

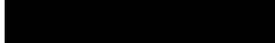
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Numbers:	2507584 and 2507653
Decision Date:	9/29/2025	Hearing Date:	7/22/2025
Hearing Officer:	Cynthia Kopka	Record Open to:	8/22/2025

Appearance for Appellants:



Interpreter:



Appearances for Respondent Element Care:

Natalie Neufeld, OT; Emma Kelsey, RN; Ellie Devol, social worker; Kristin Neidig, social worker; Mary Murphy, program administrator; Maureen McDonough, center manager; Elizabeth Agnes, director of site operations; Meleana Morioka, participant services representative



*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:	Program of All- Inclusive Care for the Elderly (PACE)
Decision Date:	9/29/2025	Hearing Date:	7/22/2025
Respondent's Reps.:	IDT, et al.	Appellants' Rep.:	Daughter
Hearing Location:	Quincy (remote)	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

By notices dated March 21, 2025, Element Care, a Program of All-inclusive Care for the Elderly (PACE) provider (hereinafter "Element Care" or "Respondent") denied Appellants' internal appeal of a request for an increase in personal care attendant (PCA) hours. Exhibit 1. Appellants filed timely requests for a fair hearing with the Board of Hearings (BOH) on May 15 and 16, 2025. Exhibits 2a and 2b. Denial of assistance is valid basis for appeal. 130 CMR 610.032(A). A PACE plan must allow for external review of its coverage decisions. 42 CFR § 460.124. The hearing was originally scheduled on June 30, 2025 and postponed at Appellant's request to July 22, 2025. Exhibit 3. The hearing record was held open through August 22, 2025 for the submission of additional evidence. Exhibit 4.

Action Taken by Respondent

Respondent denied Appellants' request for an increase in PCA hours.

Issue

The appeal issue is whether Respondent followed regulations when it denied Appellants' request.

Summary of Evidence

Respondent Element Care, a PACE provider, was represented at telephonic hearing by multiple representatives. Appellants, a married couple (separately referred to as [REDACTED] the husband/father and [REDACTED] the wife/mother), were represented by their daughter who offered testimony with the assistance of an Albanian interpreter. Appellants provided documents prior to the hearing, Exhibits 2a and 2b. Respondent did not provide evidence prior to or at the hearing. Both parties submitted records in support of their position after hearing. Exhibits 5 and 7.¹ A summary of testimony and documentary evidence follows.

Appellants are enrolled in PACE, a federal program designed to assist and enable older adults to remain living in the community as set forth in 42 USC § 460.4. Under the regulations, a PACE participant's care plan is created by an interdisciplinary team (IDT). The IDT's responsibilities include initial assessment, periodic assessment, plan of care, and coordination of 24-hour care. As part of the PACE program, both Appellants visit an adult day health [REDACTED] center from 9:00 AM – 1:00 PM on certain days of the week. Appellant [REDACTED] attends [REDACTED] twice per week and Appellant [REDACTED] attends [REDACTED] three times per week. Respondent's representative testified that at the [REDACTED] center, Appellants are independent in getting in and out of transportation and with toileting. They do recreational activities at the center including walking laps, using an exercise bike, having lunch, and playing bingo.

On February 11, 2025, Element Care received on Appellants' behalf a service determination request (SDR) to increase Appellants' weekly PCA hours. Appellants' representative sought an increase of PCA hours from 1 PCA hour per week for each parent (or 2 hours total for the household per week) to 21 PCA hours per week for each parent (42 hours total for the household per week) to reflect the time Appellants' daughter (the PCA) spends with her parents providing care.

On February 12, 2025, Respondent's occupational therapist (OT) performed an assessment. Respondent's OT presented the findings from the initial SDR assessment at hearing by testimony and documentation. Regarding Appellant [REDACTED] Respondent's OT testified that Appellant [REDACTED] had muscle strength within functional limits and chronic lower back pain that ranges from 3 to 8 out of 10. Appellant [REDACTED] standing tolerance is 10 minutes and limited by lower back pain. She has good static and dynamic standing balance. Appellant [REDACTED] was independent in transferring in and out of the bathtub with grab bars and independent sitting and standing from her shower chair. She is able to independently transfer from the toilet, a chair, and the couch, all between 15-19 inches high. At the assessment, Appellant [REDACTED] was not comfortable demonstrating her ability to dress but was observed

¹ The exhibits contain multiple duplicative documents submitted by both sides.

independently doffing and donning shoes and socks from a seated position. Exhibit 5b at 8. Respondent determined that Appellant [REDACTED] was independent with ADLs and all IADLs apart from homemaking, requiring 2 hours of PCA assistance per week. *Id.* at 2. Appellant [REDACTED] also received 2 hours every other week companion services for grocery shopping. As a result of the SDR assessment, Respondent's OT concluded that Appellant [REDACTED] did not require additional PCA time given her functional performance. Exhibit 5b at 8.

Regarding Appellant [REDACTED] on February 3 and 4, 2025, Respondent's IDT documented that Appellant [REDACTED] requires assistance with daily morning care, including showers and hygiene, for 20 minutes 6 times per week, or 120 minutes. Exhibit 5a at 8. On February 12, 2025, as part of the SDR, Respondent's OT testified that Appellant [REDACTED] has a history of right arm below-elbow amputation from over 20 years ago. Appellant [REDACTED] ambulates without a device. The OT testified that Appellant [REDACTED] standing tolerance is over 30 minutes, though the assessment states that it is "10+ minutes." Exhibit 5a at 9. Appellant [REDACTED] is able to independently get in and out of the tub with grab bars and stands to shower. Appellant [REDACTED] reported that his daughter helps wash his back. *Id.* Appellant [REDACTED] demonstrated that he can independently don and doff socks. *Id.* Appellant [REDACTED] was independent for light meal preparation, as he was able to obtain an item from the refrigerator and prepare simple food. Respondent's OT wrote that based upon [REDACTED] functional status, 2 hours of PCA is appropriate for assistance, comprising of 15 minutes daily for upper body dressing and lower body dressing. *Id.* at 9. Appellant [REDACTED] also receives companion services every other week for 2 hours for grocery shopping. *Id.* at 9. The records reflect that Appellant's spouse assists with meal preparation. *Id.* at 11.

Respondent's representatives testified that on February 14, 2025, Respondent notified Appellant that it would authorize 4 hours of PCA service per week. Appellant [REDACTED] was eligible for 2 PCA hours per week for homemaking. Appellant [REDACTED] was eligible for 2 PCA hours per week to assist with personal care. In addition, each Appellant receives 2 hours of companion service every other week for grocery shopping. In summary, Respondent denied Appellants' request for 42 PCA hours per week and approved 4 PCA hours per week. On March 20, 2025, Respondent held an internal appeal hearing on the IDT's decision. On March 21, 2025, Respondent sent Appellants a written denial of the internal appeal. Exhibit 1.

Respondent's representatives testified that in late April and early May 2025, both Appellants were evaluated for their annual assessment and had medical status updates. For Appellant [REDACTED] she received an OT evaluation on May 1, 2025. According to the OT, Appellant [REDACTED] was independent with ADLs and most IADLs including meal preparation and laundry, but is often limited by lower back pain requiring seated rest breaks intermittently. Exhibit 5b at 10. Respondent's OT noted that Appellant [REDACTED] cognitive/safety awareness is impaired, with decreased attention and memory. *Id.* Appellant's score on the Rowland Universal Dementia Assessment Scale (RUDAS) was 20 out of 30, with 23 being a baseline score. *Id.* Respondent's OT wrote that she anticipates that Appellant [REDACTED] may need more physical assistance as her spinal stenosis continues to progress and further impact her ability to perform ADLs and IADLs. The OT

wrote that Appellant's daughter currently assists with vacuuming and laundry due to Appellant having difficulty completing these tasks in relation to her back pain. *Id.* at 13.

Respondent's OT testified that Appellant was receiving skilled physical therapy (PT) for her low back pain at the center from May 7, 2025 through May 22, 2025. *Id.* at 16. She was discharged from PT on 2025 due to nonparticipation. Appellant refused to perform lumbar exercises in presence of the PT, refused home visits, and was noncompliant in wearing her lumbar brace during the day against medical education. Instead, Appellant reportedly wore her lumbar brace at night against recommendations. *Id.* at 19. Appellants' daughter testified that did not go to PT because she was doing the exercises at home.

Appellant was reevaluated on April 30, 2025. Respondent's OT wrote that Appellant receives 15 minutes of assistance daily for upper body dressing, and that his wife assists with meal preparation. Exhibit 5a at 13. Appellant RUDAS score was 27/30, which is normal. *Id.* Respondent's OT testified that in May 2025, Appellant fractured his only thumb when he was helping a friend with construction and held a nail for the friend to hammer. Appellant's thumb was in a splint for about one month. Despite this, Appellant had no change in functional status.

Respondent's social worker testified that Appellants are authorized for 4 PCA hours per week, separate from the 2 hours they receive every other week for companion grocery shopping. Respondent's social worker explained that the companion approved for grocery shopping was separate from the PCA care because Appellants' daughter does not have a vehicle. Respondent's social worker testified that currently Appellants are not receiving the paid care for which they are authorized because the paperwork expired. Appellants' daughter had declined the PCA services while the appeal was pending. Respondent's social worker testified that she can send updated paperwork to the agency so Appellants' daughter can begin services.

Appellants' daughter testified that she was living in and traveling back and forth to visit her parents more frequently as they became more medically dependent. Appellants' daughter testified that after seeing their condition, she decided to stay with them in the United States and help. She applied to be their caretaker and help with their needs through the center.

Appellants' daughter argued that 4 hours per week is not enough time to provide all of the assistance her parents need. Appellants' daughter testified that Appellant needs assistance for cooking. Appellant is diabetic and must follow a strict diet. Appellant standing tolerance is only 10 minutes, which renders her unable to cook. Appellant cannot cut food with only one hand. Appellant also has arthritis in his hands, causing his fingers to be crooked. Appellants' daughter estimated that it takes approximately 10 hours per week to assist both parents with meal preparation. Exhibit 6.

Appellants' daughter argued that Appellant needs daily assistance in the shower because she has a history of falling in the shower and breaking bones. Appellants' daughter provided documents

showing that Appellant broke her arm in 2023. Exhibit 7b at 26, 36. To assist with bathing, Appellants' daughter washes her mother's back and hair while Appellant ■ holds the rail, as Appellant ■ is limited by back pain and arthritis. Appellants' daughter did not indicate whether Appellant ■ required help transferring in and out of the shower, but argued that Appellant ■ requires supervision so Appellant ■ does not fall.

Appellants' daughter testified that Appellant ■ cannot be left alone or go out by himself due to his memory loss. Appellant ■ has a medical device he wears around his neck. Appellants' daughter testified that ■ has dementia and anxiety and is forgetful. Appellants' daughter testified that on two occasions, Appellants have forgotten to turn off the stove.

Appellants' daughter argued that 2 hours per week is an insufficient amount of care for individuals that are Appellants age and with their medical impairments. Appellants' daughter was a ■ and worked for the department of justice in ■ but gave it up to come assist her parents. Appellants' daughter argued that Appellant ■ cannot be alone by himself and Appellant ■ cannot assist her husband because she requires her own assistance.

Respondent's OT responded that from a functional OT perspective, Appellants both demonstrated that they can get in and out of the shower independently and have a long-handled sponge to assist with bathing. Appellants' daughter argued that she must assist both of her parents with bathing. Appellants' daughter testified that her parents may not have been able to express their needs sufficiently either due to embarrassment or due to the language barrier.

In her post-hearing submission, Appellants' daughter wrote that she is seeking approval of 30 total hours for PCA assistance for her parents, broken up as follows:

1. Bathing, dressing, grooming – 14 hours total per week, 1 hour a day for each parent.
2. Cooking – 10 hours per week, Appellant ■ requires special diet for diabetes.
3. Laundry – 2 hours per week.
4. Housekeeping, cleaning, ironing – 2 hours per week.
5. Shopping – 2 hours per week.

Exhibit 6. Appellants' daughter argued that both of her parents qualified for disability exceptions as part of their immigration documentation. Appellants' daughter emphasized that Appellant ■ was diagnosed with dementia and post-traumatic stress disorder (PTSD). Exhibit 6, Exhibit 7b at 2. Appellant ■ also has spondylosis with radiculopathy in her lumbar region which causes daily pain along with a hip injury. These conditions impact ■ ability to perform her daily tasks. Appellant ■ has been diagnosed with dementia and mild cognitive impairment which affects his ability to retain new information. Exhibit 6, Exhibit 7a at 2. Appellant ■ amputated right arm also inhibits his ability to perform tasks such as dressing.

Findings of Fact

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

1. Appellants are a married couple living together, over the age of [REDACTED] and enrolled in Respondent's PACE program.
2. Appellant [REDACTED] is in his [REDACTED] and has been diagnosed with dementia and associated memory loss and anxiety. Exhibit 7a at 2.
3. Appellant [REDACTED] has a history of a below-elbow right arm amputation. Exhibit 5a at 12.
4. Appellant [REDACTED] is in her early [REDACTED] and has been diagnosed with dementia, anxiety, major depressive disorder, insomnia, and PTSD. Exhibit 7b at 2.
5. Appellant [REDACTED] suffers from chronic low back pain due to lumbar spinal stenosis and has a standing tolerance of 10 minutes. Appellant LC also has diabetes. Exhibit 7b at 29.
6. Appellant [REDACTED] attends [REDACTED] twice per week from 9:00 AM – 1:00 PM.
7. Appellant [REDACTED] attends [REDACTED] three times per week from 9:00 AM – 1:00 PM.
8. At [REDACTED], Appellants are independent in getting in and out of transportation and toileting. They do recreational activities at the center including walking laps, using an exercise bike, having lunch, and playing bingo.
9. On February 11, 2025, Element Care received on Appellants' behalf an SDR to increase Appellants' weekly PCA hours. Appellants' representative sought an increase of PCA hours from 1 PCA hour per week for each parent (2 hours total in the home per week) to 21 PCA hours per week for each parent (42 hours total in the home per week) to reflect the time Appellants' daughter/PCA spends with her parents providing care.
10. On February 12, 2025, Respondent's OT performed an assessment. Regarding Appellant [REDACTED] Respondent's OT testified that Appellant [REDACTED] had muscle strength within functional limits and chronic lower back pain that ranges from 3 to 8 out of 10. Appellant [REDACTED] standing tolerance is 10 minutes and limited by lower back pain. She has good static and dynamic standing balance. Appellant [REDACTED] was independent in transferring in and out of the bathtub with grab bars and independent sitting and standing from her shower chair. She is able to independently transfer from the toilet, a chair, and the couch, between 15-19 inches. At the assessment, Appellant [REDACTED] was not comfortable demonstrating her ability to dress but was observed independently doffing and donning shoes and socks from a seated position. Exhibit

5b at 8.

11. Respondent determined that Appellant [REDACTED] required 2 hours of PCA assistance per week to assist with homemaking. Appellant [REDACTED] also received 2 hours every other week companion services for grocery shopping. Exhibit 5b at 2, 8.
12. Regarding Appellant [REDACTED] his standing tolerance is “10+ minutes” and he walks without a device. Appellant [REDACTED] is able to independently get in and out of the tub with grab bars and stands to shower. Appellant [REDACTED] reported that his daughter helps wash his back. Appellant [REDACTED] demonstrated that he can independently don and doff socks. Appellant [REDACTED] was independent for light meal preparation, as he was able to obtain an item from the refrigerator and prepare simple food. Exhibit 5a at 9.
13. On February 3 and 4, 2025, Respondent’s IDT documented that Appellant [REDACTED] requires assistance with daily morning care, including showers and hygiene, for 20 minutes 6 times per week, or 120 minutes. *Id.* at 8.
14. On February 12, 2025, Respondent’s OT wrote that based upon [REDACTED] functional status, 2 hours of PCA is appropriate for assistance, comprising of 15 minutes daily for upper body dressing and lower body dressing. Appellant [REDACTED] also receives companion every other week for 2 hours for grocery shopping. The records reflect that Appellant [REDACTED] assists with meal preparation. *Id.* at 8, 9, 11.
15. On February 14, 2025, Respondent notified Appellants that it would authorize 4 hours of PCA service per week. Appellant [REDACTED] was eligible for 2 PCA hours per week for homemaking. Appellant [REDACTED] was eligible for 2 PCA hours per week to assist with personal care. In addition, each Appellant receives 2 hours of companion service every other week for grocery shopping.
16. On March 20, 2025, Respondent held an internal appeal hearing on the IDT’s decision.
17. On March 21, 2025, Respondent sent a written denial of the internal appeal. Exhibit 1.
18. Appellants filed timely appeals on May 15 and 16, 2025. Exhibits 2a and 2b.
19. Appellant [REDACTED] was reevaluated on April 30, 2025. Respondent’s OT wrote that Appellant [REDACTED] receives 15 minutes of assistance daily for upper body dressing, and that his wife assists with meal preparation. Exhibit 5a at 13.

Analysis and Conclusions of Law

The Program of All-inclusive Care for the Elderly (PACE) is a federal program administered by state Medicaid agencies, including MassHealth, to provide a wide range of medical, social, recreational, and wellness services to eligible participants. The goal of PACE is to allow participants to live safely in their own residences as long as medically and socially feasible. 42 USC § 460.4(b). Federal and state regulations govern the PACE program.

According to MassHealth's regulations, the PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. 130 CMR 519.007(C)(1). As part of the PACE program,

- (a) A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.
- (b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).
- (c) Persons enrolled in PACE have services delivered through managed care
 - 1. in day-health centers;
 - 2. at home; and
 - 3. in specialty or inpatient settings, if needed.

In determining PACE eligibility, the applicant or member must meet all the following criteria:

- (a) be 55 years of age or older;
- (b) meet Title XVI disability standards if 55 through 64 years of age;
- (c) be certified by the MassHealth agency or its agent to be in need of nursing-facility services;
- (d) live in a designated service area;
- (e) have medical services provided in a specified community-based PACE program;
- (f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: *Asset Reduction*; and
- (g) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual.

130 CMR 519.007(C)(2). Additionally, the federal regulations set forth applicable eligibility criteria as follows:

- (a) General rule. To enroll in a PACE program, an individual must meet eligibility requirements specified in this section. To continue to be eligible for PACE, an

individual must meet the annual recertification requirements specified in § 460.160.

(b) Basic eligibility requirements. To be eligible to enroll in PACE, an individual must meet the following requirements:

(1) Be 55 years of age or older.

(2) Be determined by the State administering agency to need the level of care required under the State Medicaid plan for coverage of nursing facility services, which indicates that the individual's health status is comparable to the health status of individuals who have participated in the PACE demonstration waiver programs.

(3) Reside in the service area of the PACE organization.

(4) Meet any additional program specific eligibility conditions imposed under the PACE program agreement. These additional conditions may not modify the requirements of paragraph (b)(1) through (b)(3) of this section.

(c) Other eligibility requirements.

(1) At the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety.

(2) The State administering agency criteria used to determine if an individual's health or safety would be jeopardized by living in a community setting must be specified in the program agreement. (Emphasis added)

A PACE organization must “[e]stablish an interdisciplinary team ... at each PACE center to comprehensively assess and meet the individual needs of each participant.” 42 CFR § 460.102(a)(1). Generally, a PACE participant is entitled to all of the Medicare- and Medicaid-covered items and services that they would receive if not enrolled in the PACE plan, as set forth in 42 CFR § 460.92:

(a) The PACE benefit package for all participants, regardless of the source of payment, must include the following:

(1) All Medicare-covered services.

(2) All Medicaid-covered services, as specified in the State's approved Medicaid plan.

(3) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(b) Decisions by the interdisciplinary team to provide or deny services under paragraph (a) of this section must be based on an evaluation of the participant that takes into account:

(1) The participant's current medical, physical, emotional, and social needs; and

(2) Current clinical practice guidelines and professional standards of care applicable to the particular service.

The IDT is given broad latitude to assess a participant's needs for particular services. See 42 CFR §§ 460.102-460.106. They also have the authority to determine excluded services pursuant to 42

CFR § 460.96:

The following services are excluded from coverage under PACE:

- (a) Any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service.

42 CFR § 460.96.

The IDT must promptly develop a comprehensive plan of care for each participant. The plan of care must meet the following requirements:

- (i) The interdisciplinary team members specified in § 460.102(b) must develop, evaluate, and if necessary, revise a comprehensive person-centered plan of care for each participant.
- (ii) Each plan of care must do all of the following:
 - (A) Take into consideration the most current assessment findings.
 - (B) Identify the services to be furnished to attain or maintain the participant's highest practicable level of well-being.

42 CFR § 460.106(a).

MassHealth's regulations do not provide additional guidance regarding how an IDT is to review a participant's request for services or how an IDT's decision should be reviewed. See 130 CMR 519.007(C).

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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 requested services must also be medically necessary for prior authorization to be approved.

Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

(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.

MassHealth covers assistance with the following tasks under the PCA program (emphasis added):

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(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 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.

(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.

Under 130 CMR 422.412(C), MassHealth does not cover as part of the PCA program “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.”

At issue in this appeal is Respondent’s denial of Appellants’ request for an increase in PCA hours. Under 130 CMR 422.403(C)(3), in order to be eligible for MassHealth coverage of PCA hours, an individual must require hands-on assistance with at least two ADLs. Assistance needed in the form of supervision is not covered pursuant to 130 CMR 422.412(C).

Appellant ■

Appellant ■ request for additional PCA hours is denied. Appellant ■ has been determined to be independent with all ADLs by the IDT. Appellant’s daughter disputed this, arguing that Appellant ■ requires assistance with showering. Appellant’s daughter assists Appellant ■ with washing her back

and hair. Appellant's daughter also supervises Appellant so she does not fall in the shower. Even taking as true Appellant's daughter's testimony that Appellant requires some hands-on assistance with showering, this alone would not be sufficient to qualify Appellant for PCA services under the MassHealth regulations. As such, Appellant would not be eligible for an increase of assistance with IADLs. However, the IDT's determination that is eligible for 2 hours of PCA assistance per week for homemaking is upheld pursuant to 42 CFR § 460.92(a)(3).

Appellant

Appellant request for additional PCA hours is approved in part. According to the records, the IDT identified two ADLs for which Appellant requires assistance: bathing and dressing. Therefore, Appellant is eligible for PCA assistance under MassHealth's regulations.

On February 3 and 4, 2025, the IDT documented that Appellant requires assistance with bathing for 20 minutes, 6 times per week, for a total of 2 hours per week. On February 12, 2025, Respondent's OT wrote that based upon functional status, 2 hours of PCA is appropriate for assistance, comprising of 15 minutes daily for upper body dressing and lower body dressing. The IDT offered inconsistent testimony and evidence regarding Appellant ADL needs. Based on the IDT's records and testimony, Appellant requires 120 minutes per week to assist with bathing and 105 minutes per week to assist with dressing. Accordingly, this appeal is approved in part for a total of 225 minutes, or 3 hours and 45 minutes, per week for Appellant ADL needs.

Regarding Appellant IADL needs, this appeal is approved in part for assistance with meal preparation. The IDT wrote that Appellant is capable of "light" meal preparation, such as retrieving something from the refrigerator. The documentation notes that Appellant assists with meal preparation. However, given the undisputed evidence that Appellant has lumbar pain from spinal stenosis and standing tolerance of only 10 minutes, Appellants' daughter's testimony that she must assist with meal preparation is compelling. As both Appellant and are able to perform some of the meal preparation task, this appeal is approved in part to allow 30 minutes per day, or 3 hours and 30 minutes per week, of PCA assistance for meal preparation for Appellant. Regarding the request to increase time for assistance with the other IADLs, this appeal is denied pursuant to 130 CMR 422.410(C)(1) and (2), as the time approved for Appellant IADLs is to be shared between both Appellants.

Order for Respondent

For Appellant continue to authorize 2 hours per week for PCA assistance with IADLs.

For Appellant authorize a total of 7 hours and 15 minutes of weekly PCA hours.

The weekly total for PCA hours for both Appellants together will be 9 hours and 15 minutes.

This appeal does not impact the authorized 2 hours of biweekly grocery/companion assistance for each Appellant is offered as a separate service from the PCA request.


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 Element Care. 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.

Cynthia Kopka
Hearing Officer
Board of Hearings


Element Care, Attn: Carla Recinos, 37 Friend Street, Lynn, MA 01902