

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part; Approved in part	Appeal Number:	2418727
Decision Date:	2/21/2025	Hearing Date:	01/15/2025
Hearing Officer:	Radha Tilva		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, licensed occupational therapist
(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:	Dismissed in part; Denied in part; Approved in part	Issue:	PA – PCA modification
Decision Date:	2/21/2025	Hearing Date:	01/15/2025
MassHealth's Rep.:	Robin Brown	Appellant's Rep.:	Pro se
Hearing Location:	telephonic	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 26, 2024, MassHealth modified appellant's prior authorization request for personal care attendant (hereinafter "PCA") hours from 38 hours and 45 minutes per week to 36 hours and 45 minutes per week (Exhibit 1). The appellant filed this appeal in a timely manner on December 9, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification of a request for assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for PCA hours to 36 hours and 45 minutes.

Issue

The appeal issue is whether MassHealth was correct in modifying appellant's PCA hours.

Summary of Evidence

MassHealth was represented by a consultant who appeared by telephone. On or about November 21, 2024, the appellant's personal care management ("PCM") agency, [REDACTED], submitted a reevaluation request for personal care attendant ("PCA") services. This request sought 38 hours and 45 minutes of PCA hours per week. The prior authorization period for this request runs from December 24, 2024 through December 23, 2025. The appellant's primary diagnoses are PTSD, diabetes, a history of falls, obesity, panic attacks, insomnia, paranoia, hallucinations, neuropathy, gout, pain, and hyperlipidemia (Exhibit 6, p. 7). The representative for MassHealth stated that appellant is listed as independent with ambulation, but has tremors and an inability to reach and bend.

MassHealth made three modifications all to instrumental activities of daily living (IADLs). The appellant agreed to MassHealth's modification to the first IADL of meal preparation and cleanup, which was requested at 90 minutes per day and modified to 80 minutes per day. Thus, the appeal as to meal preparation is no longer an issue.

With respect to the second modification, the PCM agency requested 90 minutes per week of PCA assistance with the appellant's shopping, which MassHealth modified to 60 minutes per week. The MassHealth representative testified that time requested is longer than ordinarily required and appellant can ambulate independently and can do some activities himself such as bladder care. The representative further stated that social and recreational activities are not covered by the PCA program; thus, the times that the PCA takes appellant out to various groceries stores for an outing beyond once a week would not be compensated. The representative stated that appellant was receiving 90 minutes per week the year before, but since the COVID restrictions have now been lifted MassHealth is reviewing the documentation submitted with more scrutiny. The appellant stated that it takes 90 minutes for the PCA to shop and that he goes shopping 3-4 times a week with the appellant. Due to his paranoia, the appellant sits mostly in the car, unless he has to use the restroom, in which case she will accompany him. The appellant explained that they take multiple trips a week to the grocery store because the PCA is trying to get him out of the house and sometimes the drive to the store itself is about 30 to 45 minutes.

The last modification was to medical transportation which was requested at 28 minutes per week and modified to 0. The reason for this, according to MassHealth, was because there are other services that can be utilized making this not covered. The appellant is able to ambulate independently, and thus could use a PT-1 and have someone else drive him to the appointment, other than his PCA. The MassHealth representative stated that appellant used to get time last year, but that was because they wrote in the paperwork that he needed assistance with transfers. The documentation submitted with this request states the time requested for transport is only for driving, and does not state that the PCA escorts the appellant out of the car and into his appointments (Exhibit 6, p. 38). The MassHealth representative explained that time can only be

allotted for hands-on assistance.

The appellant testified that his PCA helps him in and out of the car because his medications make him feel dizzy and he has had recent falls. The appellant also explained that he does not feel comfortable using a PT-1 and never has because of his paranoia and inability to trust people he does not know.

Findings of Fact

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

1. On or about November 21, 2024, the appellant's personal care management ("PCM") agency, [REDACTED] submitted a reevaluation request for personal care attendant ("PCA") services.
2. This request sought 38 hours and 45 minutes of PCA hours per week, which MassHealth modified to 36 hours and 45 minutes per week by notice dated November 26, 2024. The prior authorization period for this request runs from December 24, 2024 through December 23, 2025.
3. The appellant's primary diagnoses are PTSD, diabetes, a history of falls, obesity, panic attacks, insomnia, paranoia, hallucinations, neuropathy, gout, pain, and hyperlipidemia.
4. Appellant is listed as independent with ambulation, but has tremors and an inability to reach and bend.
5. There were three modifications in total, and the appellant agreed to MassHealth's modification to the first IADL of meal preparation and cleanup, which was requested at 90 minutes per day and modified to 80 minutes per day.
6. The second modification was for PCA assistance with shopping, which was requested at 90 minutes per week and modified to 60 minutes per week, as 90 minutes per week is longer than ordinarily required for someone's with appellant's needs since he is able to ambulate independently.
7. The appellant's PCA takes 3 to 4 trips for shopping per week to get appellant out of the house.
8. The appellant accompanies the PCA to the store, but mostly sits in the car and does not physically shop for himself due to his paranoia.

9. The third modification was for medical transportation, which was requested at 28 minutes per week and modified to 0.
10. MassHealth stated that appellant does not need assistance with transfers and can use a less costly alternative, such as a PT-1, to get to and from medical appointments.
11. The appellant requires assistance with transfers in and out of his medical appointment due to his dizziness.

Analysis and Conclusions of Law

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416.) The regulations for MassHealth define a service as “medically necessary” if 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. (130 CMR 450.204(A).) “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.” (130 CMR 450.204(B)). A provider must make those records, including medical records, available to MassHealth upon request. (130 CMR 450.204(B)); 42 U.S.C. § 1396a(a)(30), 42 CFR §§ 440.230, 440.260.)

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs (See 130 CMR 422.403(C)). Members are responsible for hiring and training their own PCAs (130 CMR 422.420(A)(6); see also 130 CMR 422.422(A) (PCM agency must confirm member is able to employ and direct PCAs, or else have a surrogate.).)

ADLs include:

- (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.

(130 CMR 422.410(A).)

IADLs include:

- (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.

(130 CMR 422.410(B)).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs (See 130 CMR 422.410(C)). MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover downtime that may exist within a task. Further, there are certain services that MassHealth will **not** cover, including:

- (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 [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

Here, MassHealth modified the time requested for shopping from 90 minutes per week to 60 minutes per week because the time requested is longer than ordinarily required for someone with the appellant's needs. The appellant testified that he does not go into the store alone because of his paranoia, but he accompanies the PCA to the grocery store. In addition, he also stated that his PCA goes shopping 3-4 times a week to get him out of the house. As emphasized above at 130 CMR 422.412(A), MassHealth does not cover recreational services. Thus, MassHealth is correct in not authorizing multiple trips for shopping on a weekly basis. The appeal as to shopping is denied and appellant will receive 60 minutes per week.

With respect to transportation to and from the appellant's medical appointments, however, MassHealth was not correct. The appellant's medical diagnosis prevents him from taking rides with strangers. In addition, the appellant testified that he does require assistance with transfers due to feeling dizzy, and I find his testimony credible. Based on this, the appeal as to transportation to medical appointments is approved, and appellant is entitled to 28 minutes per week, the amount requested by his PCM agency.

Therefore, this appeal is DISMISSED IN PART, DENIED IN PART and APPROVED IN PART.

Order for MassHealth

Approve 28 minutes additional per week for transportation to medical appointments from the start of the prior authorization period of December 24, 2024. Implement all other adjustment as set forth in this decision.

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.

Radha Tilva
Hearing Officer
Board of Hearings

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