


COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

SUFFOLK, ss

SUPERIOR COURT  
DOCKET NO.:


  
Plaintiff  
vs.  
EXECUTIVE OFFICE OF HEALTH  
AND HUMAN SERVICES OFFICE OF )  
MEDICAID, MARYLOU SUDDERS, )  
Secretary of the Executive Office of )  
Health and Human Services, and )  
DAN TSAI, Assistant Secretary for )  
MassHealth )  
Defendants )

COMPLAINT

JURISDICTION

I. Jurisdiction of the plaintiffs cause of action is conferred upon the Superior Court by G.L. c. 30A §§ 7 and 14, G.L. c. 212 § 4, and G.L. c. 214 § 1.

PARTIES

2. The plaintiff, , resides at Quincy, Norfolk County Massachusetts.
3. The defendant, Massachusetts Executive Office of Health and Human Services ("EOHHS"), is the agency charged under federal and state law with the responsibility for administering the Massachusetts Medicaid Program ("MassHealth"). The Office of Medicaid,

13. Prior approval from MassHealth is required to receive coverage for PCA services. The purpose of prior authorization is solely to determine "the health-care necessity" of the requested services. 130 CMR 422.416. Prior approval from MassHealth is also required in order for an individual PCA to work "overtime" of more than 50 hours per week including night hours. 130 CMR 418.

THE PLAINTIFF

14. [REDACTED] is a MassHealth member who uses personal care attendant services due to hemiparesis caused by a stroke and other medical conditions. During 2016, the plaintiff received 49.5 hours per week of PCA services plus a night attendant.

15. On or about February 3, 2017, the defendants mailed the plaintiff a notice that his PCA services would be reduced to 38 hours per week, without a night attendant, beginning March 16, 2017.

16. The plaintiff filed a request for a hearing before March 16, 2017 and continued to receive MassHealth coverage for 49.5 hours of PCA plus a night attendant.

17. On or about April 28, 2017, the plaintiff received a letter from his PCM stating that MassHealth had approved his request for overtime hours for his PCA. Overtime hours only require approval when a PCA is authorized to work more than 50 hours per week including night hours. Upon receipt of this letter, the plaintiff believed that his full 49.5 hours of PCA services plus a night attendant had been approved. A copy of this letter is attached as Exhibit A.

18. BOH scheduled a fair hearing for May 15, 2017. The plaintiff did not attend the hearing because he believed that all of his PCA hours had been restored since MassHealth

within EOHHS, administers the MassHealth program. G.L. c. 118E § 1. The agency is located at One Ashburton Place, Boston, Suffolk County, Massachusetts.

4. The defendant, Marylou Sudders, is the Secretary of EOHHS. She is responsible for the administration of the MassHealth program pursuant to G.L. c. 118E § 2. Her office is located at One Ashburton Place, Boston, Suffolk County, Massachusetts. She is sued in her official capacity.

5. The defendant, Daniel Tsai, is the Assistant Secretary for MassHealth and the Director of the Office of Medicaid within EOHHS. His office is located at One Ashburton Place, Boston, Suffolk County, Massachusetts. He is sued in his official capacity.

## FACTS

### THE MEDICAID PROGRAM

6. Medicaid is a cooperative federal-state cost-sharing program designed to enable each state to furnish comprehensive medical assistance to public assistance recipients and other needy citizens whose income is insufficient to meet the costs of necessary medical care. 42 U.S.C. § 1396 *et seq.*

7. A state's participation in the Medicaid program is voluntary. Massachusetts has chosen to participate in the Medicaid program. The Massachusetts Medicaid program is known as "MassHealth." G.L. c. 118E §§ 1, 9, 9A. MassHealth is required to comply with the federal statutory and regulatory scheme. G.L. c. 118E §12.

8. EOHHS is the single state agency designated by the Commonwealth to administer its Medicaid program, as required under 42 U.S.C. § 1396(a)(5). G.L. c. 118E §1. EOHHS is

required to "formulate such methods, policies, procedures, standards and criteria, except medical standards and criteria, as may be necessary for the proper and efficient operation of the plan in a manner consistent with simplicity of administration and the best interests of the recipients." G.L. c. 118E §12.

9. The Medicaid Act and implementing regulations require the single state agency to provide a timely and adequate notice prior to the termination or reduction of benefits. A timely notice is a notice which is mailed to a Medicaid recipient at least ten days before an intended action. 42 CFR 431.211 and 130 CMR 610.015(A). An adequate notice is a notice which includes a statement of what action the agency intends to take, the reasons for the action, citations to the specific regulations supporting the action, and an explanation of the right to request a hearing and the circumstances under which Medicaid benefits are continued pending a hearing. 42 CFR 431.210, 431.220, 431.230, and 130 CMR 610.026.

10. A member has the right to appeal a MassHealth decision in a fair hearing before the Office of Medicaid Board of Hearings ("BOH"). 130 CMR 610.002; 130 CMR 610.015(B).

11. If the BOH receives an appeal before the implementation date of the appealable action, benefits will be continued until there is a BOH decision. 130 CMR 610.036.

12. MassHealth provides payment for personal care attendant (PCA) services when those services are prescribed by a physician, the member suffers from a permanent or chronic disability that impairs the member's functional ability to perform activities of daily living, and the member requires physical assistance with at least two activities of daily living. 130 CMR 422.403. Requests for coverage of PCA services are made on behalf of a member by a Personal Care Management (PCM) agency.


continued to cover all of his PCA services and his request for approval of overtime hours had been approved.

19. By letter, dated May 15, 2017, BOH dismissed the appeal because the plaintiff did not attend the hearing. This letter informed the plaintiff that he could request that the dismissal be vacated by submitting a written request within 10 days.

20. On or about May 25, 2017, MassHealth reduced its payment for the plaintiff's PCA hours to 38 hours per week without providing notice of the date of reduction.

21. By letter dated June 22, 2017 and received on or about June 26, 2017, BOH declined to vacate its dismissal of the appeal and stated that the plaintiff had 30 days from receipt of the letter to file an appeal in Superior Court.

#### **CAUSES OF ACTION**

22. The defendants' final administrative decision dismissing  appeal of the reduction of his hours of PCA services is based upon an error of law, is unsupported by substantial evidence, and is arbitrary, capricious, or otherwise not in accordance with law in violation of G.L. c.30A § 14.

23. By reducing the plaintiff's MassHealth coverage for PCA without adequate, understandable, advance notice and by dismissing the plaintiff's request for a hearing, the defendants, acting under color of state law, have deprived the plaintiff of rights secured by 42 U.S.C. §1396a and implementing regulations in violation of 42 U.S.C. §1983 including the right to timely advance notice prior to the reduction of benefits and the right to a fair hearing.

**PRAYERS FOR RELIEF**

WHEREFORE, plaintiff respectfully prays that this Court:

1. Assume jurisdiction over this action.
2. Reverse the defendants' decision of June 22, 2017 and order the defendants to conduct a fair hearing regarding the plaintiff's eligibility for MassHealth coverage of PCA service.
3. Grant the plaintiff the costs of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
4. Grant such other and further relief as this Court may deem just and equitable.

Date: July 24, 2017

Respectfully submitted,

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