

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2506373
Decision Date:	07/31/2025	Hearing Date:	06/11/2025
Hearing Officer:	Amy B. Kullar, Esq.	Record Open to:	06/25/2025

Appearances for Appellant:




Appearances for MassHealth:

Donna Burns, R.N., Clinical Reviewer, Optum;
Allison Langlois, Senior Program Manager,
Office of Long-term Services and Supports
(OLTSS)



*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:	Denied	Issue:	Prior Authorization; Personal Care Attendant (PCA) Services - Termination
Decision Date:	07/31/2025	Hearing Date:	06/11/2025
MassHealth's Reps.:	Donna Burns, R.N.; Allison Langlois	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South 2 (Telephone)	Aid Pending:	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 May 8, 2025, MassHealth notified the appellant that it was terminating the appellant's personal care attendant (PCA) services effective May 22, 2025, because the appellant had been directed to find a new surrogate, and she had not found one. *See* 130 CMR 422.422(B)(3); Exhibit 1. The appellant filed this appeal with the Board of Hearings in a timely manner on May 12, 2025. *See* 130 CMR 610.015; Exhibit 2. Termination of services is a valid ground for appeal to the Board of Hearings. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth terminated the appellant's PCA services because she did not designate a new surrogate.

Issue

Was MassHealth correct in terminating the appellant's PCA services because she did not designate a new surrogate?

Summary of Evidence

MassHealth was represented by a senior program manager from the Office of Long-Term Services and Supports (OLTSS) and by a registered nurse and clinical appeals reviewer; they both appeared telephonically. The appellant appeared at the hearing telephonically and verified her identity; she was accompanied by her spouse, who is also her surrogate. The parties' testimony and record evidence are summarized as follows:

The clinical appeals reviewer testified that the appellant is an adult between the ages of 19 and 65.¹ The appellant has primary diagnoses of sarcoma of the spine, breast cancer, diabetes, and fibromyalgia. Testimony, Exhibit 5. The appellant's personal care management ("PCM") agency, [REDACTED], submitted an initial evaluation request for personal care attendant ("PCA") services in the fall of 2024. On October 18, 2024, MassHealth authorized the appellant for 50 hours per week of PCA services. The prior authorization period ran from October 18, 2024, through October 17, 2025. Exhibit 5. The clinical appeals reviewer then stated that the issue at this appeal is that MassHealth terminated the appellant's PCA services by notice dated May 7, 2025, effective May 22, 2025. Testimony; *see also* Exhibit 4 at 5. The clinical appeals reviewer stated, "The reason for this decision is that your PCM agency informed you on April 8 that you need to find a new surrogate within 30 days. As of the date of the letter, May 7, you did not do this. Because of these violations, the PCA program ended your services." Testimony.

The OLTSS representative then offered testimony on behalf of MassHealth. She stated that the appellant's PCM agency did notify MassHealth that the current surrogate was mismanaging the PCA program; specifically, he was overbilling hours. The OLTSS representative confirmed that a letter was sent to the appellant on April 8, 2025, which informed the appellant that she had thirty (30) days to find a new surrogate. Testimony and Exhibit 5. No new surrogate was identified by the appellant, so on May 8, 2025, a letter was sent by OLTSS to the appellant indicating that her PCA services would be terminated effective May 22, 2025. Testimony; *see also* Exhibit 5 at 3. Testimony. After questioning by the Hearing Officer regarding the specific instances of mismanagement of the PCA program by the appellant's surrogate, the OLTSS representative stated, "the consumer was approved for 50 hours per week, and there was consistent overbilling of those hours, which resulted in a cap being placed on the PA." Testimony.

¹ The clinical appeals reviewer noted that the appellant had requested "Aid Pending" during the pendency of this appeal; however, she then explained that "Aid Pending" is not available in this case because the appellant has already exceeded all her authorized PCA hours for her entire one-year service period. Testimony.

A communication log between the appellant's surrogate and the PCM agency was submitted as part of MassHealth's prehearing submission and in support of the OLTSS representative's testimony. See Exhibit 5. In this log, the first reference to overbilling occurs on February 11, 2025. This notation reads: "Cap Letter received from MH due to overutilization. Cap letter is effective workweek beginning 3/2/2025. Cap letter was mailed to the consumer by MH as well. MH requested FST (functional skills training) because consumer still runs the risk of running out of hrs. ST [Skills Trainer] was made aware via email." *Id.* On the following day, February 12, 2025, the PCM Skill Trainer assigned to the appellant spoke with the appellant via telephone:

spoke with consumer [Appellant] in regards to MH issued cap letter, I explained to surrogate that due to to (*sic*) the consistent overbilling consumer has now been capped, I explained that this cap will begin 03/02/2025 meaning that any time sheets submitted over the approved hours will not be paid and [appellant] could be responsible, i (*sic*) also reviewed that consumer could still run out of hours before the end of there (*sic*) PA, I also reviewed with [appellant] that if the overbilling continues surrogate could be dismissed and [appellant] would have 30 days to place a new one, surrogate verbalized understanding of everything reviewed and discussed with no other questions or concerns.

Id.

The next communication between the appellant and her surrogate and the PCM agency occurred on March 4, 2025. The communication log notes for this interaction states: "Consumer and surrogate called. They were both extremely frustrated pca (*sic*) was not paid for hours worked. I went over hours approved 50 hours per week and told them they should reach out to fi. both consumer and surrogate were both talking over one another and yelling." *Id.* Later that same day, another call with the appellant's surrogate was documented in the communication log:

Called and spoke with surrogate [Surrogate] who stated that he says there's a (*sic*) issue with the amount of hours that this (*sic*) wife was approved for, 50hrs only at night, there should be 104hr during the day because there's a two person assist and that he had proof that they get many more hours, I explained that those numbers that he's seeing are units NOT approved hours, he became upset saying that it doesn't make sense hes (*sic*) correct, they also wanted me to overturn payrolls decision in not paying the PCAs, I explained that I do not have that power, he stated that I have misinformed him with the cap information, I never explained that they weren't going to get paid, Again I try to explain that its due to the overbilling that they most likely are not receiving payment due to running out of hours before the end of there (*sic*) PA. [Appellant] stated that she needed to speak to a supervisor as soon as possible because they were not happy with my services.

Email sent to supervisors for further assistance.

Id.

The PCM agency, the appellant, and her surrogate continued to communicate regarding the overbilling issue. On March 6, 2025, the following conversation is documented in the communication log:

Spoke with the surrogate and consumer about the overbilling issues and CAP. The consumer is insisting she has a letter there with an approval of 160 hours per week. I stated I would like to see this letter. The surrogate stated the consumer should have 24/7 care. I explained that Tempus does not provide 24/7care. [Appellant] stated she has never recieved (sic) any paperwork saying she only has 50 hours per week. I reviewed the original hours, we requested 54.15 hours in Oct.2024 which Mass Health modified to 50 hours per week. I reviewed the eval[uation] line by line which [appellant] stated she is a 2 person assist. The [appellant] stated she needs more help with bowel care. The [appellant] made a comment about the 30mins for food shopping. The [appellant] stated the grocery store is over 30 mins away and there is a lot of grocery for her house, I explained that her hours are only to be used for her needs only no ones (sic) else in the home. The [appellant] stated "someone should of told her that". I started to rev.

Id.

On March 12, 2025, the following phone call was documented in the communication log:

Surrogate [Surrogate] and [Appellant] called back insisting that we reinstate more hours. I explained to the [appellant] and surrogate that there is nothing we can do. I explained that **they overbilled their hours by hundreds of hours per week**. I reviewed the weeks and hours they overbilled. The [appellant] is insisting they are approved for 161 hours per week. I explained they are approved for 50 hour per week only. The surrogate stated they have the approval letter there. I asked them to email it to me. Rob emailed me a copy of the eval that RN completed. I reviewed what this form was and each time for task. The surrogate is insisting the RN added 2 person assist. I stated no just 1. The [appellant] was getting mad and yelling in the background that she worked for CP and knows "[First Name of CEO of PCM Agency]". The [appellant] kept saying we are wrong and we need to fix this program. I stated there is nothing we can do. I stated the hours are a bank of hours and once they run out they need to wait for the new PA.

Id. (emphasis added).

The PCM agency documented 18 additional communications between the PCM agency and the appellant and her surrogate in March 2025. See Exhibit 5. On March 21, 2025, a PCM agency skills trainer again spoke to the appellant's surrogate:

spoke with surrogate in regards to an adjustment of hours. Surrogate explained that [appellant's] condition has changed and she needs more hours. Surrogate expressed that previous skills trainer told them that they could hire 10-15 PCA's and bill 50hrs per each PCA which resulted in the hours running out for the year & PA began in October. Surrogate said MH told him to reach out to tempus and ask for more hours and have a re-assessment done. Surrogate said he spoke with an RN that suggested that they have a skills trainer complete an adjustment request. Surrogate was aware of the hours in place as when I met with him in December he did not agree with the hours, said he knew [First Name of CEO of PCM Agency] & was approved for 152 hours per week not 50hrs in December. I sent over the EVAL summary to surrogate explaining the hours in place & that they did not have more than 50 hrs/week with no response from surrogate. Per notes listed below, surrogate has received multiple overbilling letters and was aware.

Id.

On March 25, 2025, the appellant's surrogate sent the following email to the PCM agency:

Hello, PCM told us the skills trainer was to put the request in to you and you last told us over the phone that when the skills trainer contacted you, that you was (*sic*) going to do it over the phone with us. So we are confused. Because we spoke to Masshealth (*sic*) who put a ticket in and told us to have Tempus reassess for more hours. So [Skills Trainer1] told us she put in the request to you. So we are asking when we can expect to have the phone conversation with you to get more hours approved. Right now my wife is being neglected because we have no PCA's working because they are still waiting to get paid from tempus (*sic*) for hours already worked. Who do we need to speak to about getting this matter resolved? Because Tempus Skills Trainer, [Skills Trainer2] CAUSED this problem and now TEMPUS is throwing their hands up in the air because nobody is owning up to this problem caused by [Skills Trainer2] to begin with. Is this a matter I need to speak with an attorney about.

Id.

After sending this email, the appellant's surrogate left four voicemails, between March 25, 2025 and March 28, 2025, for the PCM agency that were documented in the communication log. See *Id.* In these voicemails, the surrogate expressed frustration with the PCM agency skills trainers, asks repeatedly to speak to a supervisor, and also stated that the appellant's PCA hours must

be increased as soon as possible. *Id.* On March 28, 2025, a manager at the PCM agency informed MassHealth about the issues that the appellant's surrogate is having with overbilling and managing the PCA program for the appellant. *Id.* On April 8, 2025, MassHealth responded to the PCM manager's email, which was documented in the communication log:

Heard back from MH. they support our PCM to require a change of surrogacy and want the letter confirmed as sent to them. I will write the progress note requesting the 30-day need for change of surrogate letter. The Surrogate assessment will require updating by the Skills Trainer and will be processed accordingly. A new Consumer Assessment will also be required and FI notified according to PCM process.

Id.

The appellant responded to MassHealth's testimony. She began by testifying at length about the many difficulties that she and her spouse had with communicating with the original Skills Trainer assigned to her case by her PCM agency. She believes that this Skills Trainer provided misleading information to her and her surrogate. Testimony. However, at no point during her testimony did the appellant ever dispute that the overbilling by her surrogate had occurred; rather she blamed the PCM agency staff and MassHealth for causing the situation that allowed the overbilling to occur. The appellant then testified that she frequently did not receive critical mailings from MassHealth or her PCM agency, and that she was left extremely confused about the number of hours per week that she was supposed to receive at the start of her participation in the PCA program. She stated that she never received any notice that stated she was awarded 50 hours per week of PCA hours. Testimony. The appellant acknowledged that her spouse had his own medical issues and that at times he may have had difficulties submitting the timekeeping records for the appellant's PCA, but she emphasized that MassHealth and the PCM agency had created a confusing situation for her and her spouse by not communicating clearly with her. Testimony. After discussion about the documented issues of overbilling by the appellant's surrogate, and questioning by the Hearing Officer, the appellant agreed that it would make sense for the appellant to name a different person as her surrogate so that her spouse would not have to deal with this stressful situation.

The appellant was then asked to contemplate other people in her life who could possibly serve as her surrogate so that she could preserve her PCA services. She began naming several of her family members, and then identified her 26 year old son as the best candidate. The OLTSS representative confirmed that it would be possible for the appellant's son to serve as her new surrogate. She stated that the appellant could initiate that process by reaching out to her Skills Trainer at her PCM agency to schedule an assessment of the new surrogate. Testimony. The OLTSS representative emphasized that this must be an in-person visit with the potential surrogate, and they have an opportunity to make sure they understand the scope of the program and their obligations to the appellant and the PCM agency. If a new surrogate is properly on-boarded, the PCM agency would

then be able to request that MassHealth reinstate the appellant in the PCA program. Testimony.

The appellant agreed that she would move forward with having her son become her new surrogate. The Hearing Officer proposed that she would hold the record open for two weeks so that the appellant could communicate with her PCM agency about the identity of her new surrogate and begin the process of having the new surrogate “on-boarded” and trained by the PCM agency. At the conclusion of record open period, the MassHealth representatives would provide an update as to whether or not the appellant had successfully named a new surrogate and could be reinstated in the PCA program. All parties agreed to this timeline and the hearing concluded shortly thereafter.

The record was held open until June 25, 2025. Exhibit 6. On the morning of June 25, 2025, the clinical reviewer emailed the Hearing Officer to receive an update as to whether the Hearing Officer had been notified as to whether the appellant had provided the name of the new surrogate to her PCM. Exhibit 7. Having received no communications from the appellant during the record open period, in the late afternoon on June 25, 2025, the Hearing Officer emailed the appellant, the OLTSS representative, and the clinical reviewer, and requested an update as to the status of this case. Exhibit 8. Both the OLTSS representative and the clinical reviewer confirmed that they had not received an update from the appellant or the appellant’s PCM agency regarding the status of a new surrogate for the appellant. Exhibits 9, 10. On June 25, 2025, having received no communication from the appellant by the end of day, and therefore, the end of the record open period, the Hearing Officer closed the administrative record. Exhibit 11.

Findings of Fact

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

1. The appellant is an adult female between the ages of 19 and 65; she is clinically eligible for PCA services. Testimony and Exhibit 4.
2. On October 18, 2024, MassHealth authorized the appellant for 50 hours per week of PCA services, running for the prior authorization period of October 18, 2024, through October 17, 2025. Testimony; Exhibits 1, 4.
3. [REDACTED] is the appellant’s PCM agency; the appellant’s spouse is her surrogate. Testimony and Exhibit 4.
4. In March 2025, the appellant’s PCM agency informed MassHealth that the appellant’s surrogate had been consistently overbilling for PCA hours worked, which led to a cap being placed on the appellant’s PCM account. Testimony of OLTSS representative and Exhibit 5.

5. On April 8, 2025, the PCM agency mailed the appellant a letter that she had 30 days to register a new surrogate. The letter stated that the appellant could no longer use her spouse as her surrogate. Exhibit 5.
6. Through a notice dated May 7, 2025, MassHealth terminated the appellant's PCA services, effective May 22, 2025, for not finding a new surrogate within 30 days of the PCM agency's April 8, 2025 letter. Testimony; Exhibit 4 at 5.
7. Through a letter dated May 8, 2025, OLTSS informed the appellant that it was terminating the appellant's PCA services because the PCM agency had informed the appellant that she needed to find a new surrogate within 30 days in accordance with 130 CMR 422.422(B)(3) and she failed to do so. Testimony; Exhibit 5 at 3.
8. The appellant filed a timely appeal on May 12, 2025. *See* Exhibit 2.
9. At hearing, the appellant agreed that she needed a new surrogate so that she could be reinstated in the PCA program and she did not dispute the fact that her current surrogate had overbilled the PCM agency. Testimony.
10. Following the appeal hearing, the appellant requested that the record be kept open until June 25, 2025 so that she could identify a new surrogate and have the new surrogate "on-boarded" by the PCM agency to allow the appellant to remain in the PCA program, which was granted. Testimony, Exhibit 6.
11. Neither the appellant nor her surrogate reported back to the PCM agency, to MassHealth or to the Hearing Officer, during the record open period, whether a new surrogate had been onboarded.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,

- (c) bathing/grooming;
- (d) dressing or undressing;
- (e) range-of-motion exercises;
- (f) eating; and
- (g) toileting.

(4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

A member's responsibilities in the PCA program are set forth in 130 CMR 422.420. These requirements include completing and signing the appropriate forms, employing PCAs within the hours and scope authorized by MassHealth, and cooperating with MassHealth and the PCM agency during assessments and evaluations. 130 CMR 422.420(A). These requirements also mandate that a member *"employ PCAs for no more than the number of PCA hours authorized by the MassHealth agency,"* (130 CMR 422.420(A)(5)(a)), *"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,"* (130 CMR 422.420(A)(5)(b)), and *"comply with all applicable MassHealth regulations"* (130 CMR 422.420(A)(20)).

MassHealth 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).

130 CMR 422.420(B) (emphases added).

In this matter, MassHealth terminated the appellant from the PCA program, citing 130 CMR 422.420. This action was based on the consistent and well-documented overbilling of the PCA program by the appellant's surrogate; in violation of the MassHealth regulations, the appellant's surrogate repeatedly and consistently scheduled the appellant's PCAs for more than the number of PCA hours that were authorized for the appellant by the MassHealth agency. Only after the appellant and her surrogate ignored all attempts by the PCM agency to correct the overbilling of PCA hours did MassHealth begin the termination process. Furthermore, after being informed of her surrogate's failure to comply with the applicable MassHealth regulations, the appellant then failed to identify a suitable replacement surrogate capable of complying with the PCA program billing requirements when directed to do so by her PCM agency. The written and testimonial record strongly supports MassHealth's position. The record shows that in March 2025, the appellant's PCM agency repeatedly attempted to work with the appellant and her surrogate to correct their misunderstandings about the number of hours of PCA services that had been awarded to the appellant, but neither the appellant nor her surrogate were willing or able to understand these explanations or to follow the PCM agency policies for billing PCA hours. This mismanagement of the PCA program by her surrogate caused the appellant to exceed all of her PCA hours for her entire yearly service period (which began in October 2024) by March 2025, and has left the appellant lacking the personal care for which she is clinically eligible.

Therefore, MassHealth did not err when it terminated the appellant's participation in the PCA program based on the mismanagement of the administrative portions of the PCA program and the documented overbilling that has occurred in this case. The appellant exceeded all of her PCA hours for her entire yearly service period in under six months. The record evidence shows that the appellant's surrogate was repeatedly informed about the billing violations by the PCM agency, was explicitly told how many hours the appellant was awarded for PCA services, and was told that overbilling would lead to the termination of the appellant's PCA services. On this record, the appellant's surrogate was either unable or unwilling to comply with MassHealth policies, and he is therefore not a suitable choice to serve as the appellant's surrogate.

Accordingly, this appeal is DENIED.²

Order for MassHealth

None.

² Nothing in this decision precludes the appellant from seeking an alternative program for care in the home and/or reapplying for the PCA program in the future with a suitable surrogate identified.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

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

cc: Office of Long-Term Services and Supports