

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2417930
Decision Date:	01/16/2025	Hearing Date:	12/24/2024
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:



Appearance for MassHealth:


Via telephone:
Robin Brown, OTR/L

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:	01/16/2025	Hearing Date:	12/24/2024
MassHealth's Rep.:	Robin Brown, OTR/L	Appellant's Rep.:	
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 November 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 November 21, 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 occupational therapist and clinical appeals reviewer. The appellant, assisted by an [REDACTED] interpreter, also appeared at hearing via telephone.

The MassHealth representative testified that the documentation submitted shows the appellant is an adult female between the ages of 21 and 65 with a primary diagnosis of chronic pain. Relevant medical history shows chronic pain in her back and knees; two herniated discs; neuropathy in both feet due to diabetes; numbness in hands related to previous surgery; pain in hands and knees; and a fall in May 2023. The appellant lives at home with her adult children and uses a walker for functional mobility. The bathroom with shower is on the second floor of the home.

On November 8, 2024, the appellant's personal care management (PCM) agency, [REDACTED] submitted a prior authorization request for an adjustment in PCA services due to a change in the appellant's functional status. The appellant has a narrowing of the spinal canal impinging on her nerve root. She is heavily dependent on others for all areas of activities of daily living (ADLs) due to severe, debilitating pain. A date for surgery is pending. Previously, the appellant was receiving 39 hours and 30 minutes per week in PCA assistance. The PCM agency requested an increase to 74 hours and 30 minutes per week through the remainder of the prior authorization period, March 25, 2025. On November 18, 2024, MassHealth modified the request to 45 hours and 15 minutes per week for the remainder of the prior authorization period.

Based on testimony at hearing, the appellant agreed to accept MassHealth's modification of the time requested for PCA assistance with mobility – stairs at 7 minutes, 2 times per day, 7 days per week. Since parties resolved the dispute as to mobility – stairs, the appeal is dismissed as to that ADL.

The appellant testified that she wants 10 hours of PCA assistance per day. The MassHealth representative explained that the PCA program is broken down by task and MassHealth looks at the time by task.

Mobility – Transfers

The appellant previously received 2 minutes, 8 times per day, 7 days per week for PCA assistance with mobility – transfers. She requested an adjustment to 23 minutes, 8 times per day, 7 days per week. MassHealth modified that request to 5 minutes, 2 times per day, 7 days per week for transfers in/out of bed and 3 minutes, 6 times per day, 7 days per week for assistance standing up/down (in/out of chairs, couches, etc.). The reason for the modification was that the time requested is longer than ordinarily required for someone with the appellant's physical needs. The comments in the documentation for the adjustment state that the appellant is experiencing

extensive pain which has affected her mobility and ability to transfer and reposition.

The appellant testified that because of her back, knee, and nerve problems, she has instructions not to lay down for more than 15-20 minutes at a time. So, she stands up for about one minute four to five times per hour, even throughout the night. She does not sleep because the pain is intolerable.

The MassHealth representative testified that, in her over [REDACTED] career, she has never heard of someone with the appellant's diagnoses being instructed to stand every 15 minutes (or four to five time per hour). She also explained that transfers involve assistance standing up and sitting down from a bed, chair, or couch. It does not include any waiting time for the PCA if, for example, the appellant needs to stop and rest. It also does not include transfers in/out of the shower or on/off the toilet. Time for those transfers is accounted for separately in bathing and toileting.

The appellant clarified that no one asked her to get up four to five times per an hour, but that is what makes her more comfortable. Additionally, because she is diabetic, she gets up to go to the bathroom four to five times per night. She also suggested that 23 minutes is not accurate. That is closer to the number of times she gets up and down throughout the day.

Bathing

The appellant previously received 30 minutes, 1 time per day, 7 days per week for PCA assistance with bathing. She requested an adjustment to 60 minutes, 1 time per day, 7 days per week. MassHealth modified that request to 45 minutes, 1 time per day, 7 days per week because the time requested is longer than ordinarily required for someone with her physical needs.

The comments in the documentation for the adjustment state that the "shower is located up 13 stairs on the second floor (time requested above for stairs). Once up the stairs, she is extremely fatigued, slow moving due to her pain related to narrowing of spinal canal and nerve impingement. On stairs she is very slow as her pain increases further. She is unsteady and has weakness in legs, fatigue and activity intolerance. She is not currently assisting in any aspect of showering due to debilitating pain with bending, twisting, reaching, and raising her arms. The family does report she will still shower daily."

The MassHealth representative explained that the 45 minutes was for the actual hands-on time the PCA is helping her. It does not include the time for the stairs going up to the bathroom. That was requested and approved separately in time for mobility – stairs. Time waiting while the appellant rests and recovers is also not covered by the PCA program.

The appellant testified that she gets vertigo when in the bathtub and needs to sit down. Bathing in hot water relieves her pain, so she spends time soaking. But she thinks the whole process, including getting out of clothes (about 10 minutes), helping into the tub, brushing teeth, washing

hair, washing body, getting out of the tub, drying, and back into clothes, takes about 50 minutes.

The MassHealth representative explained that MassHealth does not pay the PCA to wait while the appellant soaks in the tub. The PCA is only compensated for hands-on, physical assistance.

Bladder Care

The appellant previously received 5 minutes, 5 times per day, 7 days per week for PCA assistance with bladder care. She requested an adjustment to 17 minutes, 5 times per day, 7 days per week. MassHealth modified the request to 8 minutes, 5 times per day, 7 days per week because the time requested is longer than ordinarily required for someone with her physical needs.

The MassHealth representative testified that time for bladder care includes clothing management, assistance standing up and sitting down on the toilet, and personal hygiene that the appellant is not able to do herself.

The appellant agreed that 8 minutes was accurate for the time it takes, but the frequency is much greater. She had bladder surgery and goes to the bathroom 15 times per day, sometimes more. In addition to the bladder surgery, she is diabetic which also makes her urinate more frequently. She also has a kidney problem and has had bladder infections. As a result, the doctor told her to drink eight liters of water a day, which also makes her urinate more frequently.

The MassHealth representative understood the appellant's testimony and noted that it seemed like the PCM agency requested the wrong time for task and frequency; however, based on testimony alone, the MassHealth representative was not comfortable increasing the frequency. She explained that the standard of care in a hospital is once every 2 hours. Urinating 15 times per day is even more than that. She wanted to see physician documentation and input supporting the appellant's testimony. She suggested that the appellant's PCM agency could request an adjustment in the frequency and provide appropriate supporting documentation.

The comments in the documentation for the adjustment (for both bladder and bowel care) state that the appellant requires assistance to/from and on/off the toilet due to her pain. She has a narrowing of spinal canal and nerve impingement. She has pain with all movement. She is unable to bend, twist, reach. She requires both hygiene and clothing management to be completed for her.

Bowel Care

The appellant previously received 10 minutes, 1 time per day, 7 days per week for PCA assistance with bowel care. She requested an adjustment to 22 minutes, 1 time per day, 7 days per week. MassHealth modified the request to 13 minutes, 1 time per day, 7 days per week because the time requested is longer than ordinarily required for someone with her physical needs.

The MassHealth representative testified that, similar to bladder care, time for bowel care includes clothing management, assistance standing up and sitting down on the toilet, and personal hygiene that the appellant is not able to do herself. It does not include time for waiting while the appellant is on the toilet. 22 minutes would be an excessive amount of time.

The MassHealth representative noted that the evaluation for the adjustment is done over the phone, not in-person, and the way the PCM agency has requested time and frequency for some of the adjustments does not seem entirely accurate. She wondered whether there might have been a language or communication barrier or some other miscommunications when the PCM agency conducted the evaluation for the adjustment.

The appellant testified that she takes Ozempic and ten to fifteen other medications. Her various medications give her diarrhea, and she has bowel movements two times per day and sometimes loses control of her bowels. Her surrogate (her daughter) participated in the phone call with the PCM agency and she felt it was done in haste and she was not given a lot of time to explain the situation. The nurse doing the call did not explain anything in return.

Findings of Fact

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

1. The appellant is an adult between the ages of 21 and 65 with a primary diagnosis of chronic pain. Relevant medical history shows chronic pain in her back and knees; two herniated discs; neuropathy in both feet due to diabetes; numbness in hands related to previous surgery; pain in hands and knees; and a fall in May 2023. (Testimony and Exhibit 5).
2. On November 8, 2024, MassHealth received a prior authorization request from the appellant's PCM agency for an adjustment in PCA services (Testimony and Exhibit 5).
3. Previously, the appellant was receiving 39 hours and 30 minutes per week in PCA assistance. The PCM agency requested an increase to 74 hours and 30 minutes per week through the remainder of the prior authorization period, March 25, 2025. (Testimony and Exhibit 5).
4. On November 18, 2024, MassHealth modified the request to 45 hours and 15 minutes per week for the remainder of the prior authorization period (Testimony and Exhibits 1 and 5).
5. MassHealth made modifications related to PCA assistance with mobility – stairs; mobility – transfers; bathing; bladder care; and bowel care.

6. Based on testimony at hearing, the appellant agreed to accept MassHealth's modification of the time requested for PCA assistance with mobility – stairs at 7 minutes, 2 times per day, 7 days per week (Testimony and Exhibit 5).
7. The appellant previously received 2 minutes, 8 times per day, 7 days per week for PCA assistance with mobility – transfers. She requested an adjustment to 23 minutes, 8 times per day, 7 days per week. (Testimony and Exhibit 5).
8. MassHealth modified the request for transfers to 5 minutes, 2 times per day, 7 days per week for transfers in/out of bed and 3 minutes, 6 times per day, 7 days per week for assistance standing up/down (in/out of chairs, couches, etc.).
9. The appellant agreed that 23 minutes per transfer was not accurate, but due to her back, knee, and nerve problems, she stands up and down four to five times per an hour, even during the night (Testimony).
10. The appellant previously received 30 minutes, 1 time per day, 7 days per week for PCA assistance with bathing. She requested an adjustment to 60 minutes, 1 time per day, 7 days per week. (Testimony and Exhibit 5).
11. MassHealth modified that request to 45 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 5).
12. The hands-on bathing process of getting out of clothes, into the bath, washing hair, washing, body, getting out of the tub, drying, and getting back into clothes takes the appellant about 50 minutes (Testimony).
13. The appellant previously received 5 minutes, 5 times per day, 7 days per week for PCA assistance with bladder care. She requested an adjustment to 17 minutes, 5 times per day, 7 days per week. (Testimony and Exhibit 5).
14. MassHealth modified the request to 8 minutes, 5 times per day, 7 days per week (Testimony and Exhibit 5).
15. The appellant agreed that bladder care takes about 8 minutes, but she urinates frequently, as much as 15 times per day (Testimony).
16. The appellant previously received 10 minutes, 1 time per day, 7 days per week for PCA assistance with bowel care. She requested an adjustment to 22 minutes, 1 time per day, 7 days per week. (Testimony and Exhibit 5).

17. MassHealth modified the request to 13 minutes, 1 time per day, 7 days per week (Testimony and Exhibit 5).
18. There was no supporting documentation addressing an increased frequency in bladder or bowel care. Documentation only addressed the increased time it takes for care due to her pain and limited mobility. (Testimony and Exhibit 5).

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).

Additionally, 130 CMR 422.416(B) provides the following regarding 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, and include:

- (1) a copy of the original prior-authorization request and PCA evaluation;
- (2) a written summary of the specific adjustment requested that includes the reason for the adjustment and the specific ADLs or IADLs for which an increase or decrease in PCA services is being requested, including the number of units, the number of hours, and the duration of time for which the adjustment is being requested; and
- (3) a letter from the member's physician, nurse practitioner, or physician assistant stating that the need for an adjustment in the member's authorized number of hours of PCA services is a result of changes in the member's medical condition, functional status, or living situation that affects the member's ability to perform ADLs and IADLs without physical assistance. The letter must also describe these conditions. The letter must include the length of time for which the adjustment is required.

The appeal is dismissed as to mobility – stairs because at hearing, parties were able to resolve the dispute. The appellant agreed to accept the MassHealth modification of 7 minutes, 2 times per day, 7 days per week for PCA assistance with stairs.

As to the request for mobility – transfers, the appeal is approved in part and denied in part. The appellant requested 23 minutes, 8 times per day, 7 days per week for PCA assistance with transfers. MassHealth approved 5 minutes, 2 times per day, 7 days per week for transfers in/out of bed and 3 minutes, 6 times per day, 7 days per week for assistance standing up/down (in/out of chairs, couches, etc.). 23 minutes per transfer is excessive and not realistic for someone in the appellant's physical condition; however, given testimony, it seems clear that the appellant did not intend to request 23 minutes per transfer, but instead intended to request a greater frequency. The appellant's testimony demonstrated that, due to her medical condition, she needs transfers at a greater frequency than MassHealth approved. While her testimony is credible, the documentation does not support the need for transfers at the level to which she testified. For these reasons, the appellant is approved for 5 minutes, 2 times per day, 7 days per week for transfers in/out of bed (as was already approved by MassHealth) and 3 minutes, 10 times per day, 7 days per week for assistance standing up/down.

As to the request for bathing, the appeal is approved in part and denied in part. The appellant requested an adjustment to 60 minutes, 1 time per day, 7 days per week. MassHealth modified that request to 45 minutes, 1 time per day, 7 days per week. At hearing, the appellant credibly testified that the hands-on bathing process, excluding the stairs to the bathroom, takes 50 minutes. The appellant has shown that additional time with PCA assistance with bathing is medically necessary and she is approved for 50 minutes, 1 time per day, 7 days per week for bathing.

As to the request for bladder care, the appeal is denied. The appellant previously received 5 minutes, 5 times per day, 7 days per week for PCA assistance with bladder care. She requested an

adjustment to 17 minutes, 5 times per day, 7 days per week. MassHealth modified the request to 8 minutes, 5 times per day, 7 days per week. The appellant has not sufficiently demonstrated that additional PCA assistance with bladder care takes longer than the time already approved. MassHealth increased the time from 5 minutes to 8 minutes per episode and there is nothing in the record or testimony to support 17 minutes per episode. While the appellant testified to frequent urination, it is beyond what would be provided at the hospital level of care and there is nothing in the documentation to support that. As stated at hearing by the MassHealth representative, the appellant's PCM agency could request an adjustment in the frequency and include supporting physician documentation. For these reasons, the appellant has not shown that additional time for bladder care is medically necessary.

As to the request for bowel care, the appeal is denied. The appellant previously received 10 minutes, 1 time per day, 7 days per week for PCA assistance with bowel care. She requested an adjustment to 22 minutes, 1 time per day, 7 days per week. MassHealth modified the request to 13 minutes, 1 time per day, 7 days per week. The appellant has not sufficiently demonstrated that additional PCA assistance with bowel care takes longer than the time already approved. MassHealth increased the time from 10 minutes to 13 minutes per episode and there is nothing in the record or testimony to support 22 minutes per episode. While the appellant testified to two bowel movements per day due to medications and sometimes losing control, there is nothing in the documentation to support that. The notes provided stated that additional time is needed due to increased pain and reduced mobility. There was no request or mention of increased frequency. As stated at hearing by the MassHealth representative, her PCM agency could request an adjustment in the frequency and include supporting physician documentation. For these reasons, the appellant has not shown that additional time for bowel care is medically necessary.

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

Order for MassHealth

Approve 5 minutes, 2 times per day, 7 days per week for transfers in/out of bed (as was already approved by MassHealth) and 3 minutes, 10 times per day, 7 days per week for transfers standing up/down and approve 50 minutes, 1 time per day, 7 days per week for bathing.

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

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