

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2154155
Decision Date:	6/9/2022	Hearing Date:	06/02/2022
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Joanne Weldon



*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:	Dismissed	Issue:	Eligibility
Decision Date:	6/9/2022	Hearing Date:	06/02/2022
MassHealth's Rep.:	Joanne Weldon	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone		

A hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

The appellant submitted an application for long-term care in the fall of 2019 seeking coverage for a date in November 2018. Through a notice dated February 27, 2020, MassHealth denied the application for failure to provide information necessary to determine eligibility.¹ (130 CMR 516.001; Exhibit 1). On May 27, 2021, an individual submitted correspondence to the Board of Hearings regarding documents sent in February 2021. The correspondence included: a fax cover sheet dated February 28, 2021; Letters of Authority for a Personal Representative; A Decree and Order on Petition for Formal Adjudication for the appellant's estate; and an Authorized Representative Designation (ARD) form signed on February 25, 2021.² (Exhibit 2). The representative at hearing noted that documents related to the appeal were sent to the Board of Hearings on March 16, 2020. No documentary evidence of such correspondence was in the hearing record or provided by the appellant's representative prior to or at hearing.

On June 9, 2021, the Board of Hearings issued a notice dismissing the appeal. (130

¹ The appellant passed away following the submission of the application but prior to the issuance of the notice on appeal. (Exhibit 4). On December 28, 2020, following a hearing on the uncontested Petition for Formal Adjudication dated December 13, 2019, an individual was appointed and qualified as Personal Representative of the appellant's estate. (Exhibit 2; Exhibit 4).

² In April 2020, in response to the Coronavirus Disease 2019 (COVID-19) national emergency, MassHealth implemented protocols to support public health efforts including a protection of coverage for all individuals who had MassHealth coverage as of March 18, 2020 or newly approved on or after March 18, 2020. The filing of the application and the agency action on appeal were done well before the implementation of these protocols. Therefore, they are not applicable to this decision.

CMR 610.000; Exhibit 3). The representative at hearing testified that he did not receive the notice of dismissal. The notice was addressed to the representative at hearing with the same address listed on the ARD form, documents from the Probate Court, and current notice of hearing. (Exhibit 2; Exhibit 3).

Pursuant to 130 CMR 610.035(A), the Board of Hearings will dismiss a request for hearing when:

- (1) the request is not received within the time frame specified in 130 CMR 610.015;
- (2) the request is withdrawn by the appellant;
- (3) the sole issue is one of state or federal law requiring automatic change in assistance for classes of members;
- (4) the stated reason for the request does not constitute grounds for appeal as set forth in 130 CMR 610.032;
- (5) the stated reason for the hearing request is outside the scope of 130 CMR 610.000 as set forth in 130 CMR 610.003;
- (6) BOH has conducted a hearing and issued a decision on the same appealable action arising out of the same facts that constitute the basis of the request;
- (7) the party requesting the hearing is not an applicant, member, or resident as defined in 130 CMR 610.004;
- (8) BOH learns of an adjustment or action that resolves all of the issues in dispute between the parties;
- (9) BOH learns that the applicant or member has passed away before or after the date of filing and there is no full compliance with 130 CMR 610.016(B) within ten days of a BOH request;
- (10) BOH learns that the applicant or member has passed away prior to the date of filing and scheduling of the hearing and is not informed until the date of the hearing and there is no full compliance with 130 CMR 610.016(B); or
- (11) the appellant fails to appear at a scheduled hearing.

In this case, at the time of the submission in May 2021, the party filing the appeal did not demonstrate that: there was an appealable action; the appeal was timely; or the appellant was a MassHealth applicant/member, nursing home resident or appeal representative. (130 CMR 610.035(A)).

When the Board of Hearings determines that the appeal shall be dismissed:

- (1) The appellant will be informed by written notice of the dismissal and of the procedures for requesting that the dismissal be vacated.

- (2) A request to vacate a dismissal must be in writing and must be signed by the appellant. Such request must be received by BOH within ten days of the date of the dismissal notice. If the dismissal is for failure to appear at a hearing, such a dismissal will be vacated by the BOH Director or his or her designee upon a finding that the appellant has shown good cause for
- a) failure to appear at a scheduled hearing; and
 - b) failure to inform BOH before the date of a scheduled hearing of his or her inability to appear at that hearing. (130 CMR 610.048(C)).

As noted above, records show that the party at hearing was informed by written notice of the dismissal and the procedures for requesting that the dismissal be vacated in June 2021. (130 CMR 610.048(C)). As noted above, the written notice dismissing the appeal was sent to the address listed on the ARD form, documents from the Probate Court, and current notice of hearing. The Board of Hearings did not receive a request to vacate the dismissal.

On April 7, 2022, an individual sent a letter to the Board of Hearings regarding the status of the appeal. (Exhibit 4). The letter had documents attached that were identical to those sent in May 2021 except for a letter from the party at hearing, who is also named as the Personal Representative of the appellant's estate, naming the party making the inquiry as an appeal representative. (Exhibit 4). On May 12, 2022, the Board of Hearings scheduled a hearing regarding the denial of MassHealth for failure to verify. (Exhibit 5).

The decision to schedule a hearing on the merits was made in error as the appeal was already dismissed in June 2021 and the individual at hearing, listed as the Personal Representative of the appellant's estate and provided all notices from the Board of Hearings did not respond to the June 2021 dismissal or take any further action until April 2022.³

On the day of the hearing, the representative who was sent all correspondence related to the appeal appeared by telephone and did not dispute the fact that the parties involved in the application process and appeal did not provide all of the information necessary to determine eligibility. Instead, the individual asked that the record be held open to allow representatives the opportunity to provide the information necessary to determine eligibility. This request was made over two

³ On the day of hearing, an individual named by the Personal Representative of the appellant's estate as an appeal representative, sent the same documents that were provided to the Board of Hearings in May 2021 and April 2022. As they did not provide any additional evidence, they were not incorporated into the hearing record.

years after the issuance of the notice on appeal. Despite the onset of a pandemic during the course of this appeal, the notice on appeal was issued well before the implementation of any administrative measures related to the pandemic and the representative at hearing failed to demonstrate any valid reason for not being able to provide information necessary to determine eligibility in more than two years. Even if this appeal was not dismissed, it would be denied for failure to provide information necessary to determine eligibility as required under the regulations at 130 CMR 515.008.

As noted above, this appeal is dismissed.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Shelly-Ann Lewis, Chelsea MassHealth Enrollment Center, 80 Everett Avenue, Chelsea, MA 02150, 617-551-2052

