

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved, in part, Denied, in part	Appeal Number:	2416748
Decision Date:	1/13/2025	Hearing Date:	12/04/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN

Interpreter:

N/A



*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	Issue:	Prior Authorization, PCA services
Decision Date:	1/13/2025	Hearing Date:	12/04/2024
MassHealth's Rep.:	Kelly Rayen	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 October 23, 2024, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services for the Activity of Daily Living (ADL) of Dressing is longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(4), 130 CMR 450.204(A)(1) and Exhibit 1) Additionally, MassHealth determined that the requested times for the Instrumental Activity of Daily Living (IADL) Dinner Meal Preparation is longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(B)(1), 130 CMR 450.204(A)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on October 31, 2024. (see 130 CMR 610.015(B)). A decision modifying assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services indicated that the requested time for the Activity of Daily Living (ADL) of Dressing is longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(4), 130 CMR 450.204(A)(1) and Exhibit 1) Additionally, MassHealth determined that the requested times for the Instrumental Activity of Daily Living (IADL) Dinner Meal Preparation is longer than ordinarily

required by someone with the Appellant's physical needs. (See 130 CMR 422.410(B)(1), 130 CMR 450.204(A)(1) and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410(A)(4), 130 CMR 422.410(B)(1), and 130 CMR 450.204(A)(1) in determining that the Appellant's request for PCA services for the Activity of Daily Living (ADL) of Dressing and the Instrumental Activity of Daily Living (IADL) Dinner Meal Preparation are longer than ordinarily required by someone with the Appellant's physical needs.

Summary of Evidence

The Appellant is a MassHealth member under the age of 65 who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 5). MassHealth received a prior authorization request for PCA services submitted by [REDACTED] the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) The Appellant's primary diagnosis is TBI/neck injury. (Testimony, Exhibit 5, pg. 12) Secondary diagnoses include Depression/Anxiety and severe PTSD, and borderline personality disorder. (Testimony, Exhibit 5, pg. 13)

MassHealth, represented by a nurse from Optum, testified that MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services for the Activity of Daily Living (ADL) of Dressing and the Instrumental Activity of Daily Living (IADL) of Dinner Meal Preparation are longer than ordinarily required by someone with the Appellant's physical needs. (See 130 CMR 422.410(A)(4), 130 CMR 422.410(B)(1), 130 CMR 450.204(A) and Exhibit 1.)

Regarding the modification of 1) ADL – Dressing, from 20 minutes, 1 time a day, 7 days a week, to 15 minutes, 1 time a day, 7 days a week, MassHealth testified that the requested times are longer than ordinarily required by someone with the Appellant's physical needs. (Testimony, Exhibit 5, pgs. 23-24). The Appellant explained that she had undergone surgery after the evaluation and requires additional aid¹. (Testimony) MassHealth explained that information submitted on behalf of the Appellant by the Appellant's PCM did not include the surgery, since it didn't occur until after the date of the evaluation. (Testimony) The Appellant relied upon a submitted letter by the Appellant's doctor. (Exhibit 6). The letter, addressed neither to MassHealth, nor Optum, but instead to the Appellant's PCM states, in part:

Pt with new diagnosis on seizures and post op recovery, which requires

¹ In the Fair Hearing Request, dated October 31, 2024, it is noted "Member would like mass health to approve 19.75 personal care hours because of the level of care member needs." (Exhibit 2)

additional PCA hours to include night hours, for the following task(sic) but not limited to:

Pt unable to drive for at less (sic) the next 6 months due (sic) seizures

Needing help with ADLs, Bathing, Meal Preparation, Medication administrations, and Toileting, (Exhibit 6)

MassHealth testified that the letter was insufficiently vague, and did not include any request for specific times for the help the Appellant's physician's letter requested from the PCM. (Testimony). MassHealth explained that MassHealth cannot allot additional time beyond the time requested by the PCM. (Testimony) The Appellant stated that the letter from the doctor, addressed to the Appellant's PCM, indicated that the Appellant required additional PCA hours². (Testimony) MassHealth explained the process for seeking an adjustment to the requested PCA hours, including the need to contact the Appellant's PCM³. (Testimony) The Appellant stated that she had spoken to the Director of her PCM and was told she was all set⁴. (Testimony) The Appellant elected to continue with the appeal of the October 23, 2024 Notice. (Testimony, Exhibit 1)

MassHealth explained that the requested time for the ADL – Dressing was longer than ordinarily required by someone with the Appellant's physical needs based upon the submissions by the Appellant's PCM. (Testimony, Exhibit 5). The Appellant countered with an explanation of her current difficulties with Dressing and how she is unable to stand and the PCA currently dresses her while she is lying on her bed. (Testimony) MassHealth explained that the documentation submitted by the PCM before the Appellant underwent surgery does not support the requested time. (Testimony) No resolution was reached between the parties regarding this modification.

Regarding the modification of 2) IADL – Meal Preparation, Dinner, from 45 minutes, 1 time a day, 7 days a week, to 30 minutes, 1 time a day, 7 days a week, MassHealth testified that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with Meal Preparation. (Testimony, Exhibit 5, pgs. 33). The Appellant stated that she requires the assistance, as well as the time requested. (Testimony). MassHealth explained that MassHealth does not cover the time while the meal is cooking, rather the IADL covers meal preparation. (Testimony) MassHealth inquired as to any special preparation

² MassHealth approved the Appellant for the time the PCM requested for Bathing. (Exhibit 5, pg. 19-20). Meal Preparation is categorized as an IADL. (130 CMR 422.410(B)(2)) The Appellant was approved for time for the IADL of Meal preparation. (Exhibit 5, pg. 33). The Appellant was approved for the time the PCM requested for Assistance with Medications (Exhibit 5, pg. 27-28). The Appellant's PCM did not request any time for Toileting. (Exhibit 5, pgs. 25-26)

³ 130 CMR 422.416(B) states, in part: Adjustment of Current Prior Authorization. Prior-authorization requests to increase or decrease the number of hours of PCA services must be submitted to the MassHealth agency by the member's PCM agency in writing within 30 calendar days of the member or surrogate request.

⁴ Nothing further was submitted on behalf of the PCM for the hearing beyond what is included in Exhibit 5.

or dietary needs that would require additional time, beyond the time allotted by MassHealth. (Testimony) The Appellant explained her dietary requirements, indicating that there was no special preparation required, and stated that dinner meal preparation took at least an hour. (Testimony) No resolution was reached between the parties regarding this modification.

Findings of Fact

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

1. The Appellant is a MassHealth member under the age of 65 who seeks prior approval for PCA services. (Testimony, Exhibit 1, Exhibit 5). The Appellant's primary diagnosis is TBI/neck injury. (Testimony, Exhibit 5, pg. 12) Secondary diagnoses include Depression/Anxiety and severe PTSD, and borderline personality disorder. (Testimony, Exhibit 5, pg. 13)
2. Regarding the modification of 1) ADL – Dressing, from 20 minutes, 1 time a day, 7 days a week, to 15 minutes, 1 time a day, 7 days a week, MassHealth determined that the requested times are longer than ordinarily required by someone with the Appellant's physical needs. (Testimony, Exhibit 5, pgs. 23-24).
3. The Appellant submitted a letter, authored by the Appellant's doctor. The letter is addressed neither to MassHealth, nor Optum, but instead to the Appellant's PCM. The letter does not request any specific times. (Exhibit 6, See also Footnote 2)
4. The Appellant explained her current difficulties with Dressing and how she is unable to stand and the PCA currently dresses her while she is lying on her bed. (Testimony) MassHealth explained that the documentation submitted by the PCM before the Appellant underwent surgery does not support the requested time. (Testimony) No resolution was reached between the parties regarding this modification.
5. Regarding the modification of 2) IADL – Meal Preparation, Dinner, from 45 minutes, 1 time a day, 7 days a week, to 30 minutes, 1 time a day, 7 days a week, MassHealth determined that the requested time exceeded the time ordinarily required for someone with the Appellant's physical needs for physical assistance with Meal Preparation. (Testimony, Exhibit 5, pgs. 33). The Appellant stated that she requires the assistance, as well as the time requested. (Testimony). MassHealth explained that MassHealth does not cover the time while the meal is cooking, rather the IADL covers meal preparation. (Testimony) MassHealth inquired as to any special preparation or dietary needs that would require additional time, beyond the time allotted by MassHealth. (Testimony) The Appellant explained her dietary requirement, indicating that there was no special

preparation required, and stated that dinner meal preparation took at least an hour. (Testimony) No resolution was reached between the parties regarding this modification.

Analysis and Conclusions of Law

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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.

(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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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 tube feeding 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 PCA 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 PCM 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 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.

The Regulation regarding the requirement of needing assistance with two or more ADLs cited by MassHealth at the Hearing and in the Notice is codified in 130 CMR 422.403(C):

422.403: Eligible Members

(C) MassHealth covers PCA 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 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 ADLs and IADLs without physical assistance.
- (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.

Additionally, the Regulations regarding non-covered services, such as social services, cited by MassHealth at the Hearing and in the Notice is codified in 130 CMR 422.412(A):

422.412: Non-covered 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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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; (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also 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).

Here, the Appellant has met the burden, by a preponderance of evidence, to show that MassHealth's administrative determination is invalid, in part. Optum's review was based upon analysis of the submissions by the PCM. (Exhibit 5) The Appellant's testimony was not available to

Optum prior to the Hearing.

Regarding the modification of 1) ADL – Dressing, from 20 minutes, 1 time a day, 7 days a week, to 15 minutes, 1 time a day, 7 days a week, the Appellant’s testimony, although beyond the scope of the submissions, supports the PCM’s request for 20 minutes, 1 time a day, 7 days a week based upon the Appellant’s current needs described in the Appellant’s testimony. Accordingly, the appeal of modification 1) ADL – Dressing is APPROVED. MassHealth shall provide 20 minutes, 1 time a day, 7 days a week for the ADL – Dressing.

Regarding the modification of 2) IADL – Meal Preparation, Dinner, from 45 minutes, 1 time a day, 7 days a week, to 30 minutes, 1 time a day, 7 days a week, the Appellant’s testimony does not support the PCM’s request for 45 minutes, 1 time a day, 7 days a week. The Appellant testified that there is no special preparation required for her meals and her testimony that meal preparation, excluding cooking time, conflicts with the Appellant’s physical ability as documented within the submissions by the Appellant’s PCM. (Exhibit 5) Accordingly, the appeal of modification 2) IADL – Meal Preparation, Dinner, is DENIED⁵.

Order for MassHealth

APPROVE the following PCA service as requested by the Appellant:

1) ADL – Dressing, 20 minutes, 1 time a day, 7 days a 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

⁵ Pursuant to 130 CMR 422.416(B), Adjustment of Current Prior Authorization, the Appellant may contact her PCM to request an adjustment, and the PCM may submit the request to MassHealth as outlined within the Regulation.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

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