

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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| Appeal Decision: | Dismissed in part; Denied in part | Appeal Number: | 2500498 |
| Decision Date: | 3/26/2025 | Hearing Date: | 02/03/2025 |
| Hearing Officer: | Marc Tonaszuck | | |

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Donna Burns, RN, 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

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|---------------------------|--------------------------------------|--------------------------|---|
| Appeal Decision: | Dismissed in part; Denied in part | Issue: | Prior Authorization – Personal Care Attendant (PCA) Services |
| Decision Date: | 3/26/2025 | Hearing Date: | 02/03/2025 |
| MassHealth's Rep.: | Donna Burns, RN, Optum | Appellant's Rep.: | Pro se |
| Hearing Location: | Quincy Harbor South | 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 01/03/2025, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 31 hours and 30 minutes (31:30) hours per week to 16.00 hours per week for the dates of service from 01/03/2025 to 01/02/2026 (130 CMR 422.410; Exhibit 1). On 01/09/2025 a timely appeal was filed by the appellant (130 CMR 610.015(B); Exhibit 2). Individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations) are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

Both the appellant's representative and the MassHealth representative appeared telephonically. Exhibits were admitted into evidence (1-4).

The MassHealth representative testified that she is licensed registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request (PA) for PCA services was received on appellant's behalf from his PCA agency (PCM), [REDACTED] ("provider"), for the dates of service of 01/03/2025 to 01/02/2026. In the PA request for PCA services (Exhibit 4), the provider requested 31:30 hours per week of PCA assistance. The appellant is an adult male, in his [REDACTED] who lives independently in the community. He has a primary diagnosis of arthritis and chronic pain with a history of falls and a history of knee replacement (Exhibit 4).

The Optum representative testified that on 01/01/2025 MassHealth modified the PCA request to 31:30 hours per week. Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) tasks of mobility assistance, bathing, and nighttime toileting, and in the instrumental activities of daily living (IADL) task of shopping.

Mobility Assistance

The appellant's PCM requested 2 minutes, 4 times per day, 7 days per week (2 X 4 X 7) for mobility assistance. MassHealth modified the request for assistance with mobility to 1 X 4 X 7; however, after hearing the appellant's testimony, MassHealth restored all time requested for mobility assistance.

Bathing

The appellant's PCA provider requested 20 X 1 X 7 for assistance with bathing. MassHealth modified the request for assistance with bathing to 15 X 1 X 7; however, after hearing the appellant's testimony, the MassHealth representative restored all time requested for this task.

Nighttime Toileting

The appellant's provider requested 5 X 2 X 10 for assistance with nighttime toileting. The provider noted that the appellant requires "assistance to the bathroom, clothing management, assistance on/off toilet due to poor standing balance, difficulty and pain bending/reaching" (Exhibit 4). MassHealth denied the request for assistance with nighttime toileting. The MassHealth

representative testified that the appellant's documentation indicates he should be able to use a urinal at nighttime and he can do so independently.

The appellant testified that he sleeps on the couch and sometimes needs to use the bathroom at nighttime. He testified that sometimes he needs to get up at night to use the toilet twice a night.

Findings of Fact

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

1. On 01/01/2025, MassHealth received a prior authorization (PA) request for PCA services on appellant's behalf from the PCA provider, [REDACTED] ("provider" or "PCM"), for the dates of service of 01/03/2025 to 01/02/2026 (Testimony; Exhibit 4).
2. In the PA request for PCA services (Exhibit 4), the provider requested 31:30 hours per week of PCA assistance (Testimony; Exhibit 4).
3. The appellant is an adult man in his [REDACTED] who lives independently in the community. He has a primary diagnosis of arthritis and chronic pain with a history of falls and a history of knee replacement (Testimony; Exhibit 4).
4. On 01/03/2025, MassHealth modified the PCA request to 16:00 hours per week. Modifications were made to the request for PCA services that include modifications in the activities of daily living (ADL) tasks of mobility assistance, bathing, and nighttime toileting and in the instrumental activities of daily living (IADL) tasks of shopping (Testimony; Exhibits 1 and 4).
5. The appellant filed his timely request for a fair hearing with the Board of Hearings on 01/09/2025. A fair hearing was held on 02/03/2025 (Exhibits 2 and 3).
6. The appellant's PCM requested 2 minutes, 4 times per day, 7 days per week (2 X 4 X 7) for mobility assistance. (Exhibit 4).
7. MassHealth modified the request for assistance with mobility to 1 X 4 X 7; however, after hearing the appellant's testimony, MassHealth restored all time requested for this task (Testimony; Exhibits 1 and 4).
8. The appellant's PCM requested 20 X 1 X 7 for assistance with bathing (Testimony; Exhibit 4).
9. MassHealth modified the time for bathing to 15 X 1 X 7; however, after hearing the appellant's testimony, the MassHealth representative restored all time requested for this

task (Testimony; Exhibits 1 and 4).

10. The appellant's PCM requested 5 X 2 X 7 for assistance with nighttime toileting. The provider noted that the appellant requires "assistance to the bathroom, clothing management, assistance on/off toilet due to poor standing balance, difficulty and pain bending/reaching" (Testimony; Exhibit 4).
11. MassHealth denied the request for assistance with nighttime toileting (Testimony; Exhibits 1 and 4).
12. The documentation included with the PA request indicates the appellant is able to independently use a urinal (Testimony; Exhibit 4).
13. The appellant's PCM requested 90 X 1 X 1 for assistance with shopping (Testimony; Exhibit 4).
14. MassHealth initially denied the time for assistance with shopping; however, after hearing testimony from the appellant, MassHealth restored all time requested for this task (Testimony; Exhibits 1 and 4).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA 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;
- (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.

(Emphasis added.)

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and

(g) toileting

(4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The type of PCA services available are described in 130 CMR 422.410 below:

(A) Activities of Daily Living (ADLs). 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/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.

(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 personal care 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 personal care 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 personal care 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.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *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).

MassHealth modified the appellant's request for PCA services in the activities of daily living (ADL) tasks of mobility assistance, bathing, and nighttime toileting in the instrumental activities of daily living (IADL) tasks of shopping. At the fair hearing, after hearing the testimony from the appellant, MassHealth restored all time, as requested, in the areas of mobility assistance (2 X 4 X 7), bathing (20 X 1 X 7), and for shopping (90 X 1 X 1). As a result, this portion of the appeal is dismissed, as MassHealth has adjusted its decision and has restored all time requested.

Toileting (Nighttime)

The appellant's PCM requested 5 minutes, 2 times per day, 7 days per week for assistance with toileting during the nighttime (12:00 a.m. to 6:00 a.m.). The provider noted that the appellant requires "assistance to the bathroom, clothing management, assistance on/off toilet due to poor standing balance, difficulty and pain bending/reaching." MassHealth denied the request for assistance nighttime toileting. The MassHealth representative testified that the time was denied because the documentation in the PA shows the appellant has the functional ability to use a urinal. The appellant stated that he needs assistance during the nighttime, twice a night, in case he might need to use the bathroom; however, the documentation included in the PA request does not support his testimony. The PCA program does not cover anticipatory services, pursuant to the above regulations. I therefore credit the MassHealth representative's testimony. This portion of the appeal is denied.

For the foregoing reasons, this appeal is dismissed in part; denied in part.

Order for MassHealth

Restore all time requested in the areas of mobility assistance (2 X 4 X 7), bathing (20 X 1 X 7), and

for shopping (90 X 1 X 1). In the area of nighttime toileting, none.

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, Division of Medical Assistance, at the address on the first page of 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

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