

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

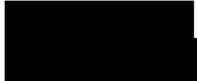
**Appeal Number:** 2416018

**Decision Date:** 1/6/2025

**Hearing Date:** 11/21/2024

**Hearing Officer:** David Jacobs

**Appearances for Appellant:**



Appellant  
PCA

**Appearances for MassHealth:**

Donna Burns, RN  
Carlos Mendez-Saravia, Assistant Manager  
Mike Diggins, Special Projects Manager



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Service Termination (PCA Services)
<b>Decision Date:</b>	1/6/2025	<b>Hearing Date:</b>	11/21/2024
<b>MassHealth Rep:</b>	Donna Burns, Carlos Mendez-Saravia, Mike Diggins	<b>Appellant Rep:</b>	[REDACTED]
<b>Hearing Location:</b>	Board of Hearings (Remote)	<b>Aid Pending:</b>	No

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through notice dated September 18, 2024, MassHealth terminated the appellant's participation in the PCA (Personal Care Attendant) program due to filing fraudulent timesheets (130 CMR 450.303) (Exhibit 1). The appellant filed a timely appeal on October 18, 2024. (Exhibit 2 and 130 CMR 610.015(B)). A termination of access to PCA services is a valid basis for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth terminated the appellant's ability to participate in its PCA program.

### Issue

The appeal issue is whether MassHealth's action to terminate the appellant's participation in its PCA program is supported by regulation.

## Summary of Evidence

On September 18, 2024, MassHealth issued a notice to the appellant which states in part:

“EOHHS is issuing this Notice because you submitted timesheets for your PCA [REDACTED] while he was incarcerated. Records from the [REDACTED] County Sheriff’s Office show that your PCA was incarcerated between [REDACTED] 2024 and [REDACTED] 2024, but you continued to submit timesheets on behalf of your PCA for dates of service during the incarceration.

Pursuant to 130 CMR 450.261, all members and providers must comply with all federal and state laws and regulations prohibiting fraudulent acts and false reporting, specifically including but not limited to 42 U.S.C. 1320a-7b. Additionally, as a condition of receiving PCA services, all members must comply with all applicable regulations, including the prohibition against false claims and false reporting. 130 CMR 422.420(A)(20)[sic]. MassHealth reserves the right to terminate any member’s participation in the PCA program for failure to comply with applicable regulations. 130 CMR 422.420(B)(1)[sic].” (Exhibit 5, pg. 3)

Donna Burns, Mike Diggins, and Carlos Mendez-Saravia appeared telephonically on behalf of MassHealth with Mr. Mendez-Saravia primarily speaking for MassHealth. He testified that as part of MassHealth’s regular fraud prevention efforts, MassHealth received a residency letter from [REDACTED] County Jail that the appellant’s PCA, [REDACTED] was incarcerated there between [REDACTED] 2024 and [REDACTED] 2024 (Exhibit 5, pg. 54). During the period of March 31, 2024 to June 22, 2024, timesheets were submitted showing that [REDACTED] performed PCA services for the appellant during those dates (Exhibit 5, pgs. 55-60). As such, MassHealth found those timesheets to be fraudulent and terminated the appellant from the PCA program pursuant 130 CMR 422.420 and 130 CMR 450.261.

The appellant and his PCA, [REDACTED] appeared telephonically with [REDACTED] primarily speaking for the appellant. [REDACTED] emphatically denied the allegations made by MassHealth and argued that the residency letter submitted by MassHealth is incorrect. He concedes that he was involved with the police in the past but testified that he was not incarcerated between [REDACTED] 2024 and [REDACTED] 2024. He was working as the appellant’s PCA as referenced in the submitted time sheets. The appellant fully supported [REDACTED] version of events. [REDACTED] argued that his identity may have been stolen or these actions are part of a larger conspiracy to deny him payment for past-due PCA services which he is currently fighting with his management company about. He argues that the management company will use a finding of fraud to absolve itself from having to pay him.

The hearing officer left the record open until December 19, 2024 for both parties to submit documents (Exhibit 9). The Board of Hearings prepared a subpoena for MassHealth to serve on the [REDACTED] County jail for any documents related to the alleged incarceration of [REDACTED] between [REDACTED] 2024 and [REDACTED] 2024 (Exhibits 9 and 10). [REDACTED] was given an opportunity to submit any documents in his possession that would verify that he was not incarcerated during the dates at issue (Exhibit 9).

On December 4, 2024, [REDACTED] submitted bank receipts and statements showing regular activity on an account bearing [REDACTED] name between March 15, 2024 and June 15, 2024 (Exhibit 11). His documents also included a request for a subpoena to further investigate the matter; this request was denied by the hearing officer on the basis that it was vague and did not identify difficulties obtaining any specific documents (Exhibits 13 and 14).<sup>1</sup>

On December 11, 2024, MassHealth submitted a response by the [REDACTED] County Jail with a notarized affidavit by [REDACTED] captain of the [REDACTED] County Jail, confirming the contents of the Residency Letter and including a photo taken of [REDACTED] while he was incarcerated (Exhibit 12).

On December 16, 2024, [REDACTED] submitted a response to the affidavit challenging the signature of the notary on the documents (Exhibit 15). He argues that the notary's signature on the cover page differed from the signature on the affidavit (Exhibit 15).

## Findings of Fact

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

1. The appellant is a male over the age of 65 that was approved for service through MassHealth's PCA program with effective dates of October 24, 2023 to October 18, 2024.
2. Timesheets were submitted for the appellant's PCA, [REDACTED] from March 31, 2024 to June 22, 2024 for PCA services performed.
3. [REDACTED] was incarcerated at [REDACTED] County Jail from [REDACTED] 2024 to [REDACTED] 2024.
4. [REDACTED] did not perform the PCA services that were identified on timesheets submitted for the period of April 2, 2024 through June 14, 2024.
5. On September 18, 2024, the appellant received a notice from MassHealth terminating him from the PCA program due to filing fraudulent time sheets on behalf of his PCA, [REDACTED].
6. On October 18, 2024, the appellant appealed the notice.

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<sup>1</sup> Subpoena requests are granted at the discretion of the hearing officer pursuant to 130 CMR 610.052(B).

## Analysis and Conclusions of Law

This action concerns MassHealth's decision to terminate the appellant from its PCA program. MassHealth argues that the appellant submitted fraudulent timesheets, which it found is a basis for termination. The appellant argues that he has not taken part in any fraudulent acts.

130 CMR 422.420 provides:

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

130 CMR 450.261 provides:

All members and providers must comply with all federal and state laws and regulations prohibiting fraudulent acts and false reporting, specifically including but not limited to 42 U.S.C. 1320a-7b. Providers shall also promptly notify the MassHealth agency if it suspects a member is not eligible to receive MassHealth or someone other than the member is using the member's MassHealth card to receive or attempt to receive services or if any provider may be engaging in Medicaid fraud. The provider shall cooperate with and provide all information requested by the MassHealth agency, the Attorney General's Medicaid Fraud Division, the State Auditor's Office, or any other law enforcement entity investigating such fraud.

42 U.S.C. 1320 defines fraud for health care programs:

- (a) Making or causing to be made false statements or representations  
Whoever—
  - (1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a federal health care program (as defined in subsection (f)),
  - (2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,
  - (3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title, shall

- (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than \$100,000 or imprisoned for not more than 10 years or both, or
- (ii) (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$20,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

Here, the appellant concedes that times sheets were submitted for PCA services from March 31 2024 to June 22, 2024 (Exhibit 5, pgs. 55-60). Therefore, the remaining question is whether the appellant's PCA, [REDACTED] actually performed the services outlined in those timesheets. MassHealth argues that he did not, as he was incarcerated at [REDACTED] County Jail between the dates of [REDACTED] 2024 and [REDACTED] 2024, and this position is supported by the evidence.

MassHealth submitted two pieces of evidence to show that [REDACTED] was indeed incarcerated on the dates in question. A residency letter from the [REDACTED] County Jail confirming that [REDACTED] was incarcerated during the dates at issue and an affidavit from the captain of the jail confirming the accuracy of the residency letter with a picture of [REDACTED] at the jail (Exhibit 5, pg. 54 and

Exhibit 12). [REDACTED] takes issue with the authenticity of the affidavit and argues that the notary's signature on the cover page of Exhibit 12 is different than that of the one on the affidavit (Exhibit 15). Notwithstanding this potential inconsistency, other persuasive evidence supports MassHealth's position. Specifically, MassHealth submitted an affidavit from a disinterested individual - the jail captain - confirming the appellant's incarceration dates. Further, MassHealth submitted other documents from the [REDACTED] County Jail, including a photograph of [REDACTED] while he was incarcerated.

To show that he was not incarcerated during the dates at issue, [REDACTED] submitted bank statements and receipts from a bank account that bear his name (Exhibit 11). The bank statements show activity from March 15, 2024 to June 15, 2024, which he claims show proof that he was making bank transactions during the time he was allegedly incarcerated (Exhibit 11). However, these documents do not credibly show that [REDACTED] was not incarcerated during this time, as it is possible that someone else with access to [REDACTED] account was making the proffered transactions.

The appellant has not demonstrated that [REDACTED] performed PCA services for him between [REDACTED] 2024 and [REDACTED] 2024. The appellant's only witness, [REDACTED] has a financial stake in the outcome of these proceedings, a factor that damages his credibility and fails to adequately support the appellant's position. The evidence submitted by MassHealth from the [REDACTED] County Jail is more credible than the evidence and testimony supplied by the appellant and [REDACTED]. The appellant has not met his burden to show that MassHealth erred in terminating him from its PCA program pursuant to 130 CMR 422.420 and 130 CMR 450.261.

The 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.

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David Jacobs  
Hearing Officer  
Board of Hearings

cc:

Carlos Mendez  
Massachusetts Executive Office of Health and Human Services (EOHHS)  
1 Ashburton Place, 10th Floor  
Boston, MA 02108

