

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2500966
Decision Date:	04/25/2025	Hearing Date:	03/28/2025
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

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

Appeal Decision:	Approved in part; Denied in part	Issue:	Prior Authorization – PCA
Decision Date:	04/25/2025	Hearing Date:	03/28/2025
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	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 24, 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 January 16, 2025 (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).

This hearing was initially scheduled for February 19, 2025, but at the request of the appellant, it was rescheduled to the above date.

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 nurse and clinical appeals reviewer. The appellant also appeared at hearing via telephone with her attorney and SJC Rule 3:03 student attorney.

The MassHealth representative testified that the documentation submitted shows that at the time of the prior authorization request, the appellant is an adult under the age of 65 with a primary diagnosis of Ehlers-Danlos Syndrome (hereinafter, EDS). On November 25, 2024, the appellant's personal care management (PCM) agency, Boston Center for Independent Living, submitted a prior authorization request for PCA services (re-evaluation) requesting 115 hours per week for dates of service of January 22, 2025 through January 21, 2026. On December 24, 2024, MassHealth modified the request to 106 hours per week. MassHealth made four modifications related to PCA assistance with assistance with medications; other healthcare needs (CPAP); equipment maintenance; and medical transportation.

The appellant is currently receiving 110 hours and 15 minutes of PCA hours which is protected during the appeal process by aid pending.

Assistance with Medications

For PCA assistance with medications, the appellant requested 10 minutes, 3 times per day, 7 days per week (for assistance setting up and administering oral medications) and 10 minutes, 2 times per day, 7 days per week (for assistance applying two topical creams to two different sites). MassHealth approved the assistance with oral medications as requested but modified the request for assistance applying topical creams to 5 minutes, 2 times per day, 7 days per week because the time requested for assistance is longer than ordinarily required for applying two topical creams to two different sites.

The comments in the prior authorization state "PCA applies 2 topical creams to 2 different sites prior to HS (after PM shower). a – urea cream is applied to the callous on her L foot. b – follow above around 1/2 hr later to pruritis rash on affected foot and/or feet prior to HS."

The appellant testified that there is an error in the evaluation here because the medicated cream (triamcinolone) for itching goes not only on her feet, but both arms and the back of her neck. The urea cream is applied to both feet, not only her left foot. She does it twice per day. Due to her condition, the creams need to be applied very gently and slowly. Additionally, she needs time for filing her bunions and corns and applying the bunion cushion.

The MassHealth representative responded that treatment of bunions and corn does not fall under assistance with medications, but could have been requested under other healthcare needs. She maintained MassHealth's position that 5 minutes was ample time to apply lotion.

Other Healthcare Needs – CPAP

The appellant requested 7 minutes, 3 times per day, 7 days per week for use of CPAP machine due to sleep apnea. MassHealth modified the request to 5 minutes, 3 times per day, 7 days per week because the time requested is longer than ordinarily required for assistance with a CPAP machine.

According to the comments in the prior authorization, the PCA sets up the device and places the mask on the appellant any time she rests or sleeps (which is often during the day/evening and every night) and the PCA checks on the mask placement and the appellant's condition.

The MassHealth representative explained that 5 minutes per an episode is standard for assistance with a CPAP, which involves filling the machine with water and putting the mask or nasal pillow onto the appellant's head. She explained that cleaning is separate and falls under equipment maintenance. Additionally, monitoring is not a PCA task.

The appellant explained that she has two different masks that she alternates between at least one time per night. She estimated it takes about 3 minutes to put on and it needs to be adjusted and put on her very carefully because her jaw can dislocate. She uses it for naps throughout the day and usually takes at least one nap per day. This does not include the time for washing or filling the machine with water which takes about 6 minutes. Daily maintenance is about 15 minutes. She explained the PCA assists her in taking it on and off for a nap during the day, when she goes to bed, and then switching the mask on and off at least once during the night.

Equipment Maintenance

The appellant requested 126 minutes per week for equipment maintenance. MassHealth modified that to 91 minutes per week. The comments in the prior authorization broke the requested time down for the PCA to clean and maintain the following four items: CPAP machine – 35 minutes per week; 1 scooter wheelchair – 35 minutes per week; 1 water filter – 35 minutes per week; and 1 shower chair – 21 minutes per week. MassHealth approved the time for everything except the water filter because it was a duplicate request. She had already been approved for 140 minutes per week (10 minutes, 2 times per day, 7 days per week) of PCA assistance to clean and maintain the reverse osmosis water filter under other healthcare needs.¹

¹ Under other healthcare needs, the comments indicate that the PCA rinses and refills the two tanks twice per day and keeps it clean daily. This request for 10 minutes, 2 times per day, 7 days per week (or 140 minutes per week) was approved in full as requested.

The appellant testified that the CPAP machine takes 45 minutes per week to clean. She explained that the time requested was for the filter was not duplicated. The time requested under other healthcare needs is for daily cleaning and maintenance of the water filter. The time requested under equipment maintenance is for the weekly deep cleaning that takes 35 minutes. It involves washing the inside of the tank with a vinegar and water solution. She referenced the instruction manual for the filter provided in her pre-hearing submission.^{2 3}

Medical Transportation

The appellant requested 1,263 minutes per week (or about 3 hours per day, 7 days per week) for PCA assistance with transportation to medical appointments.⁴ MassHealth modified the request to 829 minutes per week (just under 2 hours per day, 7 days per week) because the time requested is longer than ordinarily required for someone with her needs.

The MassHealth representative explained that time approved for medical transportation must meet medical necessity, which means that it has to prevent the worsening of, alleviate, correct, or cure a condition. She testified that the appellant requested a total of 280 chiropractic visits per year, which is almost 5.5 visits per week.⁵ She testified that this seemed unreasonable for someone with EDS and is not supported by medical necessity. Almost 5.5 chiropractor visits per week goes against professionally recognized standards of healthcare. As such, MassHealth modified the request to 104 visits per year (2 visits per week) at 120 minutes roundtrip (the longest roundtrip time requested by the appellant for chiropractor visits). The appellant also requested 21 visits per year for prolotherapy. Prolotherapy is not covered by MassHealth and it is

² This submission, marked as Exhibit 7, is 181 pages and was received by this hearing officer at 8:56AM on the day of hearing. Email records indicate the appellant's attorney submitted it via email to the Board of Hearings at 11:32PM on March 27, 2025, the night before hearing. As such, this hearing officer and the MassHealth representative did not have a chance to fully review it prior to hearing.

³ A review of the manual by this hearing officer after hearing highlights the "Quick Filter Replacement – Easy access to the filter bay to replace filters. No tools required" and "Easy Installation – Ready to use in less than 10 minutes." The water in the tap water tank must be discarded every time it is refilled. As to cleaning, it states in multiple places that both water tanks should be cleaned **once a week** with soap and water. Sometimes, it may be necessary to fill the tanks with water and a cleaning solution and then let it sit for 30 to 60 minutes before cleaning. To clean the outside of the unit, use a sponge or towel with soap and water. Nowhere does the manual mention once or twice daily cleaning and maintenance. The system tracks usage and lets the owner know when it is time to change the filter. Depending on water quality, some people may have to replace the filter more often than others. The manual did not state how often the filter would need to be changed but the company's website stated that the reverse osmosis filter will need to be changed about every 2 years or 1200 gallons, or whichever comes first; the prefilter, every 6 months or 600 gallons, or whichever comes first; and the VOC carbon filter, every 1 year or 600 gallons, or whichever comes first.

⁴ The comments in the prior authorization noted that 999 minutes were requested under Medical Transportation and, because the form does not allow more than three digits, an additional 264 minutes were requested in the other healthcare needs section, for a total of 1,263 minutes per week.

⁵ In its calculation of chiropractor visits, MassHealth included 156 visits per year (3 times per week) to Dr. Welch, 104 visits per year (2 times per week) to Dr. Cherubino, and 20 visits per year to Dr. Dick.

not FDA approved. 21 visits per year for something that is not FDA approved was not medically necessary. As such, MassHealth modified the request to 12 visits per year.

The appellant testified that there is no cure for EDS, just management. She cannot tolerate pain medications and she is not a good surgical candidate, which leaves her with chiropractors, osteopathy, physical therapy, and acupuncture. Chiropractic care has been the most helpful for her. She goes five to six times per week and she cannot function without these visits. She explained that the various chiropractors are not duplicative because each one focuses on a different area. Some treat certain areas better than others. She does not drive the most efficient route that Google Maps would suggest because the roads are bumpy. Her PCA must drive slowly and take longer routes (including avoiding the Mass Pike) to circumvent bumps and construction because she is fragile and easily in pain. In a letter provided by the appellant's PCA, the PCA states that he can never exceed 20 miles per hour on exit ramps of highways because the sharp curves cause the appellant pain. He keeps a bumper sticker on the car stating "Fragile passenger – must drive carefully," but he drives so slowly that often cars behind him get impatient and he has to pull over to let them pass. If he cannot avoid a pothole, he needs to drive as slow as 4 miles per hour over it. The appellant also clarified that one of the doctors listed on the request (Dr. Dick, 20 appointments per year at 40 minutes round trip) was counted as a chiropractor by MassHealth but he is not a chiropractor. He is an osteopath who provides osteopathic treatments, not chiropractic treatment. The appellant referred to the multiple letters from her doctors supporting medical necessity for her chiropractic treatment. One chiropractor noted that he has treated many EDS patients and the appellant's joints are among the most fragile he has encountered.

The MassHealth representative responded that time for medical transportation includes drive time and time for transfers in/out of the home and in/out of the provider's office. MassHealth did not modify the time requested for driving and transfers, only the number of office visits; however, driving time should be the most efficient to support medical necessity. If driving is going to cause the appellant more injury or more pain, additional time in the car seems contrary to medical necessity. She also pointed out that some services provided by the chiropractors may be duplicative as the appellant is also seeing a TMJ specialist, hand specialist, pain management specialist, physical therapist, and has been approved for 30 minutes per limb per day for passive range of motion (PROM). The MassHealth representative noted that she received 629 minutes per week for medical transportation in last year's prior authorization.

Findings of Fact

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

1. The appellant is an adult who, at the time of the prior authorization request, was under the age of 65 and has a primary diagnosis of Ehlers-Danlos Syndrome (Testimony and Exhibit 6).

2. On November 25, 2024, MassHealth received a prior authorization request for PCA services requesting 115 hours per week for dates of service of January 22, 2025 through January 21, 2026 (Testimony and Exhibit 6).
3. On December 24, 2025, MassHealth informed the appellant that it had modified the request to 106 hours per week (Testimony and Exhibits 1 and 6).
4. MassHealth made modifications related to PCA assistance with medications; other healthcare needs (CPAP); equipment maintenance; and medical transportation (Testimony and Exhibits 1 and 6).
5. On January 16, 2025, the appellant timely appealed (Exhibit 2).
6. The appellant is currently receiving 110 hours and 15 minutes of PCA hours which is protected during the appeal process by aid pending (Testimony).
7. For assistance with medication, the appellant seeks 10 minutes, 3 times per day, 7 days per week for setting up and administering oral medications and 10 minutes, 2 times per day, 7 days per week for applying two topical creams to two different sites (Testimony and Exhibit 6).
8. MassHealth approved the assistance with oral medications as requested but modified the request for assistance applying topical creams to 5 minutes, 2 times per day, 7 days per week because the time requested for assistance is longer than ordinarily required for applying two topical creams to two different sites (Testimony and Exhibit 6).
9. Under other healthcare needs, the appellant seeks 7 minutes, 3 times per day, 7 days per week for PCA assistance with the CPAP machine due to sleep apnea (Testimony and Exhibit 6).
10. MassHealth modified the request to 5 minutes, 3 times per day, 7 days per week because the time requested is longer than ordinarily required for assistance with a CPAP machine (Testimony and Exhibit 6).
11. Under equipment maintenance, the appellant seeks 35 minutes per week for cleaning and maintenance of the water filter (Testimony and Exhibit 6).
12. MassHealth did not approve the time for the water filter cleaning and maintenance because it was a duplicate request (Testimony and Exhibit 6).
13. Under other healthcare needs, MassHealth approved 140 minutes per week (10 minutes, 2 times per day, 7 days per week) of PCA assistance to clean and maintain the water filter (Testimony and Exhibit 6).

14. For medical transportation, the appellant seeks 1,263 minutes per week of PCA assistance (Testimony and Exhibit 6).
15. MassHealth modified the request to 829 minutes per week because the time requested is longer than ordinarily required (Testimony and Exhibit 6).

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).

As to the appellant's request for PCA assistance with medications (applying two topical creams), the appeal is denied. The appellant has not demonstrated that PCA assistance with applying two topical creams takes longer than the time already approved. The appellant testified that this was not enough time for filing her corns and bunions and applying the bunion cushion; however, that is not considered a medication. As noted at hearing by the MassHealth representative, that would fall under other healthcare needs, not assistance with medication. Even if the creams must be

applied slowly and carefully and one of the creams is for both feet, arms, and neck, as opposed to just her feet, the appellant did not adequately explain how it takes longer than 5 minutes per episode. For these reasons, the appellant has not shown that additional time for medication assistance is medically necessary.

As to the request for PCA assistance with other healthcare needs (CPAP machine), the appeal is denied. The appellant has not demonstrated that PCA assistance with her CPAP machine takes longer than the time already approved. The appellant testified that the appellant checks on the mask and her condition. Supervision is not a covered task in the PCA program. The appellant testified that it takes about 3 minutes to put the mask on and about 6 minutes to wash and fill the CPAP machine with water. Maintenance of the CPAP machine was approved separately under equipment maintenance. 5 minutes seems sufficient (and, according to MassHealth, is the standard amount of time approved) to fill a tank with water and put on the mask. While she switches masks at least once during the night and also naps using her CPAP machine during the day, the frequency of assistance was requested at 3 episodes per day and was not modified.⁶ For these reasons, the appellant has not shown that additional time for assistance with other healthcare needs (CPAP machine) is medically necessary.

As to the appellant's request for PCA assistance with equipment maintenance, the appeal is denied. The appellant's request was approved in full for the time requested for maintenance of her CPAP machine, scooter wheelchair, and shower chair. The only modification in this section was to the time requested for maintenance of the water filter (35 minutes per week). She was approved for 140 minutes per week (10 minutes, 2 times per day, 7 days per week) of PCA assistance to maintain the reverse osmosis water filter under other healthcare needs. The MassHealth representative argued that the time under equipment maintenance was not approved because it was duplicative of time already approved. The appellant argued that it was not duplicative as the additional 35 minutes per week was for a weekly deeply cleaning versus the daily cleaning and maintenance. In the instruction manual provided by the appellant, however, there is no reference to required daily cleaning or a weekly deep cleaning as stated by the appellant. Instead, the manual clearly states in multiple places that it should be cleaned once per week with soap and water. Nowhere in the manual does it mention once or twice daily cleaning and maintenance. Any time needed for soaking or drying would not be included in PCA time as the PCA program is for hands-on tasks only and does not cover time spent waiting or supervising. The various filters do not need to be changed that frequently (one about every 2 years, one about every 6 months, and a third, about every year), but the manual emphasizes quick filter replacement. So, on the occasions where filters need to be replaced, the 140 minutes per week for cleaning and maintenance should be sufficient to account for this. The manual also emphasizes that installation is easy and the whole system should be ready to use in less than 10 minutes. For a manual that seems to clearly highlight ease and speed of use, requiring multiple hours (175

⁶ If she requires more episodes per day of PCA assistance with the CPAP machine, she can request an adjustment through her PCM agency.

minutes as proposed by the appellant) of weekly cleaning and maintenance would seem contrary to its stated function and use. For these reasons, the appellant has not shown that additional time for assistance with equipment maintenance is medically necessary.

As to the appellant's request for PCA assistance with medical transportation, the appeal is approved in part and denied in part. MassHealth should approve the appellant's requested visits (20 appointments per year at 40 minutes round trip) to her osteopath, Dr. Dick. MassHealth incorrectly considered this another chiropractor visit. As to the request to restore some of the chiropractor and prolotherapy visits, the appeal is denied. The appellant has not shown that those additional visits are medically necessary. While the appellant provided multiple doctors notes regarding the medical necessity of frequent chiropractor visits, they are insufficient to support the medical necessity for over 5 chiropractor visits per week. For example, her chiropractor Dr. Cherubino states that he sees the appellant "once or twice per week" and that it is important that she "get her frequent joint injuries treated promptly and regularly." He does not mention the appellant seeing any other chiropractors, suggesting his one to two visits per week are sufficient for prompt and regular treatment. Similarly, Dr. Welch notes she sees the appellant three times per week and the appellant "reports that after I treat her injuries, the swelling and pain are greatly reduced." (Emphasis added). Again, there is no mention by Dr. Welch of any additional chiropractor treatment besides what she is providing to the appellant. Yet a third chiropractor, Dr. Diaz, notes she sees the appellant two times per week and "[g]iven her fragile ligaments, treating her injuries sooner than later greatly decreases the chance they become permanent." There is no mention by Dr. Diaz of any additional chiropractor treatment besides what she is providing to the appellant, again suggesting that her visits alone are sufficient for treating the appellant "sooner than later." MassHealth's testimony that there is no evidence to support daily chiropractor visits and that to do so would be outside the standard of healthcare is persuasive. Additionally, as mentioned by MassHealth, if the appellant is so fragile and at risk to injury and pain while in the car that she has to avoid the Mass Pike and drive extremely slowly, it would seem contrary to medical necessity to spend even more time in the car. For these reasons, the appellant is approved for the requested visits (20 appointments per year at 40 minutes round trip) to her osteopath, Dr. Dick, but denied as to the additional chiropractor and prolotherapy visits.

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

Order for MassHealth

Approve the appellant for medical transportation for the requested visits (20 appointments per year at 40 minutes round trip) to her osteopath, Dr. Dick.


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