

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2501871
Decision Date:	4/25/2025	Hearing Date:	03/07/2025
Hearing Officer:	Christopher Jones		

Appearance 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

Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Issue:	Prior Authorization; PCA
Decision Date:	4/25/2025	Hearing Date:	03/07/2025
MassHealth's Rep.:	Kelly Rayen, RN	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 January 2, 2025, MassHealth modified the appellant's request for personal care attendant services, allowing less time than was requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on January 29, 2025.¹ (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

¹ The Board of Hearings initially dismissed this appeal for lack of authorization. The appellant signed the hearing request form on February 3, 2025, and this matter was scheduled. (Exhibits 3 – 5.)

Issue

The appeal issue is whether MassHealth is 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

The appellant was in a motorcycle accident in 2018 after which he was initially paralyzed from the waist down. The appellant's current primary diagnosis is lumbar radiculopathy, and his relevant medical history includes nerve root disorder, loss of coordination, weakness, memory issues, and a history of falls resulting in fractures and concussions. The appellant is independent with mobility using a cane, though he continues to have weakness, numbness, and loss of coordination with ambulation.

On or around January 1, 2025, the appellant's personal care management ("PCM") agency, the [REDACTED], submitted a request for personal care attendant ("PCA") services. This request sought 16 hours per week of PCA services (951 minutes per week). The prior authorization period for this request runs from January 2, 2025, through January 1, 2026.

MassHealth made 7 modifications to the request for assistance with bathing, nail care, undressing, medication refilling, meal preparation, housekeeping, and shopping. MassHealth authorized 12 hours and 45 minutes (760 minutes).

Regarding bathing, the prior authorization request sought 25 minutes per day for assistance in the shower. MassHealth reduced this time down to 15 minutes per day. MassHealth's representative reviewed that the occupational therapy assessment for the appellant, which identified him as independent with mobility, transferring out of his bed, though requiring moderate assistance with bathing. The documentation regarding bathing states: "Has build in shower seat, 2 grab bars, [handheld] Hose observed. [Loses] balance w/bending. PA bathing back, [lower extremities] & areas cannot reach. Impaired bending & reaching [due to] Lumbar radiculopathy, pain [in both] knees & neuropathy knees down. Weakness, numbness, and loss of coordination." (Exhibit 7, p. 19.)

The appellant is also independent with oral care and shaving. MassHealth's representative argued that washing the appellant's back and lower extremities should only take a few minutes. MassHealth's representative testified that MassHealth only compensates a PCA for the active time the PCA is physically assisting the member, and not any time that the PCA might spend waiting for the appellant while he is showering for himself.

The appellant testified that he is a large man, and it is not easy for him to get into or out of his shower. The appellant described his PCA as participating in the entirety of his showering process because the PCA needs to hand the appellant the shower head. The shower seat is built into the

back of the shower. The handheld shower moves up and down on a pole built into the wall, but the appellant cannot reach it when he is seated. The appellant testified that the shower is very large because it was built for a roll-in shower wheelchair, which the appellant no longer uses. The appellant also testified that every day is different, but he is always a risk to himself when he tries to stand in the shower. There are days when he can barely walk, and some day she cannot wash his own hair. The appellant testified that his entire showering process from getting into the shower to getting dried off takes about an hour, and he estimated that the PCA's active involvement is at least 30 minutes of that time.

MassHealth's representative testified that the agency's modification was based upon their expectation of how long it should take a PCA to assist the appellant with transferring into the shower and washing his lower body and back. She felt the reduction was appropriate given the appellant's independence and available durable medical equipment. MassHealth's representative testified that this decision did not rely upon any time-for-task tools that may have been developed to estimate for average times given a member's level of need for assistance.

Regarding nail trimming, the appellant testified that his foot neuropathy requires his feet to be soaked before they can be trimmed, and then the trimming itself takes about 15 to 20 minutes. MassHealth had modified the requested 5 minutes per week down to 3 minutes per week. MassHealth's representative agreed to restore all of the time requested.

The appellant accepted the modifications for dressing and prefilling his medication planner. MassHealth had modified the time for undressing from 10 minutes to 8 minutes per day, and the time for filling the medication planner from 10 minutes per week to 5 minutes per week.

The request for meal preparation had sought 50 minutes per day to prepare lunch and dinner. MassHealth allowed 40 minutes per day. MassHealth's representative testified that the appellant does not have any impairment with his upper extremities, and he should be able to assist with meal preparation while seated. The appellant agreed that he can usually assist with meal preparation. The appellant prepares breakfast and snacks independently. His difficulties are with getting things together for cooking and cleaning up afterwards, as that required the most standing and bending. The appellant testified that he tries to cook fresh meals every day and to eat healthy foods. The appellant was concerned about a reduction to meal preparation time because his PCA runs over time a lot.

MassHealth restored all of the requested time for housekeeping. The request sought 60 minutes, and MassHealth had reduced the time down to 45 minutes. This was partly based upon the appellant's testimony that he has very bad dust allergies, and the PCA vacuums frequently.

Finally, MassHealth modified the time for shopping from 60 minutes to 45 minutes. MassHealth's representative argued that the active time involved with shopping would only be reaching objects on lower shelves that the appellant could not reach for himself. MassHealth's representative noted that the appellant drives for himself. The appellant testified that he gets a scooter to go shopping,

and that the assistance he needs is variable. The appellant testified that he mostly needs help off-loading the groceries at check out, or into his car, or into his home. The appellant objected to this modification as the PCA has to be with him for the whole time he is shopping. The appellant acknowledged that the PCA's assistance is not constant, but there is no other task that the PCA can be doing when they are not assisting the appellant while shopping.

Findings of Fact

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

- 1) The appellant's primary diagnosis is lumbar radiculopathy. He also suffers from nerve root disorder, loss of coordination, weakness, memory issues. He has a history of falls resulting in fractures and concussions. The appellant is independent with mobility using a cane, though he continues to have weakness, numbness, and loss of coordination with ambulation. (Exhibit 7, pp. 6-12.)
- 2) On or around January 1, 2025, the appellant's PCM agency submitted a request for PCA services. This request sought 16 hours per week of PCA services (951 minutes per week). The prior authorization period for this request runs from January 2, 2025, through January 1, 2026. (Exhibit 7, pp. 2, 35.)
- 3) MassHealth made 7 modifications to the request for assistance with bathing, nail care, undressing, medication refilling, meal preparation, housekeeping, and shopping. MassHealth authorized 12 hours and 45 minutes (760 minutes). (Exhibit 1; Exhibit 7, pp. 4, 35.)
- 4) During the appeal, MassHealth restored 2 minutes per week for nail care and 15 minutes per week for housekeeping. (Testimony by MassHealth's representative.)
- 5) During the appeal, the appellant accepted the modifications to undressing of 2 minutes per day and 5 minutes per week for refilling medications. (Testimony by the appellant.)
- 6) For bathing, the request sought 25 minutes per day. MassHealth allowed 15 minutes per day. (Exhibit 7, pp. 18-19.)
 - a. The appellant has a shower seat, handrails, and a handheld shower head, and the PCA washes his back and lower extremities. (Exhibit 7, p. 19.)
 - b. It should only take a few minutes to actively wash a person's lower extremities and back. (Testimony by MassHealth's representative.)
 - c. The appellant has poor balance in the shower and is a fall risk when standing, bending, or reaching. (Exhibit 7, p. 19; testimony by the appellant.)

- d. The appellant requires moderate assistance in the shower. The PCA helps him into the shower, passes him the shower head, and put the shower head back onto the wall while the appellant washes himself. The PCA also helps the appellant out of the shower and dries him. The active involvement with these activities is around 30 minutes. (Testimony by the appellant; Exhibit 7, p. 18-19.)
- 7) MassHealth modified the time for meal preparation from 50 minutes per day to 40 minutes per day. (Exhibit 7, pp. 4, 31.)
- a. MassHealth believes that the appellant should be able to manage most of his meal preparation in a seated position, given his upper body physical abilities. (Testimony by MassHealth's representative.)
 - b. The appellant mostly requires additional assistance with gathering materials and cleaning up after meal preparation. The appellant felt that it took longer than 40 minutes per day to prepare lunch and dinner because his PCA runs out of time many days. (Testimony by the appellant.)

Analysis and Conclusions of Law

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. Further, when multiple MassHealth members live together and are authorized for PCA services, PCA time for IADLs “must be calculated on a shared basis.” (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 actual amount of time spent by a PCA physically assisting the member with ADLs and” IADLs. (130 CMR 422.402; 130 CMR 422.411(A).)

As a preliminary matter, MassHealth restored all of the time requested for nail care and housekeeping, and the appellant accepted the modifications to undressing and prefilling the medication planner. Because these issues were resolved between the parties, these aspects of the appeal are DISMISSED. (130 CMR 610.035; 610.051.) This restores a net 17 minutes per week.

With regards to bathing, the appellant testified the entire process of taking a shower, after undressing through drying off, takes about an hour. Within this hour, he estimated that the PCA is actively assisting him for about 30 minutes. The nurse evaluator who saw the appellant and his

bathroom generally agreed with this assessment, requesting 25 minutes. MassHealth's representative argued that it should only take 15 minutes to wash an individual's legs and back. MassHealth's representative, however, did not have the opportunity to view the appellant's limitations and bathing arrangement personally, and she offered no reason why the nurse who evaluated the appellant should not be credited. Therefore, the appeal is APPROVED in part with regard to bathing time. This restores 10 minutes per day, 70 minutes per week.

Regarding meal preparation, the appellant's testimony did not specifically contradict the time MassHealth allowed. The appellant certainly requires some assistance with meal preparation and cleaning up, but he also retains a degree of independence. The appellant's contention was that because his PCA runs out of time regularly, the PCA must need more time for meal preparation. On balance, I cannot find that MassHealth's decision is in error based upon the evidence. Therefore, the appeal is DENIED in part with regard to meal preparation.

Finally, for grocery shopping, MassHealth correctly set forth the rule for allowable PCA services. Only "activity time" defined as the active assistance with an ADL or IADL is covered. The appellant is able to drive for himself, and he is able to participate in most of the shopping experience using a motorized cart. Given this degree of independence, I cannot find that MassHealth erred in reducing the time for shopping assistance down to 45 minutes per week. This aspect of the appeal is DENIED in part.

All told, the appellant should have received an additional 87 minutes per week starting January 2, 2025. This should result in a total of 14 hours and 15 minutes of PCA assistance per week.

Order for MassHealth

Reinstate all time requested for bathing, nail care, and housekeeping as of the start of the prior authorization period, January 2, 2025.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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