she lives with her spouse and IADLs are the responsibility of family members; however, because the spouse works, MassHealth approved some time for meal preparation (Testimony and Exhibit 5).

14. The appellant seeks PCA assistance with laundry as follows: 60 minutes per week (Testimony and Exhibit 5).
15. MassHealth modified the request to 45 minutes per week because she lives with her spouse and IADLs are the responsibility of family members; however, because the spouse works, MassHealth approved some time for laundry (Testimony and Exhibit 5).
16. The appellant seeks PCA assistance with housekeeping as follows: 60 minutes per week (Testimony and Exhibit 5).
17. MassHealth modified the request to 30 minutes per week because she lives with her spouse and IADLs are the responsibility of family members; however, because the spouse works, MassHealth approved some time for housekeeping (Testimony and Exhibit 5).
18. The appellant's spouse has had multiple heart procedures and a brain aneurysm which limits what he can do physically; however, he still works 12-hour shifts at least five days per week (Testimony).

Analysis and Conclusions of Law

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 or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.

(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. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204 (Emphasis added).

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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.**

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C). Family members include the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to bathing because at hearing, parties were able to resolve the dispute. MassHealth fully restored time as requested for PCA assistance with bathing (30 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days per week, as requested).

As to the request for grooming – skin checks, the appeal is denied. The basis for MassHealth’s decision regarding the performance of skin checks is that clinical assessment is a skilled task that should be completed by a registered nurse and it is outside the scope of a PCA’s responsibilities. This position has merit. The regulations specifically state that 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(B)). The appellant acknowledged that she gets frequent sores on her back, indicating she is vulnerable to wounds and possible infection that require services of a quality that meet professionally recognized standards of care. The appellant did not provide any information regarding the training or skills of her PCA in assessing sores or wounds. Additionally, the regulations specifically define activities of daily living and while such activities include assistance with grooming, the task is defined as “physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills.” The appellant stated she cannot see her back, but assessing skin is neither a grooming skill nor a task requiring physical, hands-on assistance.

Additionally, the appellant already has a nurse performing skin checks, even if those nursing hours have been reduced. Medical services available from other MassHealth providers are not covered by the PCA program. See 130 CMR 422.412(B). The PCA program does not allow for duplication of services. See PCA Operating Standards. For these reasons, the decision by MassHealth to deny time for this task was correct to ensure safe and appropriate assessment and to avoid duplication of services.

As to the appellant’s request for 10 minutes, 2 times per day, 7 days per week of PCA assistance with bowel care, the appeal is approved in part. The appellant’s testimony demonstrated that she needs more than the 6 minutes, 2 times per day, 7 days per week that MassHealth approved;

however, she did not establish that it took the full 10 minutes requested. The PCA takes time to ensure that the appellant's intimate areas are well-cleaned and the appellant cannot do it herself due to weakness on her dominant side. As such the appellant has shown that additional PCA assistance with bowel care is medically necessary. For these reasons, she is approved for 8 minutes, 2 times per day, 7 days per week for bowel care.

As to the appellant's request for 65 minutes per day, 7 days per week for meal preparation, the appeal is denied. The appellant has not demonstrated that additional PCA assistance with meal preparation takes longer than the time approved. Her husband falls under the definition of a family member who is expected to provide assistance with most IADLs; however, MassHealth approved the appellant for 65 minutes per day, 5 days per week because her spouse works. The appellant's spouse typically works 5 days per week, but is on-call every other week; however, when he is on-call, he is at home, waiting. The appellant has not shown that additional time for meal preparation is medically necessary.

As to the appellant's request for PCA assistance with laundry, the appeal is approved. The appellant requested 60 minutes per week for assistance with laundry, but MassHealth only approved 45 minutes per week because the appellant lives with a responsible family member and laundry, as an IADL, is the family member's responsibility. The regulation requires family members to provide "**routine** laundry" and "household management" assistance. The appellant's need for laundry services related to her medical conditions exceeds the laundry services anticipated through "household management" or "routine laundry." She routinely has accidents and the bed sheets and covers get changed every other day. The appellant's spouse has had multiple heart procedures and a brain aneurysm which limits his ability to assist with this task, especially given that the laundry is in the basement and wet bed sheets and covers may be heavy. Therefore, the appellant's condition results in the need for laundry assistance in excess of the routine laundry assistance that would be expected for regular household maintenance. For these reasons, the appellant is approved for 60 minutes per week for PCA assistance with laundry, as requested.

As to the appellant's request for PCA assistance with housekeeping, the appeal is denied. The appellant requested 60 minutes per week for PCA assistance with housekeeping, but MassHealth approved 30 minutes per week because the appellant lives with a responsible family member and laundry, as an IADL, is the family member's responsibility. Additionally, the PCA is only responsible for the appellant's personal spaces, not housekeeping for the entire household. In her testimony, the appellant gave conflicting information as to why her husband could not assist with housekeeping. She first said that he did not know how to do it, but then added that due to his health, he could not physically do it. The appellant's spouse works in maintenance, but does not do anything heavy. If he is capable of doing some work outside of the home, it seems that he should be able to assist with light housekeeping such as sweeping, dusting, vacuuming, or mopping. These tasks differ from laundry which requires more heavy lifting and going up and down the stairs to the basement. MassHealth appropriately approved

some time for housekeeping because her spouse works out of the home five days per week; however, the appellant has not shown that she requires more time than what was already approved.

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

Order for MassHealth

Approve 8 minutes, 2 times per day, 7 days per week for bowel care; approve 60 minutes per week for laundry; and implement agreement made at hearing for bathing (30 minutes, 1 time per day, 7 days per week and 10 minutes, 1 time per day, 7 days 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.

Alexandra Shube
Hearing Officer
Board of Hearings

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