

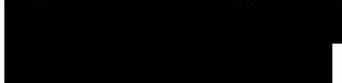
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part; Denied in part	Appeal Number:	2416643
Decision Date:	1/28/2025	Hearing Date:	12/03/2024
Hearing Officer:	Casey Groff		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown, OTR/L, 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

Appeal Decision:	Approved in part; Dismissed in part; Denied in part	Issue:	Prior Authorization; PCA Services
Decision Date:	1/28/2025	Hearing Date:	12/03/2024
MassHealth's Rep.:	Robin Brown, OTR/L,	Appellant's Rep.:	Appellant; Daughter
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 10/17/24, MassHealth informed Appellant that it was denying her prior authorization (PA) request for personal care attendant (PCA) services based on its determination that Appellant did not have a chronic disabling condition. *See* 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant filed this appeal in a timely manner on 10/30/22. *See* 130 CMR 610.015(B); Exhibit 2. Denial of a request for PCA services is a valid basis for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's request for PCA services based on its determination that she did not have a chronic disabling condition.

Issue

The issue on appeal is whether MassHealth was correct in denying Appellant's request for PCA services based on its finding that she did not have a permanent or chronic disabling condition that impaired her ability to perform activities of daily living without physical assistance.

Summary of Evidence

At hearing, a licensed occupational therapist & clinical appeals reviewer represented MassHealth. Through testimony and documentary evidence, the MassHealth representative presented the following information: Appellant is a MassHealth member under the age of 65. See Exh. 5, p. 2. Appellant lives with her daughter, son-in-law, and granddaughter on the first floor of a two-story home. *Id.* at 7-8. Pursuant to a referral for PCA services, a registered nurse and an occupational therapist from the PCM agency performed an in-person initial evaluation of Appellant to determine her functional ability to perform activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The occupational therapy functional evaluation was performed on 8/22/24 and the nursing evaluation was performed on 9/4/24. *Id.* 37; 44-45.

The PCM nurse noted the following related to Appellant's relevant medical history:

Consumer has a [history] of [REDACTED] consumer had R wrist surgery July 24 since the surgery she states she has a [fracture] in her arm and severe pain [in her [r]ight shoulder, consumer has pain in right wrist, her left hand is useless, arthritis in her spine, she has dizziness anxiety [and] depression.

Id. at 10.

In completing the evaluation, the evaluating nurse identified [REDACTED] as the "chronic condition that prevents [Appellant] from performing [her] activities of daily living without physical assistance." See Exh. 5, p. 9-10.

For the functional status report, the occupational therapist (OT) found that Appellant's diagnosis manifested as a chronic disabling condition, marked by active range of motion deficits, pain, decreased strength, impaired mobility / weight-bearing, fine motor coordination deficits, sensory loss (neuropathy) in hands, and endurance/stamina deficits. *Id.* at 5. When assessing the level of assistance required to complete ADLs, the OT found that Appellant required moderate assistance with bathing, grooming, toileting, and dressing, and all two-handed activities due to pain and limited use of the right upper extremity. *Id.* 7-8. While she was listed as independent with most mobility and transfer activities, the OT found that Appellant required maximum assistance for transfers in/out of the bathtub/shower and minimum assistance on 4 egress stairs. *Id.* at 6. It was noted that Appellant was unable to complete the entire flight of stairs required to shower at her daughter's home, and therefore, will sometimes stay at her other daughter's home who has a first-floor bathroom with shower. *Id.* at 7. For IADLs the OT found that Appellant required moderate assistance with meal preparation, and maximum assistance for housekeeping, laundry, and shopping, and medical appointment transportation. *Id.*

On 10/15/24, Appellant's PCM agency submitted an initial prior authorization (PA) request to MassHealth seeking a total of 46 hours per week of PCA services for dates of service 9/4/24 through 9/3/25.¹ *Id.* at 2, 51. The PA request was authorized and signed by Appellant's PCP, [REDACTED] who affirmed that Appellant had "a long-term chronic disability" that results in a need for physical assistance with two or more ADLs. *Id.* at 52.

The PA request was based on the PCM agency's determination that Appellant required the following amount of assistance for the identified ADLs/IADLs:

1. Mobility & Transfers: 108 minutes per week (3x2x4 mobility & 3x4x7 transfers)
2. Bathing/hair wash: 245 minutes per week (35x7)
3. Grooming: 76 minutes per week (10x1 nail care; 5x1x7 hair care; 10x1 shaving; 3x1x7 other)
4. Dressing: 175 minutes per week (25x1x7)
5. Undressing: 140 minutes per week (20x1x7)
6. Toileting Assistance: 259 per week (5x6x7 bladder and 7x1x7 bowel)
7. Nighttime toileting: 140 (10x2x7)
8. Medication Assistance: 52 minutes per week (10x1 prefilling medication box; 3x2x7 physical assistance with medications)
9. Other Healthcare Needs/ice pack application: 210 minutes per week (15x2x7).
10. Meal Preparation: 455 minutes per week (70 minutes per week breakfast; 105 minutes per week lunch; 245 minutes per week for dinner; and 35 minutes per week for snack).
11. Laundry: 60 minutes per week
12. Housekeeping: 60 minutes per week
13. Shopping: 60 minutes per week.
14. Medical Appointment Transportation: 17 minutes per week.

In support of the requested level of assistance for the aforementioned ADLs/IADLs, the PCM agency noted that Appellant has frequent episodes of dizziness, vertigo and weakness; she had impaired standing tolerance due to shortness of breath and dyspnea on exertion, and bone spurs on her right foot. *Id.* at 8-32. The PCM agency noted that Appellant is unable to complete two-handed tasks and lift arms over her head due to pain in right hand, a broken wrist and arm, an impaired right shoulder, severe right shoulder pain, neuropathy, and difficulty using her left non-dominant hand due to arthritis. *Id.* The PCM agency commented that Appellant frequently

¹ This was requested as 32 hours of day/evening services, and 14 hours per week of nighttime PCA services.

drops items, such as clothing, medications, and food, when trying to manage them independently. In placing the request for other healthcare needs, the PCM agency noted that Appellant requires assistance twice a day to place an ice pack to her right shoulder, arm, and wrist. *Id.* Appellant is unable to drive and does not live with any legally responsible relative. *Id.*

On 10/16/24, MassHealth deferred Appellant's PA request and sought additional information from the PCM agency to clarify Appellant's "chronic disabling diagnosis and if [Appellant] did therapy following [right] wrist surgery" and to clarify why her left hand was not usable." *Id.* at 54.

In response to MassHealth's request, the PCM registered nurse provided the following statement:

This consumer's right arm has nerve damage, her wrist was broken [REDACTED] she did not get therapy for the wrist, also on [REDACTED] [she broke her right shoulder] she just had surgery on [REDACTED] for the [right] shoulder, her left hand is not her dominant hand, consumer says her left hand is awkward to use she has arthritis, she has limited movement in her dominant hand, she requires assist with 2 handed tasks, she has limited standing tolerance due to dyspnea with exertion, she also has intermittent vertigo which limits her independence.

Id. at 54.

On 10/17/24, MassHealth denied Appellant's PA request based on its determination that Appellant did not meet the clinical criteria for coverage under 130 CMR 422.403(C); specifically, that Appellant's functional impairments were not due to a permanent or chronic condition. See Exh. 1. The MassHealth representative testified that the record showed that the basis for the requested services was primarily due to Appellant's acute wrist and shoulder injury, which she sustained from a fall. The MassHealth representative testified that prior to issuing the 10/17/24 notice, the PA request had been sent to a physician who concurred that Appellant's condition was considered acute, not chronic. The MassHealth representative testified that the evaluation occurred while Appellant was recovering from a significant injury and would not have accurately reflected her baseline need for assistance with ADLs. She also testified that the updated notes from the PCM agency show that Appellant had shoulder surgery on 10/1/24. The MassHealth representative also questioned whether other services would be more appropriate, such as occupational and physical therapy to assist in Appellant's recovery from the surgeries, as these interventions would allow Appellant to find ways to compensate for her injury while still maintaining independence, such as the use of a cane or a one-handed walker.²

² In response, Appellant testified that she had not had physical therapy for her wrist because of the existing shoulder injury. She is receiving post-surgery therapy for her shoulder, which was operated on in the beginning of October 2024.

Therefore, even if Appellant had a chronic condition that impaired her functional ability, MassHealth would recommend that the PCM agency conduct a new evaluation once her injury has more time to heal and other therapy services can be rendered.

Prior to hearing Appellant submitted medical records which listed her current medical conditions and relevant medical history which included: insomnia, secondary malignant neoplastic disease; hypertensive disorder; stage 3a chronic kidney disease; hypothyroidism; major depression disorder; [REDACTED]; pain due to [REDACTED] pain in right arm; and obesity. See Exh. 3. It was noted that Appellant's history of [REDACTED] involved a known mass at the [REDACTED] (a bundle of nerves that originate in the neck and upper back and extend down the arm to the wrist and hand) with right arm pain. *Id.* On 8/12/24, when being evaluated for the additional pain and swelling of the right arm, an MRI confirmed that Appellant had a displaced fracture at the proximal humerus located in the region of the metaphysis. *Id.*

Appellant and her daughter appeared at hearing and testified that the request for PCA services did not start with the fall, as MassHealth claimed. Rather, they initiated the request for a PCA evaluation in early June of 2024, due to functional impairments that Appellant has had for years, primarily relating to inoperable [REDACTED] that she was diagnosed with in 2020. For reasons beyond their control, the PCM agency was unable to come out for the initial evaluation until late August of 2024. By this time, Appellant sustained the fall and related injuries. This was an event they never expected to occur and felt was unrelated to Appellant's need for PCA services. Despite any reference to the recent injuries, Appellant and her daughter explained how the need for ADL assistance is attributed to Appellant's chronic and long-term conditions. Specifically, Appellant's daughter testified that the [REDACTED] sits on a nerve at Appellant's right shoulder, which causes her excruciating pain, and has resulted in permanent nerve damage, particularly to her right hand, which is her dominant hand. Because of [REDACTED] Appellant has been undergoing [REDACTED] treatments for the past four years, including hormone suppressants and other interventions that cause weakness and dizziness, and which have destroyed her immune system, making her prone to frequent illness. While the level of pain has been somewhat reduced with treatment, it is still significant enough that she has to manage it with pain medication. Appellant's daughter agreed that the post-operative therapies will help Appellant recover from the acute injury but noted that it will not improve or affect the permanent nerve damage to her right hand.

When asked how much the fracture exacerbated her current condition, Appellant's daughter stated that her mother "wasn't able to use her right arm as it was, so it was not any different." She acknowledged that while the injury caused more pain, it would not have significantly impacted the outcome of the PCA evaluation and functional assessment. As such, Appellant's daughter disagreed with MassHealth's position that the PCM agency could not accurately assess Appellant's condition until she completed post-surgical therapies and recovered from her acute injury.

When asked to describe the level of assistance Appellant's daughter provided to Appellant while at her baseline, i.e., not compromised with an injury or temporary illness, Appellant's daughter acknowledged that Appellant is generally capable of completing most ambulation and transfer activities without assistance, aside from shower related transfers and ambulating on stairs. However, because the [REDACTED] have destroyed her immune system, Appellant is prone to frequent illness, and this usually results in a sharp increase in her mobility/transfer needs. For example, Appellant's daughter described that when her mother recently had Covid-19, she was so weak that she could not get out of bed, and at one point she found Appellant on the floor and unable to get up. Appellant's daughter testified that since 2020, aside from mobility and transfer assistance, she has provided daily physical assistance with all other ADLs identified in the PA request, including bathing, grooming, dressing/undressing, and toileting assistance to complete two-handed tasks. Appellant's daughter also testified that, when at her baseline, Appellant requires assistance with IADLs, including shopping, meal preparation, housekeeping, laundry, and taking her to medical appointments. Appellant's daughter explained that for shopping, she makes a separate trip with her mother during the week, while she shops for herself and the rest of her family on the weekend. Because Appellant's daughter lives with her mom, she testified that under the category of meal preparation, dinner is the only meal that she will cook for the entire family, including Appellant, and therefore agreed that the that 245 minutes apportioned for dinner was not necessary at this time. Likewise, Appellant's daughter testified that because housekeeping tasks that she performs solely for her mother are limited primarily to her bedroom, 30 minutes per week, as opposed to the 60 minutes requested, was appropriate. Appellant's daughter testified that she has provided this assistance to her mother for years, without compensation, and all while sacrificing her own work and income. They were only seeking the services she felt were necessary to sustain the level of assistance that her daughter provides.

When asked if MassHealth would consider approving the PA request with agreed-upon modifications to account for only necessary PCA assistance related to Appellant's non-acute impairments, MassHealth declined. According to MassHealth, because the PCM agency's evaluation was not an accurate assessment of Appellant's current and/or baseline functional status, a new evaluation would need to be completed, ideally in the post-therapy stage of her recovery.

Findings of Fact

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

1. Appellant is a MassHealth member under the age of 65.
2. Appellant has diagnoses including insomnia, secondary malignant neoplastic disease; hypertensive disorder; stage 3a chronic kidney disease; hypothyroidism; major depression disorder; [REDACTED]

12. On 10/15/24, Appellant's PCM agency submitted an initial prior authorization (PA) request to MassHealth seeking a total of 46 hours per week of PCA services for dates of service 9/4/24 through 9/3/25.
13. The PA request was authorized and signed by Appellant's PCP, [REDACTED] M.D. who affirmed that Appellant had "a long-term chronic disability" that results in a need for physical assistance with two or more ADLs.
14. The PA request was based on the PCM agency's determination that Appellant required the following amount of assistance for the identified ADLs/IADLs: Mobility & Transfers: 108 minutes per week (3x2x4 mobility & 3x4x7 transfers); Bathing/hair wash: 245 minutes per week (35x7); Grooming: 76 minutes per week (10x1 nail care; 5x1x7 hair care; 10x1 shaving; 3x1x7 other); Dressing: 175 minutes per week (25x1x7); Undressing: 140 minutes per week (20x1x7); Toileting Assistance: 259 per week (5x6x7 bladder and 7x1x7 bowel); Nighttime toileting: 140 (10x2x7); Medication Assistance: 52 minutes per week (10x1 prefilling medication box; 3x2x7 physical assistance with medications); Other Healthcare Needs/ice pack application: 210 minutes per week (15x2x7); Meal Preparation: 455 minutes per week (70 minutes per week breakfast; 105 minutes per week lunch; 245 minutes per week for dinner; and 35 minutes per week for snack); Laundry: 60 minutes per week; Housekeeping: 60 minutes per week; Shopping: 60 minutes per week; and Medical Appointment Transportation: 17 minutes per week.
15. On 10/17/24, MassHealth denied Appellant's PA request based on its determination that Appellant did not meet the clinical criteria for coverage under 130 CMR 422.403(C); specifically, that Appellant's functional impairments were not due to a permanent or chronic condition.
16. When Appellant is at her baseline, i.e., not compromised with an acute injury or illness, Appellant is generally capable of completing most ambulation and transfer activities without assistance, aside from shower related transfers and ambulating on stairs; however, she requires daily physical assistance with bathing, grooming, dressing/undressing, and toileting assistance to complete two-handed tasks; she also requires assistance with shopping, meal preparation, housekeeping, laundry, and medical appointment transportation.
17. When preparing meals for Appellant, Appellant's daughter will prepare all meals separately for Appellant, except dinner; at hearing, Appellant agreed that the that 245 minutes apportioned for dinner was not necessary at this time.
18. Appellant agreed that 30 minutes per week, as opposed to the 60 minutes requested,

was sufficient to assist with housekeeping tasks given that it only includes Appellant's bedroom.

Analysis and Conclusions of Law

MassHealth will pay for 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:³

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416 [governing MassHealth prior authorization requirements].
- (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 PCM 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.

See 130 CMR 422.403(C) (emphasis added).

Under MassHealth regulations, 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

³ 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.

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).

Based on the evidence presented at hearing, Appellant sufficiently demonstrated that she meets all prerequisites to qualify for PCA services. MassHealth denied the request for PCA services finding that Appellant's need for assistance was based primarily on an acute right arm injury sustained prior to the evaluation and was not the result of a chronic disabling condition under 130 CMR 422.403(C). It is undisputed that at the time of the PCM agency's evaluation, Appellant had sustained fractures to her right wrist and shoulder following a fall on [REDACTED] 24. However, Appellant initiated the request for PCA services in early June of 2024, before these injuries occurred. The evidence shows that Appellant's need for PCA assistance stems from inoperable [REDACTED] that she was diagnosed with in 2020 and which she has been undergoing non-surgical treatments for over four years, as well as other long-term diagnoses including arthritis in the left hand and spine, hypertension, and chronic kidney disease. Medical records indicate that the [REDACTED] sits on top of the [REDACTED] nerves at the shoulder area. Appellant and her daughter credibly testified that the location of the [REDACTED] has caused excruciating pain in her right arm and permanent nerve damage in her right dominant hand – thus compromising the use of her right arm long before the shoulder injury occurred. When evaluating Appellant's functional status, the PCM agency did not attribute Appellant's need for assistance solely related to the wrist and shoulder injury. Rather, the PA request specifically identifies [REDACTED] as the primary disabling "chronic condition that prevented Appellant from performing ADLs without physical assistance. *See* Exh. 5, p. 9-10. In addition, the PCM agency listed numerous non-acute injury related impairments that prompted the need for ADL/IADL assistance, including fine motor coordination deficits and neuropathy in her hands, limited standing tolerance due to dyspnea with exertion, impaired weight bearing due to bone spurs on her right foot, intermittent vertigo, impaired balance, neuropathy in her right hand and arthritis in her left hand. *See* Exh. 5. The fact that Appellant sustained an acute injury should not preclude her from receiving PCA services that were otherwise necessary based on her pre-existing long-term conditions.

The appeal is therefore APPROVED insofar as Appellant successfully demonstrated that MassHealth should have determined that Appellant met the threshold requirements to qualify for PCA services.

Next, the parties addressed the individual times requested for PCA assistance with each ADL and IADL category and whether the requests were appropriately attributed to Appellant's long-term needs, as opposed to acute needs. Appellant's daughter testified that her primary needs

are with respect to bathing, dressing, grooming, toileting assistance, and grooming tasks. Appellant conceded that while she does require transfer and mobility assistance when she is particularly weak or sick, it is not an everyday occurrence, and therefore would be willing to forgo the time requested for mobility (24 minutes per week) and transfers (84 minutes per week). Therefore, the appeal is DISMISSED as to the time requested for mobility and transfers.

The PCM agency also requested 210 minutes per week to apply ice to the wrist and shoulder for pain. Because this appears to be related to the acute injury and not attributed to Appellant's chronic condition, this portion of the appeal is DENIED.

Appellant's daughter testified that she requires all IADL assistance requested, however, because she will usually prepare a family dinner, she would be willing to forgo the 245 minutes per week requested for dinner preparation. She also conceded that because they share the same home, housekeeping strictly for Appellant's space may be limited to 30 minutes (as opposed to the 60 minutes requested). Therefore, the appeal is DISMISSED in part with respect to the requests for meal preparation and housekeeping.

In all other respects, this appeal is APPROVED.

Order for MassHealth

Rescind notice dated 10/17/24. Approve Appellant's prior authorization request for a one-year period starting 10/17/24,⁴ as requested, except for the following modifications:

1. Mobility and Transfers: Requested at 108 minutes per week: Modify to 0x0 per week.
2. Other Healthcare Needs (ice pack): Requested at 210 minutes per week: Modify to 0x0 per week.
3. Meal Preparation: Requested 455 minutes per week: Modify to 210 minutes per week (approving time as requested for breakfast, dinner, and snacks, and modifying the 245 minutes per week requested for dinner to 0x0).
4. Housekeeping: Requested 60 minutes per week: Modify to 30 minutes per week.

Notification of Your Right to Appeal to Court

⁴ See 130 CMR 450.303(B)(3) (a service is authorized on the date the MassHealth agency sends a notice of its decision to the member or someone acting on the member's behalf). Once this decision is implemented, Appellant may contact her PCM agency and/or fiscal intermediary to process requests for retroactive payment for any unpaid PCA services rendered within the authorized time period.

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