

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part	Appeal Number:	2209523
Decision Date:	2/1/2023	Hearing Date:	01/25/2023
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
Pro se with Power of Attorney

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

Appeal Decision:	Approved in part; Dismissed in part	Issue:	PCA Services
Decision Date:	2/1/2023	Hearing Date:	01/25/2023
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Pro se with Power of Attorney
Hearing Location:	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

Through a notice dated December 2, 2022, MassHealth modified Appellant's prior authorization request for personal care attendant services effective December 12, 2022 (130 CMR 422.410, 422.412, 450.204 and Exhibit 1). Appellant filed this appeal in a timely manner on December 22, 2022 (130 CMR 610.015(B) and Exhibit B). Appellant did not receive aid pending the outcome of the appeal (130 CMR 610.036). Modification of a request for assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified 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, 422.412, 450.204, in modifying Appellant's prior authorization request for personal care attendant services. A second issue is whether Appellant should have received aid pending protection until the outcome of the appeal.

Summary of Evidence

Through a notice dated December 2, 2022, MassHealth notified Appellant that his prior authorization request for Personal Care Attendant services was modified from 28.25 day/evening hours requested and approved for the previous prior authorization period to 23.5 day/evening hours effective December 12, 2022 (Exhibit 3, pp. 3-6). Appellant requested and was approved for 2 nighttime hours. Modifications were made in the following areas: mobility, medication box prefill, medication administration, shaving, meal preparation, and housekeeping. After testimony and review of each modification at hearing, the parties agreed to 24.5 day/evening PCA hours and 2 nighttime hours per week. MassHealth testified that aid pending protection was not allowed because the request for an appeal was submitted outside timelines for aid pending, and the changes in PCA hours would be effective December 12, 2022.

Appellant's representative testified that Appellant continued to utilize 28.25 PCA hours during the pendency of the appeal and paid the PCA accordingly. Appellant's representative stated that Appellant should have received aid pending the outcome of the appeal because he timely filed an appeal of the December 2, 2022 notice. Appellant's representative testified that the December 2, 2022 notice was received by Appellant on December 15, 2022, and noted that the notice was not mailed by MassHealth until December 12, 2022 which is the same date the reduction in hours went into effect (Exhibit 3, p. 11). Appellant's representative testified that he submitted a request for an appeal on December 21, 2022 which is within 10 days of receipt of the notice; therefore 28.25 PCA hours should have been allowed during the pendency of the appeal.

Findings of Fact

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

1. Through a notice dated December 2, 2022, MassHealth notified Appellant that his prior authorization request for Personal Care Attendant services was modified from 28.25 day/evening hours requested to 23.5 day/evening hours effective December 12, 2022.
2. Appellant was approved for 2 nighttime hours as requested.
3. Modifications were made in the following areas: mobility, medication box prefill, medication administration, shaving, meal preparation, and housekeeping. After testimony and review of each modification at hearing, the parties agreed to 24.5 day/evening PCA hours per week.
4. MassHealth implemented the change to 24.5 day/evening PCA hours effective December 12, 2022.
5. Appellant continued to utilize 28.25 PCA hours during the pendency of the appeal.
6. The December 2, 2022 notice was mailed by MassHealth on December 12, 2022.

7. The December 2, 2022 notice was received by Appellant on December 15, 2022.
8. Appellant's PCA hours were reduced to 23.5 hours effective December 12, 2022.
9. Appellant's request for an appeal was received by the Board of Hearings on December 22, 2022.

Analysis and Conclusions of Law

Through a notice dated December 2, 2022, MassHealth notified Appellant that his prior authorization request for Personal Care Attendant services was modified from 28.25 day/evening hours requested to 23.5 day/evening hours effective December 12, 2022. Modifications were made in the following areas: mobility, medication box prefill and medication administration, shaving, meal preparation, and housekeeping. After testimony and review of each modification at hearing, the parties agreed 24.5 day/evening PCA hours were medically necessary. As the parties reached agreement regarding modifications to time requested for day/evening PCA hours, the issues are DISMISSED (130 CMR 610.051(B), 610.035(A)(8)).

Regarding the continuation of authorization for 28.25 day/evening PCA hours during the pendency of the appeal, regulation 130 CMR 610.036 states in relevant part:

(A) When the appealable action involves the reduction, suspension, termination, or restriction of assistance, such assistance will be continued until the Board of Hearings decides the appeal or, where applicable, the rehearing decision is rendered if the Board of Hearings receives the initial request for the fair hearing before the implementation date of the appealable action. ***If such appealable action was implemented before a timely request for a hearing, such assistance will be reinstated if the Board of Hearings receives the request for the fair hearing within 10 days of the mailing of the notice of the appealable action.*** If the hearing officer's decision is adverse to the appellant, the appealable action will be implemented immediately, except as provided in 130 CMR 610.091 (Emphasis added).

Through a notice dated December 2, 2022, MassHealth notified Appellant that his prior authorization request for Personal Care Attendant services was modified from 28.25 day/evening hours to 23.5 day/evening hours effective December 12, 2022. In the absence of evidence or testimony to the contrary, it will be presumed that a notice was received by an appellant on the fifth day after the date of the notice, regardless of whether the fifth day after the date of the notice falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed (130 CMR 610.015(C)(2)). Here, Appellant has shown by postmark that the December 2, 2022 notice was mailed by MassHealth on December 12, 2022, and received by Appellant on December 15, 2022 (Exhibit 3, p. 11). The evidence also shows that Appellant sent his request for an appeal to the Board of Hearings on December 21, 2022 with a time stamp on Appellant's fax showing that the appeal request was sent at 11:56 p.m., which is outside normal business hours (Exhibit 3, p.1). The Board of Hearings determined the date of receipt of the appeal request as December 22, 2022,

which is within 10 days of the December 12, 2022 mailing date of the December 2, 2022 notice. Therefore, the appeal is APPROVED in that Appellant's PCA hours are reinstated to 28.5 day/evening hours effective December 12, 2022 through the date of receipt of this hearing decision.

Order for MassHealth

Reinstate authorization for 28.25 day/evening PCA hours effective December 12, 2022. Upon receipt of this hearing decision, change Appellant's day/evening PCA hours to 24.5 day/evening hours as agreed to by the parties at hearing.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

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

