

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2307539
Decision Date:	11/21/2023	Hearing Date:	10/18/2023
Hearing Officer:	Christine Therrien	Record Open to:	11/15/2023

Appearance for Appellant:




Appearance for MassHealth:

Robin Brown, OT, Clinical Appeals Reviewer



*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:	Dismissed	Issue:	PCA
Decision Date:	11/21/2023	Hearing Date:	10/18/2023
MassHealth's Rep.:	Robin Brown, OT	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South - Virtual	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 8/10/23, MassHealth notified the appellant of two prior notifications now combined into one notice as a text correction.¹ The appellant filed this appeal on 8/23/23. (130 CMR 610.015(B), 130 CMR 422.417(B)(1), and Exhibit 2).² The appellant's attorney argued that the 8/10/23 notice was an action by MassHealth and therefore should receive aid pending. The

¹ The notice on appeal states: MassHealth has modified your prior authorization for PCA services due to a MassHealth error in the message text. Corrected message is as follows: Approval is contingent upon the discontinuation of VNA services provided by Maxim. On 8/27/23, MassHealth will be combining day/evening and night hours for all Consumers in the PCA program. This change is being made to give you more flexibility when scheduling your PCA(s). Starting on 8/27/23, you will be authorized for 88 hours and 0 minutes per WEEK. 88 hours and 0 minutes per WEEK is the combination of your currently approved day/evening hours and night hours. Starting on 8/27/23, you can schedule your PCA(s) to work at any time of the day or night, as long as you do not exceed your authorized weekly hours. You must still follow ALL program rules, including overtime rules, after the change happens. Please contact your PCM agency with any questions

² 130 CMR 422.417(B)(1) If the MassHealth agency denies or modifies a prior authorization request for PCA services, the MassHealth agency will send written notice to the member...The notice will state the reason for the denial or modification and will inform the member of the right to appeal and of the appeal procedure.

BOH determined there was no aid pending because there was no MassHealth action. (Exhibit 2, p.2).

130 CMR 610.032 defines the grounds for appeal.

(A) Applicants and members have a right to request a fair hearing for any of the following reasons:

- (1) denial of an application or request for assistance, or the right to apply or reapply for such assistance;
- (2) the failure of the MassHealth agency to give timely notice of action on an application for assistance in accordance with the requirements of M.G.L. c. 118E, § 21;
- (3) any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance;
- (4) MassHealth agency actions to recover payments for benefits to which the member was not entitled at the time the benefit was received;
- (5) individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations);
- (6) coercive or otherwise improper conduct as defined in 130 CMR 610.033 on the part of any MassHealth agency employee directly involved in the applicant's or member's case;
- (7) any condition of eligibility imposed by the MassHealth agency for assistance or receipt of assistance that is not authorized by federal or state law or regulations;
- (8) the failure of the MassHealth agency to act upon a request for assistance within the time limits required by MassHealth regulations;
- (9) the MassHealth agency's determination that the member is subject to the provisions of 130 CMR 508.000: MassHealth: Managed Care Requirements;
- (10) the MassHealth agency's denial of an out-of-area provider under 130 CMR 508.003(A)(2);
- (11) the MassHealth agency's disenrollment of a member from a managed care provider under 130 CMR 508.003: Enrollment with a MassHealth Managed Care Provider;
- (12) the MassHealth agency's denial of a member's request to transfer out of the member's MCO, ACPP, or Primary Care ACO under 130 CMR 508.003: Enrollment with a MassHealth Managed Care Provider;
- (13) the MassHealth agency's determination to enroll a member in the Controlled Substance Management Program under the provisions of 130 CMR 406.442: Controlled Substance Management Program; and
- (14) the MassHealth agency's determination of eligibility for low-income subsidies under Medicare Part D, as set forth in the Medicare Prescription Drug and Improvement and Modernization Act of 2003 as described in federal regulations at 42 CFR Part 423, Subpart P.

Notification of a messaging error that did not change previous determinations is not a valid ground for appeal. (130 CMR 610.032).³ Therefore this appeal is dismissed.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

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

³ On 6/15/23 MassHealth notified the appellant MassHealth approved the appellant's Prior Authorization (PA) contingent on the discontinuation of VNA services through MAXIM. MassHealth requested an updated 485 form from the nursing agency to help clarify areas of overlap in the care being provided by the nurse and the care requested to be provided by the PCA. MassHealth modified the appellant's PA request for personal care attendant (PCA) services from the requested 91 hours of day/evening PCA assistance per week, and 2 nighttime hours per night to 74 hours of day/evening PCA assistance per week, and 2 nighttime hours per night. On 7/13/23 MassHealth notified the appellant of the same modification as the 6/15/23 notice but included the modifications: repositioning 2x10x7, PROM 0x0, bladder care, (leg repositioning not foley catheter placement) 10x6x7 and, bleach bath 0x0. On 8/4/23 MassHealth notified the appellant that MassHealth will be combining day/evening and night hours for all Consumers in the PCA program. Starting 8/27/23, the appellant will be authorized for 88 hours per week. (Exhibit 1).