

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2417998
<b>Decision Date:</b>	2/3/2025	<b>Hearing Date:</b>	01/02/2025
<b>Hearing Officer:</b>	Sharon Dehmand		

**Appearance for Appellant:**




**Appearance for MassHealth:**

Robin Brown, O.T., Clinical Appeal 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

<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Issue:</b>	Prior Authorization; PCA Services
<b>Decision Date:</b>	2/3/2025	<b>Hearing Date:</b>	01/02/2025
<b>MassHealth's Rep.:</b>	Robin Brown, O.T.	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 4, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. See 130 CMR 450.303; 130 CMR 422.410; 130 CMR 422.412; and Exhibit 1. The appellant filed a timely appeal on November 25, 2024. See 130 CMR 610.015(B) and Exhibit 2. A decision regarding the scope or amount of assistance is valid ground for appeal before the Board of Hearings. See 130 CMR 610.032(A)(3).

### Action Taken by MassHealth

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

### Issue

Whether MassHealth was correct in modifying the appellant's request for PCA services pursuant to 130 CMR 422.410 and 130 CMR 422.412.

### Summary of Evidence

All parties participated telephonically. MassHealth was represented by a registered occupational therapist and clinical appeals reviewer. The appellant appeared with his spouse who acted as his appeal representative and verified his identity. The following is a summary of the testimonies and evidence provided at the hearing:

The MassHealth representative testified that the documentation submitted shows that the appellant is over [REDACTED] years of age with primary diagnoses of Parkinson's disease and cervical disk disease. See Exhibit 6, p. 11. On October 30, 2024, the appellant's personal care management (PCM) agency, [REDACTED] submitted a prior authorization for PCA services requesting 59 hours for the dates of service of November 4, 2024 to November 3, 2025. On November 4, 2024, MassHealth modified the request to 53 hours and 15 minutes per week. MassHealth made three (3) modifications related to PCA assistance, namely: passive range of motion (PROM); grooming (other/skin check); and toileting (bladder care). See generally Exhibit 5.

Based on testimony at the hearing, MassHealth fully restored time as requested for PCA assistance with PROM (5x1x7<sup>1</sup> – both arms; 10x1x7 – both legs) and toileting (bladder care – 5x8x7 and 10x2x7). Id. at 18, 25.

Only one modification remained in dispute during the hearing, namely: grooming (other/skin check).

The MassHealth representative stated that the requested PCA service hours for grooming included time for daily foot soaks, deodorant and lotion application, and skin check. She stated that most of the requested time was approved with the exception of the time requested for skin check. She said that skin check is a skilled nursing task and not covered by MassHealth's PCA program. She added that when the PCA is performing bathing tasks and applying lotion, he can observe the appellant's skin and, if necessary, report any concerns to a nurse or the appellant's doctor.

The appellant's spouse stated that their son is the appellant's PCA. He is not a nurse. She stated that the appellant's health is deteriorating due to his disease. She explained that the appellant wears compression socks, wrapping, and boots. The PCA must remove the appellant's compression socks and wrapping in order to properly observe the appellant's feet. She emphasized that additional time is necessary to thoroughly evaluate the appellant's skin.

The MassHealth representative responded that the time required for removing the compression socks and wrapping has already been approved as part of dressing and undressing, along with the time allotted for bathing.

## Findings of Fact

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<sup>1</sup> The notation (AxBxC) refers to A minutes per session, B times per day, C days per week.

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

1. The appellant is over [REDACTED] years of age with primary diagnoses of Parkinson's disease and cervical disk disease. (Testimony and Exhibit 6).
2. On October 30, 2024, MassHealth received a prior authorization request for PCA services requesting 59 hours per week for dates of service of November 4, 2024 to November 3, 2025. (Testimony and Exhibit 6).
3. On November 4, 2024, MassHealth informed the appellant that it had modified the request to 53 hours and 15 minutes per week. (Testimony and Exhibit 1).
4. MassHealth made three (3) modifications related to PCA assistance, namely: passive range of motion (PROM); grooming (other/skin check); and toileting (bladder care). (Testimony and Exhibit 1).
5. At the hearing, MassHealth fully restored time as requested for PCA assistance with PROM and bladder care, which resolved the disputes related to PCA assistance with those tasks. (Testimony).
6. The appellant requested 10 minutes, once per day, 7 times per week for PCA assistance with grooming which included foot soaks, application of deodorant and lotion, and skin check. MassHealth approved 5 minutes, once per day, 7 times per week. PCA assistance was denied for skin check only. (Testimony and Exhibit 5).
  - a. Skin check is a skilled nursing task, and it is a medical service available from other MassHealth providers. Id.
7. The appellant filed a timely appeal on November 25, 2024. (Exhibit 2).

## Analysis and Conclusions of Law

Regulations concerning personal care attendant (PCA) services are found at 130 CMR 422.000, et seq. PCA is defined as a person who is hired by the member or surrogate to provide PCA services. See 130 CMR 422.402. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Id.

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 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.<sup>2</sup>

See 130 CMR 422.403(C).

The regulations concerning ADLs and IADLs in 130 CMR 422.410 are as follows:

(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.

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<sup>2</sup> 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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).

(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.

Here, there is no dispute that the appellant meets all the requirements to qualify for PCA services. The issue is whether MassHealth allowed sufficient time in accordance with the program regulations.

The following are considered “non-covered services” in the PCA 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.

See 130 CMR 422.412.

MassHealth will approve “activity time performed by a PCA in providing assistance.” See 130 CMR 422.411. “Activity time” is defined as the “actual amount of time spent by a PCA physically assisting the member” with his ADLs/IADLs. See 130 CMR 422.402.

At issue in this appeal were modifications of time requested for PCA assistance for the appellant with ADLs. The following ADLs were the subject of modifications: passive range of motion (PROM), grooming (other/skin check), and toileting (bladder care).

At the hearing, MassHealth fully restored time as requested for PCA assistance with PROM (5x1x7 – both arms; 10x1x7 – both legs) and toileting (bladder care – 5x8x7 and 10x2x7). Id. at 18, 25. Since the parties reached a resolution regarding these issues, these portions of the appeal are DISMISSED in accordance with 130 CMR 610.035(8).

One modification to the requested time for an ADL remained in dispute, namely: grooming (other/skin check). The regulations specifically define activities of daily living and while such activities include bathing and grooming, the task is defined as physically assisting a member with bathing, personal hygiene, or grooming. See 130 CMR 422.410(A)(3). MassHealth approved the requested PCA service hours for all tasks related to bathing and grooming with the exception of skin check which is not listed as a task related to grooming. See id. The appellant’s spouse argued that the PCA needs time to visually examine the appellant’s skin after removing his compression socks and wrapping to identify any abnormalities.

This argument fails for number of reasons. One, MassHealth has already approved the PCA service hours requested for dressing and undressing, which includes the time needed for the removal of compression socks and wrapping. See Exhibit 6, p. 23. Two, any observation regarding the condition of the appellant’s skin can be made during the application of lotion by the PCA, which MassHealth has already approved as part of the PCA service hours requested for grooming. See id. at 21. Three, the PCA who is not a nurse does not possess the nursing skills required for the proper evaluation of the appellant’s skin. The regulations state that some services are nursing services

based on complexity alone, as here. See 130 CMR 438.410(A)(2). Additionally, MassHealth will not provide PCA service hours for medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services. See 130 CMR 422.412(B). As such, MassHealth correctly modified the requested time for the PCA service hours for skin check which is a skilled nursing task. The appellant has the burden "to demonstrate the invalidity of the administrative determination." [REDACTED]

[REDACTED] Here, the appellant has failed to do so. Accordingly, appellant's request for additional time for this task is DENIED.

## **Order for MassHealth**

For the prior authorization period beginning on November 4, 2024 ending on November 3, 2025 approve the following PCA service hours:

- Passive Range of Motion (PROM): 5 minutes, once per day, 7 days per week for both arms; and 10 minutes, once per day, 7 days per week for both legs;
- Grooming (other/skin check): 5 minutes, once per day, 7 days per week;
- Toileting (bladder care): 5 minutes, 8 times per day, 7 days per week; and 10 minutes, 2 times per day, 7 days per week.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

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Sharon Dehmand, Esq.  
Hearing Officer  
Board of Hearings

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