

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |              |                       |           |
|-------------------------|--------------|-----------------------|-----------|
| <b>Appeal Decision:</b> | Denied       | <b>Appeal Number:</b> | 2506064   |
| <b>Decision Date:</b>   | 7/8/2025     | <b>Hearing Date:</b>  | 6/25/2025 |
| <b>Hearing Officer:</b> | David Jacobs |                       |           |

**Appearances for Appellant:**



**Appearances for MassHealth:**

Kelly Rayen, RN  
Kristin Lummus, Assistant General Counsel  
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<br>(PCA Services) |
| <b>Decision Date:</b>    | 7/8/2025                                              | <b>Hearing Date:</b>  | 6/25/2025                             |
| <b>MassHealth Rep:</b>   | Kelly Rayen, Mike<br>Diggins, Kristin<br>Lummus, Esq. | <b>Appellant Rep:</b> | Pro se                                |
| <b>Hearing Location:</b> | Board of Hearings<br>(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 4/1/2025, MassHealth terminated the appellant's participation in the Personal Care Attendant (PCA) program due to filing fraudulent timesheets (130 CMR 450.303) (Exhibit 1). The appellant filed a timely appeal on 4/16/2025. (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 participation 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 4/1/2025, 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 you were incarcerated. Records from the [REDACTED] show that you were incarcerated between [REDACTED] 2023 and [REDACTED] 2023, between [REDACTED] 2024 and [REDACTED] 2024, between [REDACTED] 2024 and [REDACTED] 2024, and that since your last arrest on [REDACTED] 2024, you remain in custody as of [REDACTED] 25. However, records from the PCA Fiscal Intermediary (FI) [REDACTED] show that 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 422.422(A)(20). MassHealth reserves the right to terminate any member's participation in the PCA program for failure to comply with applicable regulations. 130 CMR 413.422(B)(1)."*

(Exhibit 1)

Kelly Rayen, Mike Diggins, and Kristin Lummus appeared telephonically on behalf of MassHealth. Kelly Rayen testified first that the appellant is male, under 65, with a primary diagnosis of arthritis and chronic pain. On 11/7/2023, his Personal Care Management (PCM) company, [REDACTED] submitted a prior authorization request for PCA services that was approved for 38 hours a week with dates of services from 12/17/2023 to 12/31/2024. On 4/1/2025, the appellant was notified that MassHealth was terminating his participation in the PCA program due to filing fraudulent PCA timesheets. Mike Diggins then spoke for MassHealth and testified that according to records provided by Elder Services of [REDACTED] the appellant was filing time sheets during dates when he was incarcerated. MassHealth contacted the [REDACTED] ("the jail"), and they confirmed that the appellant was indeed incarcerated during dates when PCA timesheets were submitted.

Specifically, the appellant was incarcerated from [REDACTED] 2023 to [REDACTED] 2023, [REDACTED] 2024 to [REDACTED] 2024, [REDACTED] 2024 to [REDACTED] 2024, and [REDACTED] 2024 to [REDACTED] 2025 (Exhibit 5, pg. 39). At the same time there are time sheets filed on the appellant's behalf with his initials for service dates 6/18/2023 to 7/1/2023, 1/28/2024 to 2/10/2024, 3/24/2024 to 4/6/2024, 5/5/2024 to 5/18/2024, and 5/19/2024 to 6/1/2024 (Exhibit 5, pgs. 44-48). Several of those dates align with weeks when the appellant was entirely or in part incarcerated at the jail. Therefore, the appellant was removed from the PCA program per the 4/1/2025 Notice (Exhibit 1).

The appellant appeared telephonically and conceded to the majority of facts laid out by MassHealth. He confirmed that he was incarcerated during the dates in question and does not contest the submitted time sheets were submitted on his behalf. However, he testifies he had no knowledge that they were being submitted and maintains that he did not sign them. The PCA who submitted all the alleged fraudulent timesheets is his cousin [REDACTED]. He testified that he trusted her and believes she had no reason to submit fraudulent timesheets, as she is not especially in need of money. He argued that he thinks this was all a mistake as his family and friends were not aware of what happened to him each time he was incarcerated. It is possible she submitted them not knowing he was incarcerated during those dates. The hearing officer challenged that assertion, as the timesheets in questions are specific to the dates and times services were allegedly performed, and those dates and times are often during dates where the appellant admits he was incarcerated. The appellant could offer no explanation for what could have motivated his cousin to file the time sheets like she did. The appellant emphasized that while he was incarcerated, he had limited knowledge of what was happening with his PCA hours and had no way of knowing that timesheets were being filed on his behalf, fraudulent or otherwise.

The hearing officer then asked Mr. Diggins to specify how the appellant could have protected himself from fraud. Mr. Diggins responded that the PCA program is a self-directed program, which means that ultimately, the member is responsible for how the program is administrated. He referenced 130 CMR 422.421(B), which provides that PCMs are responsible for providing functional skills training to members to maximize their ability to self-direct care. Here, the appellant has no surrogate on file which means he was responsible for making sure accurate timesheets were being filed on his behalf. For the appellant specifically, it means he should have contacted his PCM and informed them that he was incarcerated so they could have put a hold on his account and prevent the filing of any time sheets during his dates of incarceration. Moreover, the requirement of a signature on each timesheet is what typically ensures that the member is aware of what is being filed on his or her behalf. However, he admitted that timesheet signatures are not usually checked for authenticity by MassHealth.

The appellant responded that it is not reasonable for MassHealth to expect the appellant to contact his PCM after being incarcerated, as it is very difficult to make phone calls in prison. Moreover, he had many other concerns while incarcerated.

Kristin Lummus concluded MassHealth's testimony by arguing that MassHealth's primary concern with the present case is repeated instances of fraud. The appellant was incarcerated several times, and several timesheets were filed on his behalf during those instances of incarceration.

## **Findings of Fact**

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

1. The appellant is a male under the age of 65 that was approved for MassHealth PCA services with effective dates between 12/17/2023 and 12/31/2024.

2. The appellant was incarcerated from [REDACTED] 2023 to [REDACTED] 2023, [REDACTED] 2024 to [REDACTED] 2024, [REDACTED] 2024 to [REDACTED] 2024, and [REDACTED] 2024 to [REDACTED] 2025 at [REDACTED].
3. Timesheets were submitted for the appellant's PCA, [REDACTED] for service dates of 6/18/2023 to 7/1/2023, 1/28/2024 to 2/10/2024, 3/24/2024 to 4/6/2024, 5/5/2024 to 5/18/2024, and 5/19/2024 to 6/1/2024.
4. No PCA services were performed for the appellant during his dates of incarceration.
5. On 4/1/2025, the appellant received a notice from MassHealth terminating his participation in MassHealth's PCA program due to filing fraudulent time sheets.
6. On 4/16/2025, the appellant appealed this notice.

## **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);

Further, 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) 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.

(Emphasis added)

MassHealth cited 130 CMR 422.421: PCA Program: Personal Care Management Agency Intake and Orientation and Functional Skills Training, which provides in part as follows:

(B) Functional Skills Training. **PCM agencies must provide members who have a prior authorization for PCA services, and surrogates and administrative proxies as applicable, with the functional skills training needed to successfully manage the PCA program and maximize the member's ability to self-direct care.** The frequency and type of functional skills training that a member and the surrogate or administrative proxy, if any, receive must be documented in the member's service agreement.

(Emphasis added)

Here, the question is whether the appellant was knowingly and willfully making or causing to be made any false statement or representation for payment of a healthcare program benefit per 42 U.S.C. 1320. The appellant concedes that timesheets were filed on his behalf on dates that he was incarcerated. As these timesheets reflect PCA services that were not performed by the PCA, they are in fact fraudulent. However, the appellant argues he had no knowledge that these timesheets were being filed while he was incarcerated and had no way to know, as his access to information was limited while in jail. In other words, he argues that he should not be terminated from the PCA program because the false statements were not made knowingly and willfully by him.

The appellant's argument would be persuasive but for the fact that not all the fraud occurred during his periods of incarceration. Several of the timesheets were filed during periods when the appellant was no longer incarcerated and was living in the community. The appellant was first incarcerated from [REDACTED] 2023 to [REDACTED] 2023 with a time sheet being submitted with service dates of [REDACTED] 2023 to [REDACTED] 2023. That time sheet would have been submitted after the appellant was living in the community again and capable of, and responsible for, reviewing the time sheets being

submitted on his behalf. The appellant's next period of incarceration was from [REDACTED] 2024 to [REDACTED] 2024 with a time sheet being submitted with service dates from 3/24/2024 to 4/6/2024. Again, the appellant was in the community when this time was submitted. Lastly, another opportunity arose after the appellant was incarcerated from [REDACTED] 2024 to [REDACTED] 2024, as a time sheet was submitted for the service period of 5/19/2024 to 6/1/2024. Once again, the appellant was in the community when this time sheet was filed.

MassHealth correctly argues that the PCA program is self-directed and requires members to be empowered to self-direct their own care per 130 CMR 422.421. Part of self-directing care includes being responsible for the accuracy of the time sheets submitted, particularly while the appellant was living in the community capable of reviewing and approving them. The appellant's argument that he could not have known of the fraudulent submissions is only plausible if the appellant's periods of incarceration completely aligned with the time period identified in the time sheets at issue. However, as discussed above, there are multiple timesheets that were submitted when the appellant was living in the community and thus had the ability and responsibility to review them. MassHealth has also persuasively argued that this case does not involve one isolated instance fraud but rather involves multiple instances across several periods of incarceration. MassHealth's position that the appellant should have known is reasonable, and its determination to terminate him from its PCA program is supported by regulation.

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.

---

David Jacobs  
Hearing Officer  
Board of Hearings

cc:  
Mike Diggins  
PCA Special Projects

Kristin Lummus, Esq.  
EHS Legal