

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2400330
<b>Decision Date:</b>	3/15/2024	<b>Hearing Date:</b>	2/02/2024
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Rayen, RN


**Interpreter:**

N/A



*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>	Denied	<b>Issue:</b>	PCA Prior Authorization, Modification
<b>Decision Date:</b>	3/15/2024	<b>Hearing Date:</b>	2/02/2024
<b>MassHealth's Rep.:</b>	Kelly Rayen, RN	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (Tel)	<b>Aid Pending:</b>	Yes

### 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 27, 2023, MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services to cover paperwork was prohibited by the Regulations because the Appellant has a surrogate. (See 130 CMR 422.402. 130 CMR 410(C)(1) and Exhibit 1). The Appellant filed this appeal in a timely manner on January 7, 2024. (see 130 CMR 610.015(B)). A decision regarding the scope or amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth modified the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services to cover paperwork was prohibited by the Regulations because the Appellant has a surrogate. (See 130 CMR 422.402. 130 CMR 410(C)(1) and Exhibit 1).

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.402 and 130 CMR 422.410(C)(1), in modifying the Appellant's prior authorization for personal care attendant (PCA) services because MassHealth determined that the Appellant's request for PCA services to cover paperwork was prohibited by the Regulations because the Appellant has a surrogate.

## Summary of Evidence

The Appellant is a MassHealth member over the age of 65 who has been receiving PCA services. (Testimony) On December 7, 2023, MassHealth received a prior authorization request for renewal of services sent by [REDACTED], the Appellant's Personal Care Management (PCM) Agency. (Testimony, Exhibit 1) The Appellant's primary diagnoses include Insulin Dependent Diabetes, Sciatica, Memory Loss, Melanoma, four Herniated Discs, Depression, as well as other diagnoses. (Testimony, Exhibit 6, pg. 6) On December 27, 2023, MassHealth made one modification to the Appellant's request for prior authorization for PCA services, denying 15 minutes for paperwork because MassHealth determined that the Appellant's request for PCA services to cover paperwork was prohibited by the Regulations because the Appellant has a surrogate. (See 130 CMR 422.402. 130 CMR 410(C)(1) and Exhibit 1).

MassHealth, represented by a nurse from Optum, testified that the request was denied because the Appellant has a surrogate, who testified at the Hearing. (Testimony). MassHealth explained that paperwork was to be completed by a surrogate who is responsible for performing certain PCA management tasks that the member is unable or unwilling to perform pursuant to the Regulations. (Testimony, 130 CMR 420.402)

The Appellant, after being identified and sworn, requested that his surrogate testify on his behalf. (Testimony). The Appellant's surrogate testified that the Appellant had received the requested time in the past. (Testimony) The Appellant's surrogate testified that she performs her part and she approves the electronic paperwork that the PCA completes. (Testimony). The Appellant's surrogate testified that they wished to keep the Appellant's PCA happy and wanted the time reinstated. The Appellant's surrogate testified that the requested allotment is regularly decreased, and then they file an appeal. (Testimony)

MassHealth testified that the purpose of the PCA program is provide hands on aid to a member. MassHealth stated that the current allotment of time is an increase from the Appellant's last request. (Testimony) The Appellant's surrogate testified that they had received the allotment for paperwork in the past, however, MassHealth was unable to find documentation to support the Appellant's surrogate's testimony. (Testimony). MassHealth testified that in 2022, no request for time for task for paperwork was submitted. (Testimony). When asked whether the Appellant's surrogate was able to perform the paperwork, the Appellant's surrogate reiterated her prior testimony. (Testimony) No resolution related to the

modification was reached.

## **Findings of Fact**

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

1. The Appellant is a MassHealth member over the age of 65 who has been receiving PCA services. (Testimony)
2. The Appellant's primary diagnoses include Insulin Dependent Diabetes, Sciatica, Memory Loss, Melanoma, four Herniated Discs, Depression, as well as other diagnoses.
3. On December 27, 2023, MassHealth made one modification to the Appellant's request for prior authorization for PCA services, denying 15 minutes for paperwork because MassHealth determined that the Appellant's request for PCA services to cover paperwork was prohibited by the Regulations because the Appellant has a surrogate. (See 130 CMR 422.402. 130 CMR 410(C)(1) and Exhibit 1).
4. MassHealth explained that paperwork was to be completed by a surrogate is responsible for performing certain PCA management tasks that the member is unable or unwilling to perform pursuant to the Regulations. (Testimony, 130 CMR 420.402)
5. The Appellant's surrogate testified that they wished to keep the Appellant's PCA happy and wanted the time reinstated. The Appellant's surrogate testified that the requested allotment is regularly decreased, and then they file an appeal. (Testimony)
6. The Appellant's surrogate testified that they had received the allotment for paperwork in the past, however, MassHealth was unable to find documentation to support the Appellant's surrogate's testimony. (Testimony). MassHealth testified that in 2022, no request for time for task for paperwork was submitted. (Testimony).
7. When asked whether the Appellant's surrogate was able to perform the paperwork, the Appellant's surrogate reiterated her prior testimony. (Testimony)

## **Analysis and Conclusions of Law**

Personal Care Assistant services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

- (A) A service is "medically necessary" if:

(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.

(B) Medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(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/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 PCA 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 PCM 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 PCA 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. (Emphasis added.)

Additionally, the Definition Section of the Regulation, codified in 130 CMR 422.402, defines surrogate:

Surrogate - the member's legal guardian, a family member, or other person as identified in the service agreement, who is responsible for performing certain PCA management tasks that the member is unable or unwilling to perform.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998).

Here, the Appellant has not met his burden, by a preponderance of evidence, that MassHealth's administrative determination is invalid. Specifically, MassHealth testified that the requested time was generally performed by a surrogate. (Testimony, 130 CMR 422.402) The

definition of surrogate indicates a surrogate is responsible for performing certain PCA management tasks that the member is unable or unwilling to perform. (130 CMR 422.402) The Appellant's surrogate is named within the submission and testified at the Hearing. (Testimony) Exhibit 6, pg. 32) When asked, the surrogate provided no evidence as to why she would be unable to perform the task of paperwork. (Testimony).

Based upon the Record in the instant appeal, the Appellant has not met his burden, by a preponderance of evidence, that MassHealth's administrative determination is invalid. According, this appeal is DENIED.

## **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.

## **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.

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Patrick Grogan  
Hearing Officer  
Board of Hearings

cc:

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