

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2500315
<b>Decision Date:</b>	3/24/2025	<b>Hearing Date:</b>	02/04/2025
<b>Hearing Officer:</b>	Christopher Jones		

**Appearances for Appellant:**

Pro se



**Appearance for MassHealth:**

Kelly Rayen, RN



*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>	Denied	<b>Issue:</b>	Prior Authorization - PCA
<b>Decision Date:</b>	3/24/2025	<b>Hearing Date:</b>	02/04/2025
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Reps.:</b>	Pro se; Daughter
<b>Hearing Location:</b>	Telephonic	<b>Aid Pending:</b>	Yes

### 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 December 20, 2024, MassHealth modified the appellant's request for personal care attendant services, allowing 12 hours and 30 minutes per week, fewer than were requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on January 6, 2025, and last year's authorized hours are continuing pending the outcome of this appeal. (Exhibit 2; 130 CMR 610.015(B); 610.036.) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth denied nighttime assistance for personal care tasks that were not required during the day.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining that the appellant should be allowed less time for PCA assistance than requested.

## Summary of Evidence

On or around December 17, 2024, the appellant's personal care management ("PCM") agency, [REDACTED] submitted a re-evaluation for personal care attendant ("PCA") services. This request sought 26 hours and 30 minutes per week of PCA services (1,584 minutes per week, including 840 nighttime minutes). The prior authorization period for this request runs from January 19, 2025, through January 18, 2026. The appellant is under the age of 65, and his primary diagnosis is chronic back pain. The appellant's diagnoses also include arthritis, bipolar disorder, anxiety, and depression.

Through its notice, MassHealth made one modification to the request for PCA services. The appellant requested 2 minutes of assistance, 3 times per night for assistance with mobility. Because MassHealth allows a minimum of 2 hours of assistance per night for any nighttime services, this request resulted in 840 minutes of nighttime assistance. The request did not seek any daytime mobility or toileting assistance. The comments on the mobility section of the evaluation state the appellant demonstrated independent transfers from a low couch and his bed "with difficulty [due to] back pain and impaired mobility. All movement is guarded and generalized stiffness is noted. Does report he is able to turn side to side during the night without assistance." The appellant is also able to ambulate independently. The appellant has a cane, but does not use it. The evaluation found that his gait "is slow and balance is impaired." The appellant also reported falling during the night while getting up to go to the bathroom.

MassHealth denied the nighttime mobility assistance. MassHealth's representative testified that the appellant is independent with both mobility and toileting during the day, therefore there was no reason to allow nighttime hours for mobility. MassHealth's representative suggested having a commode or urinal in the bedroom and restarting occupational or physical therapy to rebuild stability.

The appellant testified that he gets up 5 to 6 times a night. The appellant had a hip replacement 4 years ago, which causes instability, and the appellant is more likely to get dizzy at night. The appellant explained that he takes psychiatric medications that cause insomnia and sleepwalking. The appellant's daughter moved home to be his PCA and generally help him be more safe. The appellant's daughter gets up regularly throughout the night to check on the appellant and make sure that he is safe. The appellant believed that he could safely use a urinal or commode in his bedroom, but he did not like the idea of doing so. The appellant also argued that a commode would not stop his wandering during the night.

The appellant and his daughter testified that the need for nighttime assistance is with supervision and returning the appellant to bed, rather than physically assisting the appellant with ambulation. The appellant also testified that he does better when he is not alone; they are comfortable with their routines, and the nighttime is the worst time for him psychologically. MassHealth's representative responded that supervision is not a covered service under the PCA program. It was

suggested that the appellant investigate the Adult Foster Care program, which might be able to cover his needed assistance.

The appellant also questioned why he had been approved for nighttime hours in the past. MassHealth's representative testified that the appellant had originally applied for the PCA program during the COVID 19 federal public health emergency. At that time, MassHealth relaxed its documentation requirements, but the public health emergency has ended. Furthermore, MassHealth's representative argued that if MassHealth made a mistake in the past, it should not be required to continue making that mistake on future prior authorization requests.

## **Findings of Fact**

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

- 1) On or around December 17, 2024, the appellant's PCM agency, [REDACTED], submitted a re-evaluation for PCA services, requesting 26 hours and 30 minutes per week of PCA services, including 2 hours per night. These services were to run from January 19, 2025, through January 18, 2026. (Exhibit 5, p. 2.)
- 2) The appellant is under the age of 65, and his primary diagnosis is chronic back pain. The appellant's diagnoses also include arthritis, bipolar disorder, anxiety, and depression. (Exhibit 5, p. 7.)
- 3) The appellant requested 2 minutes, 3 times per night for assistance with mobility. This resulted in a total requested time of 14 hours per week (840 minutes per week) for nighttime assistance. (Exhibit 5, pp. 11, 35.)
- 4) The nurse who evaluated the appellant described him as independent with both toileting and mobility. (Exhibit 5, pp. 11-12, 20.)
- 5) The nurse described the appellant as having a slow gait and impaired balance and documented the appellant's report that he has fallen at night. (Exhibit 5, pp. 11-12.)
- 6) The appellant gets up 5 to 6 times per night to either use the bathroom or just wander around. The appellant's PCA gets up to return him to bed and prevent his wandering. (Testimony by the appellant and his daughter.)

## **Analysis and Conclusions of Law**

MassHealth generally covers personal care attendant ("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).)

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 time waiting or downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(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).)

This appeal is DENIED. The appellant is documented to be independent with toileting and ambulation. The appellant and his daughter agreed that the nighttime assistance is for supervision to make sure the appellant remained safe, and to prevent wandering. There is some component of this assistance that could be considered safety to prevent falling when going to the toilet, but MassHealth offered to cover a urinal in the appellant’s bedroom that would alleviate the need to go to the bathroom. The fact that the appellant acknowledged this would not prevent his wandering confirms that this assistance is more directed at supervision than at assistance with mobility to the bathroom. Supervision is not covered under the PCA program. MassHealth’s decision was correct based upon the request for services submitted to it to review.

## **Order for MassHealth**

Remove Aid Pending.

### **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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

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