

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2306403
<b>Decision Date:</b>	10/17/2023	<b>Hearing Date:</b>	09/27/2023
<b>Hearing Officer:</b>	Patricia Mullen		

**Appearance for Appellant:**

, mother

**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

<b>Appeal Decision:</b>	Dismissed	<b>Issue:</b>	Personal Care Attendant services
<b>Decision Date:</b>	10/17/2023	<b>Hearing Date:</b>	09/27/2023
<b>MassHealth's Rep.:</b>	Donna Burns, RN, Optum	<b>Appellant's Rep.:</b>	Mother
<b>Hearing Location:</b>	Quincy Harbor South		

### 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 June 28, 2023, MassHealth informed the appellant that on August 27, 2023, MassHealth will be combining day/evening and night hours for all consumers in the personal care attendant (PCA) program, and starting on August 27, 2023, the appellant can schedule PCAs to work at any time of the day or night, as long as the authorized weekly hours are not exceeded; the notice states further that the appellant's previously authorized weekly PCA hours will not be changing. (Exhibit 1). The appellant filed this appeal in a timely manner on July 28, 2023, disputing a modification in PCA hours made by MassHealth in a notice dated May 4, 2023. (see 130 CMR 610.015(B) and Exhibit 2). The MassHealth representative testified that MassHealth modified a request for PCA services for the appellant by notice dated May 4, 2023. The MassHealth representative stated that the June 28, 2023 notice was simply informing the appellant of a change in MassHealth policy in that now PCA day/evening and night hours could be combined.

The appellant is a minor child and was represented telephonically by his mother at the hearing. The appellant's mother verified the appellant's identity. The appellant's mother stated that the appellant only has day/evening PCA hours and does not have any night hours, thus the change in policy does not affect the appellant. The appellant's mother stated that she did not appeal the May 4, 2023 notice earlier because she wanted to discuss the changes with the appellant's doctor. Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on

which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

- (1) 60 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing.

(130 CMR 610.015(B)(1)).

#### Dismissal of a Request for a Hearing

(A) BOH will dismiss a request for a hearing when

- (1) the request is not received within the time frame specified in 130 CMR 610.015;...
- (3) the sole issue is one of state or federal law requiring automatic change in assistance for classes of members;

(130 CMR 610.035(A)(1), (3)).

The appellant is appealing a MassHealth notice dated May 4, 2023. It is presumed that the notice was received on May 9, 2023. (130 CMR 610.015(B)(1)). 60 days after May 9, 2023 is July 8, 2023. BOH received the appellant's appeal on July 28, 2023 and thus the appeal was not received within the time frame specified in 130 CMR 610.015. Accordingly the appeal is dismissed pursuant to 130 CMR 610.035(A)(1)).

## Order for MassHealth

None.

## 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.

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Patricia Mullen  
Hearing Officer  
Board of Hearings

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

