

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2413161
<b>Decision Date:</b>	11/4/2024	<b>Hearing Date:</b>	10/01/2024
<b>Hearing Officer:</b>	Marc Tonaszuck		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Robin Brown, OTR/L, 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>	Denied	<b>Issue:</b>	Prior Authorization – Personal Care Attendant (PCA) Services
<b>Decision Date:</b>	11/4/2024	<b>Hearing Date:</b>	10/01/2024
<b>MassHealth's Rep.:</b>	Robin Brown, OTR/L, Optum	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	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 07/10/2024, MassHealth informed the appellant that it planned to terminate her personal care attendant (PCA) services on 07/23/2024 because she failed to cooperate with her PCA management agency, Ethos, to schedule a meeting or to notify Ethos of a change of in address and/or telephone number (130 CMR 422.420(A) and (B)(1); Exhibit 1). The appellant filed a timely appeal on 08/26/2024 (130 CMR 610.015; Exhibit 2). Termination of assistance is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth terminated the appellant's PCA services on 07/23/2024.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.420(A) and (B)(1), in determining that not eligible for PCA services.

## Summary of Evidence

MassHealth was represented in these proceedings by Robin Brown, OTR/L, who works for Optum, the MassHealth contractor that makes PCA decisions for MassHealth. She testified that the appellant is an adult woman who suffers from chronic pain following two motor vehicle accidents, one in 2019, and another 2021. In June 2023, the appellant was approved for 37 hours and 30 minutes per week of MassHealth PCA services, plus two daily night-time hours, totaling 51 hours and 30 minutes per week of PCA services for dates of service from 06/16/2023 to 06/15/2024. On 06/03/2024, MassHealth received a request to extend the dates of service to 07/15/2024. MassHealth approved the request.

On 06/10/2024, Ethos, the PCA management agency sent a letter to the appellant informing her that she was required to contact the agency for a re-evaluation of services. The appellant failed to contact Ethos or provide Ethos with an updated address and telephone number. On 07/09/2024, MassHealth informed the appellant that according to Ethos, she failed to “maintain a meeting with your PCA agency,” and MassHealth planned to terminate her PCA services on 07/23/2024 for failing to cooperate with the MassHealth PCA agency.

The appellant appeared telephonically at the fair hearing with a friend. The appellant testified that she suffers from chronic pain syndrome after a car accident in 2019. She stated that she was “definitely unaware of this.” The appellant testified that she was recently hospitalized and then lived at her mother’s home afterwards. She stated that she did not know how she was supposed to keep up with this matter when she could “barely walk.” She concluded that she “didn’t know what to do.”

## Findings of Fact

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

1. The appellant is an adult MassHealth member who lives in the community.
2. The appellant suffers from chronic pain following two motor vehicle accidents, one in 2019, and another 2021.
3. In June 2023, the appellant was approved for 37 hours and 30 minutes per week of PCA services, plus two daily night-time hours, totaling 51 hours and 30 minutes per week of PCA services for dates of service from 06/16/2023 to 06/15/2024.
4. On 06/03/2024, MassHealth received a request to extend the dates of service to 07/15/2024.

5. MassHealth approved the request to extend services to 07/15/2024.
6. On 06/10/2024, Ethos, the PCA management agency sent a letter to the appellant informing her that she was required to contact the agency for a re-evaluation of services.
7. The appellant failed to contact Ethos for the re-evaluation or provide Ethos with an updated address and telephone number.
8. On 07/09/2024, MassHealth informed the appellant that according to Ethos, she failed to “maintain a meeting with your PCA agency,” and MassHealth planned to terminate her PCA services on 07/23/2024 for failing to cooperate with the MassHealth agency.
9. MassHealth terminated the appellant’s PCA services on 07/23/2024.
10. As of the date of the fair hearing, the appellant provided no evidence that she has been in contact with her PCA agency.

## **Analysis and Conclusions of Law**

MassHealth regulations at 130 CMR 422.420 address member responsibilities as they related to the MassHealth PCA Program:

(A) As a condition of receiving MassHealth PCA services, the member must:

- (1) complete and sign the standard consumer agreement supplied by the fiscal intermediary;
- (2) complete and sign all employment forms required by the fiscal intermediary; and
- (3) complete and sign activity forms and submit them to the fiscal intermediary in the form and format as required by the MassHealth agency, including through the use of EVV, and in accordance with the instructions provided and time frame specified by the fiscal intermediary or the MassHealth agency;
- (4) ensure that information submitted on the activity forms for each pay period correctly identifies who provided the PCA services, and the correct hours and dates that the PCA services were provided; and
- (5) employ and schedule for PCA services in the following manner:
  - (a) employ PCAs for no more than the number of PCA hours authorized by the MassHealth agency in accordance with 130 CMR 422.416(E), and only to provide physical assistance with ADLs and IADLs as described in the personal care attendant evaluation submitted by the PCM agency and authorized by the MassHealth agency;
  - (b) not schedule an individual PCA to work in excess of the weekly hour limit, unless

- authorized to schedule a PCA to work additional overtime hours pursuant to 130 CMR 422.418(A); and
- (c) schedule PCAs and coordinate with PCAs to use EVV as required by the MassHealth agency and pursuant to 130 CMR 422.419(C)(5).
- (6) hire, terminate, schedule, and train PCAs;
- (7) employ PCAs who meet the requirements of 130 CMR 422.404(A)(1);
- (8) inform PCAs of PCA program requirements, including the requirement to use EVV as required by the MassHealth agency and pursuant to 130 CMR 422.419(C)(5), and the requirement to have PCA payments direct deposited into the PCA's bank account;
- (9) ***cooperate with the MassHealth agency and the PCM agency during assessments, evaluations, and reevaluations;***
- (10) notify the fiscal intermediary of the date of hire and the date of termination of the member's personal care attendants and of a personal care attendant's change of address;
- (11) ***notify the MassHealth agency and the fiscal intermediary of the member's change of address and telephone number, if any;***
- (12) ***notify the PCM agency when there is a change in the member's medical condition or living situation that may require an adjustment in the number of PCA hours per week authorized by the MassHealth agency;***
- (13) contact the PCM agency to request authorization to schedule an individual PCA to work in excess of the weekly hour limit according to conditions described in 130 CMR 422.418(A)(2)(c);
- (14) contact the PCM agency to request payment for juror service for a PCA in accordance with 130 CMR 422.418(B);
- (15) contact the PCM agency to request authorization to schedule an individual PCA to work in excess of the weekly hour limit according to conditions described in 130 CMR 422.418(A)(2)(a) and (b);
- (16) work with the PCM agency to establish and maintain a current list of available PCAs, who can be contacted when an unforeseen event occurs that prevents the member's regularly scheduled PCA from providing PCA services;
- (17) ***work with the fiscal intermediary and the PCM agency to resolve any issues or complaints;***
- (18) review and sign the evaluation or reevaluation prepared by the PCM agency in accordance with 130 CMR 422.422(C) and (D);
- (19) comply with all applicable state and federal labor laws including, but not limited to, federal and state child labor laws;
- (20) comply with all applicable MassHealth regulations;
- (21) participate in functional skills training as required by the MassHealth agency including, but not limited to, participating in in-person comprehensive functional skills training on at least a quarterly basis during the first year of approved PCA services and at least annually thereafter, and other functional skills training as applicable in accordance with 130 CMR 422.421(B)
- (22) if assessed by the PCM Agency to require a surrogate or administrative proxy in

accordance with 130 CMR 422.422(A)(1)(b), locate and appoint a surrogate or administrative proxy to assist the member in performing the PCA management tasks or related administrative functions that the member is unable or unwilling to perform as described in the service agreement in accordance with 130 CMR 422.423(A)(1) and (2). In appointing a surrogate or administrative proxy, the member must select a surrogate or administrative proxy who is not the member's PCA or an employee or contractor of the member's PCM agency or fiscal intermediary, and who must live in proximity to the member and be readily available to perform the tasks described in the service agreement. A member may not appoint both a surrogate and an administrative proxy; and (23) cooperate with the MassHealth agency, the PCM agency, and the Fiscal Intermediary for the implementation and use of EVV.

(B) The MassHealth agency reserves the right to:

(1) ***terminate PCA services if a member fails to comply with any of the requirements listed in 130 CMR 422.420(A);***

(2) terminate PCA services if a member's surrogate becomes unavailable, or the MassHealth agency requires the member to replace the current surrogate, and another surrogate cannot be identified within 30 days of the PCM agency's notification to the member and the MassHealth agency in accordance with 130 CMR 422.422(B);

(3) require a member who is receiving PCA services to obtain a surrogate or administrative proxy to continue to receive PCA services if the PCM agency or the MassHealth agency determines, based on an assessment conducted in accordance with 130 CMR 422.422(A), that the member is not able to manage the PCA program independently. The MassHealth agency will terminate PCA services if the member does not obtain a surrogate or administrative proxy within 30 calendar days of the date of the PCM agency's assessment, and the PCM agency will refer the member to an appropriate service provider;

(4) require a member to replace the surrogate or administrative proxy if the surrogate or administrative proxy is not performing PCA tasks on behalf of the member in accordance with MassHealth regulations and after intervention from a skills trainer pursuant to 130 CMR 422.419(A)(17)(g); and

(5) recover costs of overtime from the member for any activity time scheduled by a member and performed by an individual PCA that is in excess of the weekly hour limit without an authorization from the MassHealth agency for the member pursuant to 130 CMR 422.418(A)

***(Emphasis added.)***

The appellant, an adult MassHealth member living in the community, applied for and was determined eligible for MassHealth PCA services in June 2023 for a period of one year. The PCA dates of services was to terminate on 06/15/2024; however, the PCA agency submitted a request for an extension of time to conduct the annual re-evaluation/assessment. MassHealth approved the request and the PCA period was extended until 07/15/2024. On 06/10/2024, Ethos, the PCA

management agency sent a letter to the appellant informing her that she was required to contact the agency for a re-evaluation of services.

The appellant failed to contact Ethos or provide Ethos with an updated address and telephone number. On 07/09/2024, MassHealth informed the appellant that according to Ethos, she failed to “maintain a meeting with your PCA agency,” and MassHealth planned to terminate her PCA services on 07/23/2024 for failing to cooperate with the MassHealth agency. MassHealth terminated the appellant’s PCA services on 07/23/2024.

At the fair hearing, the appellant stated that she had recently been hospitalized and when she was discharged, she moved to her mother’s residence. She claimed she was “unaware,” and “didn’t know what to do.” The appellant provided no evidence that after receiving the letters from her PCA agency and from MassHealth, she made any efforts to schedule and participate in the annual PCA evaluation. In fact, the appellant provided no evidence that she has been in contact with her PCA agency. Accordingly, MassHealth’s termination of the appellant’s PCA services is supported by the regulations and the facts in the hearing record. This appeal is therefore 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.

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Marc Tonaszuck  
Hearing Officer  
Board of Hearings

cc: [REDACTED]

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