

# Office of Medicaid BOARD OF HEARINGS

## Appellant Name and Address



<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Appeal Number:</b>	2133174
<b>Decision Date:</b>	12/22/2021	<b>Hearing Date:</b>	12/07/2021
<b>Hearing Officer:</b>	Samantha Kurkijy		

## Appearance for Appellant:



## Appearance for MassHealth:

Jennifer Carroll—Taunton MEC



*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>	Dismissed in part; Denied in part	<b>Issue:</b>	Verifications
<b>Decision Date:</b>	12/22/2021	<b>Hearing Date:</b>	12/07/2021
<b>MassHealth Rep.:</b>	Jennifer Carroll	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	No

### 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 March 16, 2021, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant failed to submit verifications in a timely manner. (130 CMR 516.001; Exhibit 1; Exhibit 6.) The appellant filed an appeal in a timely manner on April 12, 2021. (130 CMR 610.015(B); Exhibit 2.) Denial of assistance is a valid ground for appeal. (130 CMR 610.032.) The hearing officer experienced computer problems beyond the control of the Board of Hearings, which extends the time limit for rendering a decision, pursuant to 130 CMR 610.015(D)(4)(b).

### Action Taken by MassHealth

MassHealth notified the appellant that she is not eligible for MassHealth benefits because she did not submit the requested verifications.

### Issue

Whether MassHealth was correct in notifying the appellant that she is not eligible for MassHealth benefits.

## Summary of Evidence

The MassHealth representative reported that the appellant submitted all outstanding verifications. However, the parties disagree as to which application date controls. The MassHealth representative testified that the appellant originally submitted an application for benefits on April 27, 2020. On May 4, 2020, MassHealth issued a Request for Information with a due date of June 3, 2020. MassHealth did not receive any of the requested verifications and denied the case on June 15, 2020. The MassHealth representative noted, however, that the MassHealth system was not sending out denials due to the COVID-19 pandemic and she had not received direction yet as to how to handle denials. Later, MassHealth began issuing manual denials. The MassHealth representative testified that on January 11, 2021, the appellant's representative enquired about the status of the appellant's application for benefits. The MassHealth representative testified that she informed the appellant's representative that the appellant's application was obsolete and she needed to file a new application. The appellant filed a new application on January 31, 2021.

The MassHealth representative testified that the February 10, 2021 Request for Information erroneously contained a note which related to the appellant's first application. That note reads as follows: "The application was received on 2/26/2020 we can only go back 90 days of application which would be 11/1/2019 for possible start date." (Exhibit 6; Exhibit 7.) The MassHealth representative testified that she included the note in the May 4, 2020 Request for Information as a courtesy to the nursing facility and then forgot to delete the note when she issued the February 10, 2021 Request for Information. She testified that the note was not meant to indicate she was preserving a start date, but to inform the nursing facility of the earliest possible start date. She testified that while a denial notice did not issue on the first application, the onus is on the nursing facility to follow up with MassHealth.

The appellant's representative testified that the appellant never received a denial notice on the April 27, 2020 application. She testified that as the regulations dictate that a denial must issue within 45 days of the deadline to submit verifications, the appellant filed an appeal on MassHealth's failure to take action (appeal # 2100945). The appeal was received at the Board of Hearings on February 3, 2021. (Exhibit 7; Exhibit 8.) On February 11, 2021, the Board of Hearings dismissed the appeal "because the stated reason for the hearing request is not grounds for appeal as specified in Section 610.032." (Exhibit 8, p. 1.) The appellant's representative testified that in the past, when an appeal on MassHealth's failure to take action has been filed, the Board of Hearings has called MassHealth and instructed MassHealth to process the application. She testified that the appeal is then dismissed without going to hearing. Because the appellant received a Request for Information after the dismissal of the appeal, the appellant's representative assumed that the Board of Hearings interceded as it has in the past and that the original application date of April 27, 2020 was honored. She noted that the language relating to the original application date was contained on both the February 10, 2021 Request for Information and the March 16, 2021 denial notice.

The MassHealth representative responded that she was not aware of any appeal filed for

MassHealth's failure to take action. She testified that the February 10, 2021 Request for Information was prompted by the appellant filing a new application for benefits on January 31, 2021.

## **Findings of Fact**

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

1. On April 27, 2020, the appellant submitted an application for benefits to MassHealth.
2. On May 4, 2020, MassHealth issued a Request for Information with a due date of June 3, 2020.
3. MassHealth did not receive any of the requested verifications and denied the case on June 15, 2020.
4. The MassHealth system was not sending out denials due to the COVID-19 pandemic and the appellant contends she did not receive a denial notice on this case.
5. On January 11, 2021, the appellant's representative enquired about the status of the appellant's application for benefits. The MassHealth representative testified that she informed the appellant's representative that the appellant's application was obsolete and she needed to file a new application.
6. The appellant filed a new application on January 31, 2021.
7. On February 3, 2021, the appellant filed an appeal on MassHealth's failure to take action on the April 27, 2020 application for benefits (appeal # 2100945).
8. On February 11, 2021, the Board of Hearings dismissed appeal number 2100945 "because the stated reason for the hearing request is not grounds for appeal as specified in Section 610.032." (Exhibit 8, p. 1.)
9. The appellant's representative testified that in the past, when an appeal on MassHealth's failure to take action has been filed, the Board of Hearings has called MassHealth and instructed MassHealth to process the application. She testified that the appeal is then dismissed without going to hearing.
10. On February 10, 2021, MassHealth issued a Request for Information.
11. The February 10, 2021 Request for Information erroneously contained a note which related to the appellant's first application. That note reads as follows: "The application was received on 2/26/2020 we can only go back 90 days of application which would be 11/1/2019 for possible

start date.” (Exhibit 6; Exhibit 7.)

12. On March 16, 2021, MassHealth denied the appellant’s application for failure to submit verifications. The language relating to the appellant’s first application date was also on the March 16, 2021 denial notice.
13. The appellant submitted a timely appeal on April 12, 2021.
14. The MassHealth representative testified that she included the note in the May 4, 2020 Request for Information as a courtesy to the nursing facility and then forgot to delete the note when she issued the February 10, 2021 Request for Information.
15. As of the time of the hearing on the March 16, 2021 denial notice, all outstanding verifications had been submitted.

## **Analysis and Conclusions of Law**

Pursuant to 130 CMR 515.008(A), an “applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility...” After receiving an application for MassHealth benefits, MassHealth proceeds as follows:

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.

(130 CMR 516.001(B).) “If the requested information...is received [by MassHealth] within 30 days of the date of the request, the application is considered complete....If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied.” (130 CMR 516.001(C).)

There is no dispute that the appellant submitted all of the outstanding verifications. The appeal, as it relates to the issue of verifications, is dismissed in part.

Pursuant to 130 CMR 610.032(A),

(A) Applicants and members have a right to request a fair hearing for any of the following reasons:

- (1) denial of an application or request for assistance, or the right to apply or reapply for such assistance;
- (2) the failure of the MassHealth agency to give timely notice of action on an application for assistance in accordance with the requirements of M.G.L. c. 118E, § 21;**
- (3) any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance;
- (4) MassHealth agency actions to recover payments for benefits to which the member was not entitled at the time the benefit was received;
- (5) individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations);
- (6) coercive or otherwise improper conduct as defined in 130 CMR 610.033 on the part of any MassHealth agency employee directly involved in the applicant's or member's case;
- (7) any condition of eligibility imposed by the MassHealth agency for assistance or receipt of assistance that is not authorized by federal or state law or regulations;
- (8) the failure of the MassHealth agency to act upon a request for assistance within the time limits required by MassHealth regulations;
- (9) the MassHealth agency's determination that the member is subject to the provisions of 130 CMR 508.000: *MassHealth: Managed Care Requirements*;
- (10) the MassHealth agency's denial of an out-of-area provider under 130 CMR 508.003(A)(2);
- (11) the MassHealth agency's disenrollment of a member from a managed care provider under 130 CMR 508.003: *Enrollment with a MassHealth Managed Care Provider*;
- (12) the MassHealth agency's denial of a member's request to transfer out of the member's MCO, ACPP, or Primary Care ACO under 130 CMR 508.003: *Enrollment with a MassHealth Managed Care Provider*;
- (13) the MassHealth agency's determination to enroll a member in the Controlled Substance Management Program under the provisions of 130 CMR 406.442: *Controlled Substance Management Program*; and
- (14) the MassHealth agency's determination of eligibility for low-income subsidies under Medicare Part D, as set forth in the *Medicare Prescription Drug and Improvement*

*and Modernization Act* of 2003 as described in federal regulations at 42 CFR Part 423, Subpart P.

(emphasis added.)

The time limits regarding an individual's right of appeal are addressed in 130 CMR 610.015(B):

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

(1) 30 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing;

(2) **unless waived by the BOH Director or his or her designee, 120 days from**

(a) the date of application when the MassHealth agency fails to act on an application;

(b) the date of request for service when the MassHealth agency fails to act on such request;

(c) **the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action;** or

(d) the date of the alleged coercive or otherwise improper conduct, but up to one year from the date of the conduct if the appellant files an affidavit with the BOH Director stating the following, and can establish the same at a hearing (Failure to substantiate the allegation either before or at the hearing will be grounds for dismissal.):

1. he or she did not know of the right to appeal, and reasonably believed that the problem was being resolved administratively or he or she was justifiably unaware of the conduct in question; and

2. the appeal was made in good faith....

(emphasis added.)

The appellant submitted an appeal of MassHealth's failure to act on February 3, 2021. On

February 11, 2021, the Board of Hearings denied the appellant's appeal. There is no evidence supporting the appellant's representative's supposition that the Board of Hearings instructed MassHealth to process the appellant's application before dismissing appeal # 2100945.<sup>1</sup> Instead, it appears that appeal # 2100945 was dismissed because the appellant submitted the appeal outside of the 120-day time limit. According to the May 4, 2020 Request for Information, verifications were due to MassHealth by June 3, 2020. On June 15, 2020, MassHealth determined that the appellant's application was denied due to lack of verifications. There is no dispute that the denial notice did not issue. The appellant had 120 days from the date of MassHealth's failure to act to appeal, and did not submit an appeal until February 3, 2021, well after the 120-day time limit. Therefore, the original application date of April 27, 2020 was not preserved. The MassHealth representative credibly testified that the notation regarding the original application date was included on the February 10, 2021 Request for Information and the March 16, 2021 denial notice in error, and the February 10, 2021 Request for Information was prompted by the application MassHealth received on January 31, 2021. The January 31, 2021 application is the viable application in this case, and the earliest date of potential eligibility, October 1, 2020, is reflected on the November 23, 2021 MassHealth approval notice, as "[t]he 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...." (130 CMR 516.006(A)(2).)

The appeal is denied in part.

## **Order for MassHealth**

Process the application, honoring the January 31, 2021 application date.

## **Notification of Your Right to Appeal to Court**

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<sup>1</sup> When an appeal is filed, the Board of Hearings' actions are dictated by the regulations found at 130 CMR 610.000.

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.

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Samantha Kurkly  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira  
