

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2101798
Decision Date:	11/26/2021	Hearing Date:	10/04/2021
Hearing Officer:	Paul C. Moore	Record Closed:	11/18/2021

Appellant Representative:



MassHealth Representative:

(by Michael Rooney, Tewksbury MEC (by telephone))



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
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APPEAL DECISION

Appeal Decision:	Denied	Issue:	Verifications
Decision Date:	11/26/2021	Hearing Date:	10/04/2021
MassHealth Rep.:	Michael Rooney	Appellant Rep.:	
Hearing Location:	Board of Hearings (remote)		

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 February 17, 2021, MassHealth informed the appellant that she was not eligible for MassHealth due to missing verifications (Ex. 1). The appellant, through her appeal representative, filed a request for a fair hearing with the Board of Hearings (BOH) on March 11, 2021 (Ex. 2). Denial of MassHealth assistance is grounds for appeal to BOH (130 CMR 610.032(A)).

The BOH learned, on March 11, 2021, that the appellant passed away on . A petition for appointment of a personal representative for the appellant's estate was filed in probate court in January, 2021, a copy of which was provided to BOH (Ex. 6). On August 17, 2021, the probate court issued letters of authority for appointment of a personal representative for the appellant's estate (Ex. 3).

An appeal hearing was held on October 4, 2021. At hearing, following testimony by the parties, the appeal representative requested additional time to compile and submit the requested missing verifications. The hearing officer agreed to hold the record of the appeal open for four weeks, or until November 1, 2021 for the appeal representative to submit the missing verifications, and also agreed to keep the record open for an additional two weeks for the MassHealth representative to review the documentation, and report back to the hearing officer whether all verifications needed to make a decision had been submitted (Ex. 7).

On November 1, 2021, the hearing officer received an e-mail communication from the appeal

representative requesting that the record-open period be extended for an additional two weeks to allow the personal representative of the estate to obtain and submit requested bank statements (Ex. 8). By e-mail to the parties dated November 1, 2021, the hearing officer agreed to extend the record-open period for the appeal representative until November 15, 2021, and for MassHealth until November 29, 2021 (Ex. 9). The hearing officer informed the appeal representative that no additional extensions of time would be granted (*Id.*).

On November 15, 2021, the appeal representative submitted via e-mail to the hearing officer and the MassHealth representative a copy of an e-mail communication from the personal representative of the estate (Ex. 10). On November 17, 2021, the MassHealth representative responded that he reviewed the information provided and determined that there was insufficient information for MassHealth to proceed to an eligibility decision (Ex. 11).

On November 18, 2021, the appeal representative submitted via e-mail to the hearing officer and the MassHealth representative a copy of a statement from the personal representative of the estate, although such a statement was not requested by the hearing officer (Ex. 13). The hearing officer closed the record of the appeal on November 18, 2021.

Action Taken by MassHealth

MassHealth denied the appellant's MassHealth application.

Issue

Did MassHealth correctly determine that the appellant was not eligible for MassHealth?

Summary of Evidence

A representative from the Tewksbury MassHealth Enrollment Center testified by telephone that the appellant, who was over age 65, filed a MassHealth application for long-term care coverage on December 1, 2020. The MassHealth representative stated that he was assigned the case on December 15, 2020, and that he sent a request for more information about the appellant's assets, income, and nursing facility documentation to the appellant on that date. No verifications were timely received, so the MassHealth representative sent a denial notice to the appellant on January 4, 2021. Some of the missing verifications were received by MassHealth on January 8, 2021, according to the MassHealth representative, and January 8, 2021 therefore became the new controlling application date. According to the MassHealth representative, no additional verifications were received, and the appellant's application was denied a second time by notice dated February 17, 2021. It is the latter notice that was appealed to the BOH (Testimony, Ex. 1, Ex. 2).

The MassHealth representative noted that the appellant passed away on [REDACTED], shortly after filing her application. She was a resident of a nursing facility at that time. The MassHealth

representative clarified that the February 17, 2021 denial notice appealed in this matter erroneously states that the appellant applied for home- and community-based waiver services; she did not. The MassHealth representative stated that although the applicable MassHealth reapplication date is January 8, 2021, the MassHealth representative is willing to honor the original application date of December 1, 2020, since that date is contained in the relevant denial notice (Testimony).

The MassHealth representative stated that as of the hearing date, the following documentation is still missing: completed SC-1 Form from the appellant's nursing facility; long-term care screening document; statement of funds contained in the appellant's personal needs allowance (PNA) account at the facility; and a letter from the facility reflecting the amount of private payments the appellant made to the facility (Testimony, Ex. 5). In addition, for a Bank #1 checking account, monthly statements from January, 2019 through the date of her death are needed, as well as monthly statements for two Individual Retirement Accounts (IRAs) formerly owned by the appellant with two different investment banks (IRA #1 and IRA #2) for the dates January, 2019 through the date of death.¹ Finally, for Bank #2, checking and savings account statements, respectively, from January, 2019 through date of death are needed, or in the alternative, a letter from Bank #2 stating that the appellant did not have any accounts with them since early 2019 (*Id.*).² He added that for all accounts (bank and IRA), the appellant's estate must verify the proof of sources of any deposits into the accounts, as well as explain the purpose(s) of all withdrawals of \$1,000.00 or more from the accounts (*Id.*).

The appellant's estate was represented at hearing by a Medicaid consultant, who testified telephonically. She noted that she previously sent MassHealth the requested completed SC-1 Form from the appellant's nursing facility, and long-term care screening document. She noted, however, that she is in the process of obtaining an updated statement of funds contained in the appellant's PNA account, and an updated letter reflecting private payments the appellant made to the facility. Over the weekend immediately prior to the day of the appeal hearing, she sent the MassHealth representative a copy of monthly statements from January, 2019 to present for IRA #1 owned by the appellant. She testified that the personal representative of the appellant's estate is still working to obtain monthly statements of the appellant's accounts with Bank #1 and Bank #2. She testified that the personal representative was appointed by the probate court only in August, 2021, and that he did not receive a hard copy of his appointment letters until mid-September, 2021. She testified that the personal representative needs to go to Bank #1 and Bank #2 in person, with the letters of authority in hand, to obtain the requested statements (Testimony).

The appeal representative testified that the appellant was admitted to the facility on [REDACTED], and that the appellant paid \$136,020.00 in "room and board" payments to the facility. The facility is seeking MassHealth coverage for the appellant's stay beginning in July, 2020, but the appeal representative stated she understood that the facility will likely not be awarded this coverage date, given that the appellant's application was filed with MassHealth in December, 2020 (Testimony).

¹ Specific bank and investment bank names are omitted for privacy reasons.

² The MassHealth representative stated that the accounts with Bank #2 were not disclosed on the appellant's MassHealth application, but were instead located via MassHealth's asset verification system.

At the close of the hearing, the hearing officer agreed to leave the record of this appeal open for four weeks, or until November 1, 2021, for the appeal representative to submit the balance of the missing verifications, and to allow the MassHealth representative an additional two weeks, or until November 15, 2021, to review the additional documents to determine if all verifications needed to proceed to an eligibility decision have been received (Ex. 7).

On November 1, 2021, the hearing officer received, via e-mail from the appeal representative, copies of a completed SC-1 Form from the nursing facility; a letter from the nursing facility concerning “coding” of the appellant’s care at the facility; and a private pay letter from the facility (Ex. 8). In addition, the November 1, 2021 e-mail correspondence from the appeal representative forwarded correspondence from the personal representative of the appellant’s estate, which states in pertinent part:

I am having difficulty with [Bank #1]. I have been there 2x and they are now requesting an original death certificate. They did tell me there is a beneficiary on the account, but would not tell me who it is. . . . It appears that whatever funds are in the account would go to the beneficiary unless they are deceased.

[Bank #2] had to be done online and we have no response from them yet.

(Ex. 8A)

In response to the appeal representative’s November 1, 2021 correspondence, the hearing officer informed the parties via e-mail on the same date that he would extend the record-open period for an additional two weeks, or until November 15, 2021, for the appeal representative to submit the still-missing bank statements, and until November 29, 2021 for MassHealth to review the documents submitted (Ex. 9).³

On November 15, 2021, the hearing officer received from the appeal representative by e-mail a copy of a letter from Bank #2, reflecting that the appellant owned joint checking and savings accounts with a family member at Bank #2, that the accounts remain open, and that as of the appellant’s date of death, the balances in these accounts were \$55.26 (savings) and \$406.66 (checking) (Ex. 10A). With regard to the requested statements of the appellant’s account at Bank #1, the appeal representative wrote that the personal representative of the appellant’s estate was diagnosed with symptomatic Covid-19 as of November 15, 2021, and was quarantined (Ex. 10). The appeal representative forwarded a copy of e-mail correspondence from the personal representative, also dated November 15, 2021, stating as follows:

I spoke with S.D. at Bank #1. They will only provide statements if I appear in person. I am currently infected with COVID and symptomatic and under quarantine.

³ The hearing officer indicated in his November 1, 2021 correspondence to the parties that he would not extend the record-open period for the appellant beyond November 15, 2021 (Ex. 9).

S.D. informed me there is one checking account. . . . Social Security has been deposited into the account since [the appellant's] death on 12/8/20 to the present. There is a federal hold on the account. . . . The balance is \$87,000. There is also a beneficiary on the account, but the bank would not tell me who it is. . . .

I will try and get to the bank next week after I am well enough and off quarantine.

(Ex. 10B)⁴

On November 17, 2021, the hearing officer received e-mail correspondence from the MassHealth representative, copied to the appeal representative, stating as follows:

At the present time, this is not sufficient information for MassHealth to make a new decision, and MassHealth stands by the denial.

First, the requested statements were not received. What was requested was (*sic*) statements from 1/2019-present. This was on the information request from 1/2021, the denial notice, and the record open. These statements are needed in order to review for potential unreported income, assets, or transfers.

Second, most of what was received was a statement from another party relaying information he got from the bank representative, but not directly from the bank. Second-hand conversations are not sufficient for MassHealth verification. However, the main issue is the lack of statements.

Although I am sympathetic to [the personal representative's] situation (I am also under quarantine after testing positive for Covid, and have been out for the last few days), this information has been requested for over 10 months, and could have been addressed prior to last week.

(Ex. 11)

Although not requested by the hearing officer, on November 18, 2021, the appeal representative forwarded via e-mail a signed, dated "affidavit" of the personal representative of the appellant's estate, which reads in relevant part:

I, [attorney J.S.], as personal representative of the appellant's estate, hereby state the following:

I was initially appointed as Conservator, however [the appellant] passed away very soon after my appointment. I was then appointed as the Personal Representative as of

⁴ Initials are used to protect confidentiality.

8/17/2021. My Court appointment was not received until mid-September. There was very little information on assets for this matter.

The information provided relative to the bank accounts:

[IRA #1] year to date statement from 1/1/2019 to 12/31/19; the account was closed out by [the appellant] in 2019; there is a 0.00 balance.

[IRA #2] indicates [another family member] is the beneficiary;

[Bank #2] – received a letter indicating the date of death values and both accounts were joint accounts with [a family member]. . .

[Bank #1] – spoke with S.D. and was informed the account indicates a beneficiary as well as frozen due to Social Security.

I have traveled in person to [Bank #1] on two occasions to request information. [Bank #1] then required an original death certificate. When the death certificate was received, I had been tested positive for Covid as well as having symptoms. Unfortunately [Bank #1] will not provide a letter or information via email/fax, only in person.

(Ex. 13)⁵

Findings of Fact

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

1. The appellant, who was over age 65, entered a nursing facility in [REDACTED] (Testimony).
2. The appellant filed a MassHealth application for long-term coverage on December 1, 2020 (Testimony, Ex. 5).
3. The appellant passed away on [REDACTED] (Ex. 3).
4. MassHealth sent a request for information to the appellant seeking additional information about her assets and income on December 15, 2020 (Testimony, Ex. 5).
5. Not all requested verifications were timely received by MassHealth (Testimony, Ex. 5).
6. MassHealth denied the appellant's application by notice dated January 4, 2021 (Testimony, Ex. 5).
7. The appellant's estate submitted some of the missing verifications on January 8, 2021 (Testimony).

⁵ This affidavit is not sworn under the pains and penalties of perjury, nor is it notarized (Ex. 13).

8. MassHealth granted a reapplication date of January 8, 2021, and requested additional verifications from the appellant (Ex. 5).
9. MassHealth sent a second denial notice to the appellant's estate on February 17, 2021 for missing verifications (Ex. 1).
10. The appellant's estate filed a timely appeal of the February 17, 2021 denial notice with the BOH (Ex. 2).
11. A personal representative for the appellant's estate was appointed by the probate court on August 17, 2021 (Ex. 3).
12. As of the appeal hearing date, the following verifications were still outstanding: completed SC-1 Form from the appellant's nursing facility; long-term care screening document; statement of the appellant's PNA account at the facility; a letter from the facility reflecting the amount of private payments the appellant made to the facility; for a Bank #1 checking account, monthly statements from January, 2019 through the date of the appellant's death; monthly statements for two Individual Retirement Accounts (IRAs) formerly owned by the appellant with two different investment banks (IRA #1 and IRA #2) for the dates January, 2019 through the date of her death; and for Bank #2, checking and savings account statements, respectively, from January, 2019 through date of death, or in the alternative, a letter from Bank #2 stating that the appellant does not have, and has not owned, any accounts with them since early 2019 (Testimony).
13. The personal representative of the appellant's estate visited Bank #1 in person on two occasions to obtain the requested bank statements, but was unsuccessful in obtaining them (Ex. 13).
14. The hearing record was held open for six weeks following the hearing for the appeal representative to submit the missing verifications (Ex. 7, Ex. 9).
15. As of November 18, 2021, the requested bank statements from Bank #1 and Bank #2 had not been produced to MassHealth.

Analysis and Conclusions of Law

MassHealth regulation 130 CMR 516.001(A) states:

(A) Filing an Application.

(1) Application. To apply for MassHealth

(a) for an individual living in the community, an individual or his or her authorized representative must file a Senior Application online at www.MAHealthConnector.org, complete a paper application, complete a telephone application, or apply in person at a MassHealth Enrollment Center (MEC).

(b) for an individual in need of long-term-care services in a nursing facility, a

person or his or her authorized representative must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center (MEC).

(Emphasis added)

Also, pursuant to 130 CMR 516.001(B):

Corroborative Information. The MassHealth agency requests all corroborative information necessary to determine eligibility.

(1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of receipt of the application.

(2) The notice advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information.

Next, pursuant to 130 CMR 516.001(C):

Receipt of Corroborative Information. If the requested information, with the exception of verification of citizenship, identity, and immigration status, is received within 30 days of the date of the request, the application is considered complete. The MassHealth agency will determine the coverage type providing the most comprehensive medical benefits for which the applicant is eligible. **If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied.**

(Emphasis added)

Also, pursuant to 130 CMR 515.008(A):

Responsibility to Cooperate. The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining other health insurance.

Next, MassHealth regulation 130 CMR 516.005, "Coverage Date," states in relevant part:

The begin date of MassHealth Standard, Family Assistance, or Limited coverage may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided. If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved.

The appellant filed an application for long-term care services in a nursing facility almost one year ago, in December, 2020. Unfortunately, she passed away very shortly thereafter. Information about her assets, income, and possible transfers of resources is needed by MassHealth in order to approve her application. Such information was initially requested as long ago as mid-December, 2020.

Some of the information needed by MassHealth to make a decision has been provided, including the status of the appellant's IRA accounts. However, monthly bank account activity at Bank #1 and Bank #2 from January 1, 2019 through the date of her death has not been provided, despite multiple requests.

The appeal representative submitted evidence showing that the personal representative of the estate personally visited Bank #1 on at least two occasions to obtain the account statements, and that a contemplated third visit to Bank #1 had to be delayed until the personal representative of the estate was out of quarantine. It is unclear why Bank #1 has not been forthcoming in providing information to the personal representative of the appellant's estate.

While the recent health circumstances of the estate's personal representative are certainly unfortunate, they do not obviate the estate's obligation to cooperate in providing information necessary to establish the appellant's eligibility. A lengthy record-open period of approximately six weeks following the hearing was granted to the appellant's estate; nevertheless, not all required information was submitted.

The appellant's estate has not provided all corroborative information necessary to determine her eligibility, as required at 130 CMR 516.001(B) and (C), above. Therefore, there was no error in MassHealth's decision to deny the appellant's estate's application for coverage.

The appeal is therefore 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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Sylvia Tiar, Appeals Coordinator, Tewksbury MEC

[REDACTED]