

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2514604
Decision Date:	12/04/2025	Hearing Date:	11/05/2025
Hearing Officer:	Sharon Dehmand	Record Open to:	11/14/2025

Appearance for Appellant:



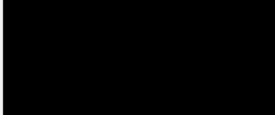
Appearance for MassHealth:

Kelly Rayen, R.N., Clinical Reviewer, Optum
Carlos Mendez-Saravia, Assistant Manager,
OLTSS
Kristin Lumus, Attorney, 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:	12/04/2025	Hearing Date:	11/05/2025
MassHealth's Rep.:	Kelly Rayen; Carlos Mendez- Saravia; Kristin Lumus	Appellant's Rep.:	
Hearing Location:	Remote	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 September 30, 2025, MassHealth notified the appellant that his participation in the MassHealth Personal Care Attendant (PCA) program would be terminated on October 14, 2025. See 130 CMR 422.420(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on October 3, 2025. See 130 CMR 610.015(B) and Exhibit 2. An aid pending protection was put in place to protect the appellant's benefits. Any agency action to suspend, reduce, terminate, or restrict a member's assistance is grounds for appeal before the Board of Hearings. See 130 CMR 610.032(A)(3).

Action Taken by MassHealth

MassHealth terminated the appellant's participation in the PCA program because he requested that the PCA perform services that are inappropriate and a violation of the PCA program rules and regulations.

Issue

Whether MassHealth was correct, pursuant to 130 CMR 422.420(B)(1), in terminating the appellant's participation in the PCA program.

Summary of Evidence

All parties participated virtually. MassHealth was represented by a registered nurse and clinical reviewer, and representatives from the Office of Long-Term Services and Supports (OLTSS). The appellant appeared pro se with his PCA and verified his identity. Both parties submitted documents that were incorporated into the hearing record. See Exhibit 5 and Exhibit 6. The following is a summary of the testimony and documentary evidence provided at the hearing:

The MassHealth registered nurse testified that the appellant is over the age of 65 and remains clinically eligible for the PCA program. However, the representative from the OLTSS testified that there were multiple complaints filed against the appellant. He referenced an email from the PCA Workforce Council indicating that a PCA resigned after two days, alleging that the appellant requested a sexual massage from her. See Exhibit 6, pp. 15-21. The representative noted that the PCA's report contained specific details and was made against her own financial interest as a single parent who needed the income. See *id.* He stated that a MassHealth Critical Incident Report (CIR) refers to a second PCA worker who attempted to work for the appellant in August 2025. This PCA left her employment before she completed the new hire paperwork because the appellant asked her to massage him while he lay on his back and touched himself inappropriately. He also cited additional past PCA complaints including a statement from the PCM agency staff member who reported that the appellant made an inappropriate comment about her appearance in a dress. See *id.* at 14. He asserted that transferring to a different PCM agency or appointing a surrogate would not resolve the concerns, as the PCA program is consumer-directed and the appellant may be better served in a non-self-directed Home Health Aide (HHA) program. He suggested that the reports indicate a pattern of inappropriate conduct.

The MassHealth OLTSS attorney emphasized that the appellant must be able to work with all PCAs and that multiple PCAs had reported inappropriate behavior, with the incidents occurring close in time. She also referred to the PCM agency's statement noting that the appellant has had numerous short-term PCA employment relationships, which indicate a concerning pattern.

The appellant adamantly denied the allegations and argued that the complaints were self-serving and retaliatory. He claimed that one PCA complained because she was unable to provide proper identification to complete the I-9 form. He fired her and she filed a complaint to retaliate against him. He also referred to a [REDACTED] police report in which the police determined that they would not pursue a complaint made against him. He said that he has additional letters from his other female PCAs that would attest to his appropriate behavior towards his PCAs.

The appellant's PCA testified that she has worked for the appellant intermittently for the past ten years, providing bathing, grooming, and dressing assistance. She reported that she has never witnessed any inappropriate conduct by the appellant toward herself or any other PCA. She also referenced two letters in the appellant's possession, one from his son, who is also one of his PCAs and one from another female PCA. She said that both letters corroborate that the appellant has never acted inappropriately toward them or any other PCA.

The record was held open until November 14, 2025, for both the appellant and MassHealth to submit additional documentation in support of their respective positions. See Exhibit 7. Both parties submitted materials which have been marked and incorporated into the record as Exhibits 8 and 9. On November 18, 2025, the MassHealth representative submitted additional documents and requested that the record be reopened to allow the additional submission to be incorporated into the record. This request was denied by this hearing officer as it was deemed untimely. See 130 CMR 610.004.

In the documentation submitted by MassHealth and incorporated into the record as Exhibit 9, the MassHealth representative asserts the following:

- Pursuant to 130 CMR 422.420(A)(5)(a), the member is only permitted to employ a PCA to provide assistance with ADLs and IADLs as described in the PCA evaluation. EOHHS is terminating the member from the PCA program because it was reported to MassHealth that he requested that his PCA perform services that are inappropriate and a violation of the PCA Program rules and regulations. Specifically, it was reported to MassHealth that he asked his PCA to provide massage services that were sexual in nature, and MassHealth found the allegation to be credible.
- The PCA Program is a member-directed program in which the member becomes a consumer and the employer of record for PCAs. Because the appellant has demonstrated that he is unable to manage the program in a way that will preserve the safety and integrity of his PCA workers, it is strongly recommended that the appellant receive services through an agency to address his personal care needs.
- The proposed notice of sanction and termination only applies to participation in the PCA program and does not limit or reduce access to other personal care services that are covered under MassHealth regulations and the state plan. This means that the appellant may receive services through an agency, such as a Home Health Aide organization, for which MassHealth is contracted with the current Personal Care Management (PCM) agency to support this transition of services.

- The appellant has engaged in a pattern of inappropriate behavior with at least three PCAs and one PCM staff employee.
 - A PCA who began working for the appellant on July 24, 2025, left that job after only two days because the appellant asked for a massage that was sexual in nature.
 - A MassHealth Critical Incident Report (CIR) refers to a second PCA worker who attempted to work for the appellant in August 2025. This PCA left her employment before she completed the new hire paperwork because the appellant asked her to massage him while he lay on his back and touched himself inappropriately. Because her new hire paperwork was never completed, she could not be paid for her time.
 - An email communication between MassHealth and the PCM agency reflects that the appellant exhibited inappropriate behavior towards the PCM agency female staffer by making an inappropriate comment about the way she looked in her dress. This same communication states that there have been other incidents where other unnamed PCM agency female staffer complained to the PCM agency about the appellant's inappropriate behavior.

In the documentation submitted by the appellant and incorporated into the record as Exhibit 8, the appellant asserts the following:

- If he were to receive services through an agency, he would lose all his current PCAs due to lower rate of pay.
- The two submitted letters from his two female PCAs corroborate his appropriate behavior towards PCAs.
- The emails submitted to MassHealth PCA program reflect that he has been to a restaurant with one of the complaining PCAs.

Findings of Fact

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

1. The appellant is over the age of 65 and remains clinically eligible for the PCA program. (Testimony, Exhibit 4, and Exhibit 6).
2. The PCA Program is a member-directed program in which the member becomes a

consumer and the employer of record for PCAs. (Testimony and Exhibit 9).

3. On or about August 17, 2025, a female PCA reported the appellant's inappropriate behavior by asking for a massage that was sexual in nature after being employed by the appellant for two days. (Testimony and Exhibit 6).
4. On or about August 27, 2025, another female PCA reported the appellant's inappropriate behavior by asking for a massage and touching himself. This PCA left her employment before she completed the new hire paperwork and was not paid for her time. (Testimony and Exhibit 6).
5. The appellant exhibited inappropriate behavior towards the PCM agency female staffer by making an inappropriate comment about the way she looked in her dress. (Testimony and Exhibit 6, and Exhibit 9).
6. The appellant has utilized PCA services to dine at a restaurant with one of the female PCAs. (Exhibit 8).
7. On September 30, 2025, MassHealth notified the appellant that his participation in the MassHealth PCA program would be terminated on October 14, 2025, because he requested that the PCA perform services that are inappropriate and a violation of the PCA program rules and regulations. (Testimony and Exhibit 1).
8. The appellant filed this appeal in a timely manner on October 3, 2025. (Exhibit 2).
9. An aid pending protection was put in place to protect the appellant's benefits.
10. The record was held open until November 14, 2025, for both the appellant and MassHealth to submit additional documentation in support of their respective positions. (Exhibit 7).
11. Both parties submitted materials which have been marked and incorporated into the record. (Exhibit 8 and Exhibit 9).

Analysis and Conclusions of Law

Regulations concerning personal care attendant (PCA) services are found at 130 CMR 422.000, et seq. PCA is defined as a person who is hired by the member or surrogate to provide PCA services. See 130 CMR 422.402. PCA services are physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs), as described in 130 CMR 422.410. Id.

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.¹

See 130 CMR 422.403(C).

Here, there is no dispute that the appellant meets all the requirements to qualify for PCA services. The only question is whether the appellant failed to comply with any of the requirements listed in applicable MassHealth's regulations.

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. See 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..., and only to provide physical assistance with ADLs and IADLs as described in the personal care attendant evaluation submitted by the PCM agency...", 130 CMR 422.420(A)(5)(a), and "comply with all applicable MassHealth regulations." See 130 CMR 422.420(A)(20).

The MassHealth agency reserves the right to:

¹ 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 MassHealth. Services that are less costly to MassHealth include, but are not limited to, health care reasonably known by the provider, or identified by MassHealth 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. See 130 CMR 450.204(A).

- (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).

See 130 CMR 422.420(B).

In this case, MassHealth terminated the appellant from the PCA program, citing 130 CMR 422.420(A)(5)(a). The record establishes that at least two PCAs independently reported the appellant's inappropriate behavior. Their reports state that the appellant either requested inappropriate massages or engaged in inappropriate self-touching in their presence. See generally Exhibit 6. The first PCA terminated her employment after only two days, despite the clear financial disadvantage of doing so as a single parent. See Exhibit 6, pp. 16-17. The second PCA left so abruptly that her employment paperwork was never submitted, resulting in her forfeiting payment for the hours she had already worked. See Exhibit 6, pp. 9. The appellant asserts that the second PCA departed because she was unable to produce the identification required for employment. However, this explanation is inconsistent with the record and lacks credibility. If the PCA had been unable to produce identification due to some form of wrongdoing, it is unlikely that she would have filed a complaint with MassHealth, a state agency, subjecting herself to potential scrutiny. Her willingness to report the appellant's conduct strongly suggests that her departure was prompted by the behavior she described, not by any deficiency in her documentation.

It should be noted that two of the appellant's female PCAs submitted letters on his behalf, and one testified credibly that the appellant had not acted inappropriately toward her. See Exhibit 8, pp. 9, 11. While this testimony and correspondence are acknowledged, they do not meet a preponderance of the evidence standard necessary for the appellant to satisfy his burden. See Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983)("[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings"). Appropriate behavior toward some PCAs does not establish that the appellant behaved appropriately toward all female PCAs.

I therefore find that the reports made by the two complaining PCAs are credible because they were made close in time, are similar in nature, and were submitted against the PCAs' financial interest. Moreover, the record, including the appellant's own submissions, demonstrates that he has previously used PCA services for non-ADL-IADL related purposes, such as having a PCA accompany him to a restaurant. This further corroborates concerns regarding his misuse of PCA services. See 130 CMR 422.420(A)(5)(a); Exhibit 8, p. 13.

Lastly, the appellant's own submission regarding an incident in [REDACTED] lends additional support to the possibility that another PCA may have had similar complaints. Although the relevant police department declined to pursue that complaint, it is important to recognize that the standards for initiating a criminal prosecution differ significantly from the standards applied in an administrative hearing. See Craven v. State Ethics Comm'n, *supra*. In this context, the lack of criminal charges does not undermine the credibility or significance of the complaints. As such, I find that MassHealth was within its rights to terminate the appellant's participation in the PCA program pursuant to 130 CMR 422.420(A)(5)(a) and 130 CMR 422.420(B)(1).

For the foregoing reasons, this appeal is DENIED.²

Order for MassHealth

Remove aid pending protection.

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.

² Nothing in this decision precludes the appellant from seeking an alternative program for services through any agency such as Home Health Aide organization as suggested by MassHealth. See Exhibit 9, p. 1.

Sharon Dehmand, Esq.
Hearing Officer
Board of Hearings

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