

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part; Denied in part	Appeal Number:	2417006
Decision Date:	1/28/2025	Hearing Date:	12/11/2024
Hearing Officer:	Emily Sabo		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Donna Burns, R.N., 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:	Personal Care Attendant (PCA) Services; Prior Authorization
Decision Date:	1/28/2025	Hearing Date:	12/11/2024
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South (Telephone)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated October 22, 2024, MassHealth denied the Appellant's request for prior authorization of personal care attendant (PCA) services on the basis that the Appellant does not need hands-on PCA assistance with two or more activities of daily living. 130 CMR 422.403(C)(3) and Exhibit 1. The Appellant filed this timely appeal on November 6, 2024. Exhibit 2 and 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B)(2) and 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the Appellant's request for prior authorization of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.403(C)(3), in denying the Appellant's prior authorization request for PCA services.

Summary of Evidence

The hearing was held by telephone. A registered nurse and clinical appeals reviewer represented MassHealth at hearing and submitted records in support. Exhibit 5. The Appellant verified her identity.

The MassHealth representative testified that the Appellant's primary diagnoses are [REDACTED]

[REDACTED] The Appellant testified that her left side is paralyzed, that she has an immune deficiency, and that she has three rare medical conditions.

The MassHealth representative testified that the Appellant's personal care management (PCM) agency is the [REDACTED]. As part of a reevaluation, they requested, on the Appellant's behalf, 20.25 hours for PCA services weekly. The time period for the request for services is November 28, 2024 to November 27, 2025. Exhibits 1 and 5.

The MassHealth representative testified that MassHealth denied the prior authorization request because the only category in which the Appellant has daily needs for PCA assistance is the single activity of bathing or grooming, and that in order to qualify for the program, a member must require physical assistance with two or more of the activities of daily living as defined in 130 CMR 422.410(A). The MassHealth representative testified that the request for medication administration assistance involved the Appellant not remembering to take medication, and the MassHealth representative testified that the PCA program only provides hands-on assistance; any reminders or cueing are not covered by the PCA program. The MassHealth representative testified that the other time requested was in anticipation of "bad days" or an intermittent need.

The Appellant testified that she needs services all the time and that she has been disabled since 1999. The Appellant testified that her condition has progressively worsened.

The Center for Living and Working requested time in the following categories:

Activity of Daily Living	Time Requested per week:
Mobility	120 minutes
Passive Range of Motion (PROM)	60 minutes
Bathing	215 minutes
Grooming	83 minutes
Dressing	51 minutes
Eating	90 minutes
Toileting	75 minutes
Medication Assistance	42 minutes

Instrumental Activities of Daily Living	Time Requested per week:
Meal Preparation and Cleanup	204 minutes
Laundry	60 minutes
Housekeeping	60 minutes
Shopping	60 minutes
Medical Transportation	82 minutes

MassHealth agreed that the Appellant needed time for bathing and grooming, and through discussion at the hearing, the MassHealth representative agreed to approve time for the Appellant in the category of dressing/undressing. Specifically, the MassHealth representative approved 7 minutes, three times a week for dressing, and 5 minutes, three times a week for undressing, for a total of 36 minutes per week.

The MassHealth representative testified that she would continue to deny the time requested for mobility, PROM and eating because the Appellant did not demonstrate that hands-on assistance was necessary for those activities. The MassHealth representative testified that she would continue to deny the time requested for toileting and medication assistance because the request indicated that assistance was intermittent and supervisory. The MassHealth representative testified that the Appellant's PCM agency did not request PCA assistance time for PROM or eating the previous year. The MassHealth representative testified that the medication assistance request did not request time for the PCA to prefill medication. The MassHealth representative testified that MassHealth approved the time requested for the instrumental activities of daily living.

The Appellant testified that she disagreed with the nurse who performed the assessment for the [REDACTED] and that the Center later fired the nurse. The Appellant testified that she is concerned about her rights as a disabled person. The Appellant testified that she needs hands-on assistance with getting up and down. The Appellant testified that she has a walker and a cane, but cannot use the cane due to arthritis in her hand. The Appellant testified that she uses her walker once in a while. The Appellant testified that she has a prescription for a rollator, but has not received one yet.

The Appellant testified that she receives physical therapy and injections every three weeks. The Appellant testified that she cannot lift her arms above her head. The Appellant testified that while the Center only requested time for PROM for her lower extremities, she also needs assistance with her upper extremities. Regarding eating, the Appellant testified that the PCA is not putting food in her mouth. Regarding toileting, the Appellant testified that when she is weak, she loses her balance and that she has passed out on the toilet, and bruised and banged her head in the past. The Appellant testified that her PCA fills her pill containers for her. The Appellant shared that she was upset that if she experiences a better health day, that her services will be cut. The Appellant shared that she is afraid of being hospitalized and that she will die from an infection. The Appellant stated that she had spent nine hours in advance of the hearing making phone calls to try and

access her records and prepare for the hearing and that she did not have sufficient time to access a lawyer through legal aid. The Appellant also stated that she had requested the hearing be rescheduled for these reasons.

Findings of Fact

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

1. The [REDACTED] submitted a reevaluation request for PCA services on behalf of the Appellant, for 20.25 hours per week in the following categories:

Activity of Daily Living	Time Requested per week:
Mobility	120 minutes
Passive Range of Motion (PROM)	60 minutes
Bathing	215 minutes
Grooming	83 minutes
Dressing	51 minutes
Eating	90 minutes
Toileting	75 minutes
Medication Assistance	42 minutes

Instrumental Activities of Daily Living	Time Requested per week:
Meal Preparation and Cleanup	204 minutes
Laundry	60 minutes
Housekeeping	60 minutes
Shopping	60 minutes
Medical Transportation	82 minutes

The time period for the request for services is November 28, 2024 to November 27, 2025. Exhibits 1 & 5.

2. MassHealth denied the request on October 22, 2024 on the basis that the Appellant does not need hands-on PCA assistance with two or more activities of daily living. Testimony, Exhibits 1 & 5.
3. The Appellant filed a timely appeal on November 6, 2024. Exhibit 2.
4. MassHealth approved the requested time for bathing and grooming, but denied the overall request, because MassHealth considered them to be a single activity of daily living, such that the Appellant did not require assistance with two or more activities of daily living. Testimony.

5. At the hearing, MassHealth agreed to approve time for a second activity of daily living, dressing/undressing. Specifically, MassHealth approved 7 minutes, three times a week for dressing, and 5 minutes, three times a week for undressing, for a total of 36 minutes per week. Testimony.
6. MassHealth approved the 215 minutes per week requested for bathing and the 83 minutes per week requested for grooming. Testimony and Exhibit 5.
7. MassHealth approved the PCA time requested for the instrumental activities of daily living, specifically, 204 minutes per week for meal preparation and cleanup, 60 minutes per week for laundry, 60 minutes per week for housekeeping, 60 minutes per week for shopping, and 82 minutes per week for medical transportation. Testimony and Exhibit 5.
8. At the hearing, the MassHealth representative testified that MassHealth would deny the requests for mobility, PROM, and eating, on the grounds that the Appellant did not need hands-on assistance and deny the requests for toileting and medication assistance on the grounds that the Appellant's needs were intermittent and for supervision. Testimony.
9. The Appellant testified that she needs hands on assistance to move up and down and testified that she needs hands on assistance transferring to and from the toilet. Testimony.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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.

Pursuant to 130 CMR 450.204(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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(A) Activities of Daily Living (ADLs). Activities of daily living include the following categories of activities. Any number of activities within one category of activity is counted as one ADL:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or 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.

The MassHealth regulations at 130 CMR 422.412 provide:

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).

At the hearing, MassHealth agreed to approve 36 minutes per week for dressing, 215 minutes per week for bathing, 83 minutes per week for grooming, 204 minutes per week for meal preparation and cleanup, 60 minutes per week for laundry, 60 minutes per week for housekeeping, 60 minutes per week for shopping, and 82 minutes per week for medical transportation. Therefore, those categories are no longer in dispute before the Board of Hearings, and the appeal is APPROVED and DISMISSED IN PART regarding those categories. 130 CMR 610.035(A)(8).

Regarding the time requested for mobility, I credit the Appellant's testimony that she needs assistance to move up and down. The Appellant's testimony provides a preponderance of evidence that the Appellant requires time for this task. However, the Appellant's testimony does not support, by a preponderance of evidence, the total time requested by the Appellant. Therefore, regarding mobility, the appeal is approved, in so much as MassHealth shall allot 54 minutes per week of PCA mobility assistance.¹

Regarding the time requested for PROM, after reviewing the evidence in the record, I find that the Appellant has not met her burden to show the invalidity of MassHealth's denial. Therefore, the appeal is denied regarding PROM.

Regarding the time requested for eating, after reviewing the evidence in the record, I find that the Appellant has not met her burden to show the invalidity of MassHealth's denial. Therefore, the appeal is denied regarding eating.

Regarding the time requested for toileting, I credit the Appellant's testimony that she needs hands on assistance transferring to and from the toilet. I find that the Appellant has met her burden in providing a preponderance of evidence that she requires time for this task. The appeal is approved, as requested for 75 minutes per week.

Regarding the time requested for medication assistance, after reviewing the evidence in the record, I find that the Appellant has not met her burden to show the invalidity of MassHealth's denial. Therefore, the appeal is denied regarding medication assistance.

Order for MassHealth

Approve the time requested for PCA services for 54 minutes per week for mobility, 215 minutes per week for bathing, 83 minutes per week for grooming, 36 minutes per week for dressing/undressing, 75 minutes per week for toileting, 204 minutes per week for meal preparation and cleanup, 60 minutes per week for laundry, 60 minutes per week for housekeeping, 60 minutes per week for shopping, and 82 minutes per week for medical transportation weekly for the requested time period, November 28, 2024 to November 27, 2025.

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

¹ This is based on 2 minutes, 4 instances, 3 days a week = 24 minutes for walking/mobility equipment and 5 minutes, 3 instances, 3 days a week = 30 minutes for transfers. See Exhibit 5 at 11-12.

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.

Emily Sabo
Hearing Officer
Board of Hearings

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