

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2154652
Decision Date:	11/19/2021	Hearing Date:	09/02/2021
Hearing Officer:	Scott Bernard	Record Open to:	11/04/2021

Appearance for Appellant:




Appearance for MassHealth:

Eileen Smith (Chelsea MEC) *via* telephone



*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:	Approved	Issue:	Long Term Care (LTC) Verifications
Decision Date:	11/19/2021	Hearing Date:	09/02/2021
MassHealth's Rep.:	Eileen Smith	Appellant's Rep.:	
Hearing Location:	Chelsea MassHealth Enrollment Center		

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 May 26, 2021, MassHealth denied the appellant's application for LTC benefits because MassHealth determined that the appellant had not given MassHealth the information it needed to decide his eligibility. (See 130 CMR 515.008 and Exhibit 1, p. 2). The appellant filed this appeal in a timely manner on June 21, 2021. (See 130 CMR 610.015(B) and Ex. 1, p. 1). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

On June 25, 2021, the Board of Hearings sent the appellant's daughter (the holder of his power of attorney) notice that it had scheduled a hearing for July 21, 2021. (Ex. 2, p. 1). On July 19, 2021, the appellant's daughter informed the Board by fax that she had a professional conflict on July 21, 2021 with attached verification. (Ex. 3). In a notice dated August 9, 2021, the Board rescheduled the hearing for September 2, 2021. (Ex. 4).

At the hearing, the appellant's representative (a Medicaid consultant) and the appellant's daughter requested that the record remain open so that they could submit the requested verifications. The appellant's representative and daughter were given until October 4, 2021 to submit the verifications and the MassHealth representative was given until October 12, 2021 to respond. (Ex. 8). On September 30, 2021, the appellant's representative emailed both the hearing officer and the MassHealth representative some of the verifications and requested the record remain open a further three weeks to submit the remainder. (Ex. 9). The hearing officer extended the record open to November 3, 2021 for the appellant's representative and November 12, 2021 for the MassHealth representative. (Ex. 10). On October 28, 2021, the appellant's representative (through a colleague) emailed the hearing officer

requesting that decision be made based on the information already submitted. (Ex. 11; See also Ex. 12, Ex. 13). On November 4, 2021, after assessing the submissions, the hearing officer informed the parties that he would take the matter under advisement and write a decision at which time the record closed. (Ex. 14).

Action Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits for failure to submit requested verifications.

Issue

The first appeal issue is whether MassHealth was correct, pursuant to 130 CMR 515.008 and 516.001, in determining that the appellant did not submit verifications. The second issue is whether the appellant (through his representatives) has supplied sufficient verification to allow MassHealth to make an eligibility decision.

Summary of Evidence

The appellant is a single individual over the age of 65. (Ex. 6, pp. 4, 5). The appellant applied for MassHealth LTC benefits on April 7, 2021, seeking a coverage start date of March 6, 2021. (Ex. 6, pp. 2, 4, 5). On April 12, 2021, MassHealth sent the appellant's daughter (as power of attorney) a VCT-1 (request for information) notice. (Ex. 6, pp. 6-9). The request for information listed nine verifications that the daughter needed to submit by May 12, 2021. Ex. 6, p. 7). These included the following:

- Income from Military Pension MILITARY PENSION
Provide statement showing current gross amount received

- Health Insurance Pharmacy [REDACTED]¹ HEALTH PLAN
Provide statement showing current premium due

- BANK [REDACTED] Checking Account XXXXXX [REDACTED]
This account was previously listed on your case. Provide statement for 4/2020-4/2021. show where any withdrawal of \$1000 and over went as well as the source of all deposits. If closed, also provide verification from the Bank² of this and show what the balance was and where it went when closed. Do this for any account you have access to Show where all income is deposited.

- Life Insurance [REDACTED] LIFE INSURANCE

¹ MassHealth lists the names of institutions and lists the last four numbers of certain accounts in the request for information. This information has been redacted here and below for reasons of privacy.

² So in the original.

This was previously listed on your case. Provide statement showing whole or term, face value, and current cash surrender value. Cash value charts are not acceptable. If cashed out provide statement showing what was received and where it went.

- PNA/NOTE Personal Needs Allowance Account XXXXXX

Provide statement from day of admittance through present day. Show where any withdrawal of \$1000 and over went as well as the source of all deposits. Also Provide³ a private pay letter from the facility. Complete and mail back new application (mailed separately) as the one received is too old.

- BANK [REDACTED] Checking Account XXXXXX [REDACTED]⁴

Provide statement from 3/2020-8/14/2020 and 3/13/21-4/2021. Show where any withdrawal of \$1000 and over went as well as the source of all deposits like deposit on 11/5/20 for \$500. Verify the withdrawal for [REDACTED] Insurance

- Bank Account BANK [REDACTED] XXXXXX [REDACTED]⁵

There was a deposit from this account into your checking. Provide statement from 4/2020-4/2021. show where any withdrawal of \$1000 and over went as well as the source of all deposits

- Residence: Notification of admission to facility (SC-1)
- Nursing Facility Screening Notification[.] (Ex. 6, pp. 7-8).

The request for information also provided a list of acceptable documents for verifying the requested information. (Ex. 6, pp. 8-9). Relevant to this appeal, for verification of unearned income one of the following documents was listed as acceptable: “a copy of your check stub or award letter; a statement from the company or agency issuing the payment or benefit; or your most recent form 1040...with all attachments.” (Ex. 6, p. 9).

MassHealth did not receive all the requested documents by May 12, 2021. For that reason, MassHealth sent a Manual Denial Notice on May 26, 2021. (Ex. 1, p. 2; Ex. 6, p. 10). The Denial Notice identified the following items as the verifications that were not submitted in the time allowed: “[REDACTED] account [;] Military pension and where deposit[ed][;] PNA[;] Private Pay Letter[;] SC1[;] Screen[.]” (*Id.*). The denial was appealed in a timely manner on June 21, 2021. (Ex. 1, p. 1). On June 15, 2021, the daughter submitted the Private Pay Letter, the SC-1, and the Screen. (Ex. 1, pp. 14-17). At some point between the date of denial notice and the date of the hearing, the appellant’s representatives submitted the requested information concerning the PNA.

³ not in the original.

⁴ Oddly, this appears to be the same checking account as that listed above.

⁵ This, however, is a different bank account at the same bank.

The MassHealth representative stated that the only remaining items that need to be submitted are statements for the [REDACTED]. The MassHealth representative stated that this asset was not listed in the appellant's application. On May 11, 2021, MassHealth received an email from the appellant's daughter with a copy of the appellant's [REDACTED] but MassHealth needs the statements. (Ex. 6, p. 3). MassHealth has received copies of two statements, from June and July 2021. (Ex. 6, pp. 22-23). The main concern that MassHealth had about the [REDACTED] account was that the opening balance in June was over \$2,000. (Ex. 6, p. 23). MassHealth needed to know what the appellant's assets were at the time of his application in March. The statements submitted indicate that someone withdrew funds in both June and July 2021, therefore someone does have access to these funds. (Ex. 6, pp. 22-23). The MassHealth representative stated that at this time, the statements would seem to indicate that the appellant is over the countable asset limit. The MassHealth representative specified that MassHealth required statements from March 2021 to the present.

The appellant's representative stated that the appellant's daughter has repeatedly attempted to contact [REDACTED] to obtain the information MassHealth is seeking. The daughter first mailed [REDACTED] the request with a copy of the Power of Attorney document on July 15, 2021. (Ex. 5, pp. 6-13). The appellant's representative testified that the appellant's daughter has attempted to call [REDACTED] on over 30 different occasions. The daughter has tried calling three different [REDACTED] phone numbers. The appellant's daughter cannot get a live [REDACTED] representative to speak with her and gets a message that there is a backlog because of the stimulus payment. The appellant's representative stated that the appellant's daughter has tried using [REDACTED] online portal but every time she enters her father's Social Security Number, she is informed it is not the correct number.

The appellant's daughter testified that she became her father's power of attorney in March 2021. (Ex. 5, p. 7). For 8 years prior to this, her brother was the power of attorney. Upon becoming the power of attorney, the appellant's daughter was handed the [REDACTED] card and informed that the pension was located with [REDACTED]. (Ex. 5, p. 21). A representative at [REDACTED] informed the daughter that the account was not there. (*Id.*). The appellant's daughter stated that she spoke to someone at the Veteran's Administration, who told her that he did not know how to obtain the information from [REDACTED] as the VA had no access to that information. (Ex. 5, pp. 30-31). The appellant's daughter stated that she has made 41 calls to [REDACTED]. She stated she started calling [REDACTED] on June 3, not July 15, which was when she mailed [REDACTED] the written request for the first time, through August 31, 2021. The appellant's daughter also mailed [REDACTED] an overnight request for the information on August 31, 2021, enclosing the July 15 request. (Ex. 7). The appellant's daughter stated that she has also been in contact with the office of Senator Elizabeth Warren. The appellant's daughter testified that she has diligently tried to obtain the information MassHealth is seeking but has not been successful.

The appellant's representative requested that the record remain open for four weeks so that she and the appellant's daughter could continue trying to obtain the [REDACTED] Statements. The appellant's representatives were given until October 4, 2021 to submit statements from March 2021 through the present (excluding June and July, which had already been submitted) with an explanation of any transactions exceeding \$1,000. (Ex. 8). MassHealth was given until October 12 to confirm in writing the receipt of verifications and specify any that remained outstanding. (*Id.*).

On September 30, 2021, the appellant's representative submitted the August 2021 [REDACTED]

statement, which indicated there was a starting balance of \$1,462.41 and an ending balance of \$1,461.66.⁶ (Ex. 9, p. 7). The appellant's representative also submitted updated Bank statements. (Ex. 9, pp. 9-20). The appellant's representative wrote in the cover email that the appellant's daughter had mailed [REDACTED] for a third time and had not yet received a response. (Ex. 9, pp. 1, 5). The appellant's representative requested a further three weeks to see if [REDACTED] would respond. (*Id.*). On October 4, 2021, the parties were informed that the record open would be extended to November 3 for the appellant's representatives and November 12 for MassHealth. (Ex. 10).

On October 28, 2021, the appellant's representative (through a colleague) emailed the hearing officer requesting that decision be made based on the information already submitted. (Ex. 11; *See also* Ex. 12, Ex. 13). On October 29, MassHealth confirmed that it had received a copy of the September [REDACTED] statement, which the appellant's daughter submitted on October 28, 2021. (Ex. 13). On November 4, 2021, after assessing the submissions, the hearing officer informed the parties that he would take the matter under advisement and write a decision at which time the record closed. (Ex. 14). On the same date, MassHealth the hearing officer that it had been seeking statements from April 2020⁷ through the present and it had only received September 2021⁸ and that it would not change its determination based on this. (Ex. 15).

Findings of Fact

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

1. The appellant is a single individual over the age of 65. (Ex. 6, pp. 4, 5).
2. The appellant applied for MassHealth LTC benefits on April 7, 2021, seeking a coverage start date of March 6, 2021. (Ex. 6, pp. 2, 4, 5).
3. On April 12, 2021, MassHealth sent the appellant's daughter a request for information. (Ex. 6, pp. 6-9).
4. The request for information listed nine verifications that the daughter needed to submit by May 12, 2021, including the following:

Income from Military Pension MILITARY PENSION

Provide statement showing current gross amount received

Health Insurance Pharmacy [REDACTED] HEALTH PLAN

Provide statement showing current premium due

BANK [REDACTED] Checking Account XXXXXX [REDACTED]

⁶ The \$.75 debit was due to a "MONTHLY PAPER STATEMENT FEE". (Ex. 9, p. 7).

⁷ The hearing record only indicates that MassHealth was seeking statements from March 2021 to the present.

⁸ The hearing record shows that MassHealth has received statements from June, July, August, and September 2021 as of the date the hearing record closed.

This account was previously listed on your case. Provide statement for 4/2020-4/2021. show where any withdrawal of \$1000 and over went as well as the source of all deposits. If closed, also provide verification from the Bank of this and show what the balance was and where it went when closed. Do this for any account you have access to Show where all income is deposited.

Life Insurance [REDACTED] LIFE INSURANCE

This was previously listed on your case. Provide statement showing whole or term, face value, and current cash surrender value. Cash value charts are not acceptable. If cashed out provides statement showing what was received and where it went.

PNA/NOTE Personal Needs Allowance Account XXXXXX

Provide statement from day of admittance through present day. Show where any withdrawal of \$1000 and over went as well as the source of all deposits. Also Provide a private pay letter from the facility. Complete and mail back new application (mailed separately) as the one received is too old.

BANK [REDACTED] Checking Account XXXXXX [REDACTED]

Provide statement from 3/2020-8/14/2020 and 3/13/21-4/2021. Show where any withdrawal of \$1000 and over went as well as the source of all deposits like deposit on 11/5/20 for \$500. Verify the withdrawal for [REDACTED] Insurance

Bank Account BANK [REDACTED] XXXXXX [REDACTED]

There was a deposit from this account into your checking. Provide statement from 4/2020-4/2021. show where any withdrawal of \$1000 and over went as well as the source of all deposits

Residence: Notification of admission to facility (SC-1)

Nursing Facility Screening Notification[.] (Ex. 6, pp. 7-8).

5. The request for information also provided a list of acceptable documents for verifying the requested information including, for verification of unearned income, one of the following documents: “a copy of your check stub or award letter; a statement from the company or agency issuing the payment or benefit; or your most recent form 1040...with all attachments.” (Ex. 6, pp. 8-9).
6. MassHealth did not receive all the requested documents by May 12, 2021 and sent a Manual Denial Notice on May 26, 2021 identifying the following items as the verifications that were not submitted in the time allowed: [REDACTED] account [.] Military pension and where

deposit[ed][;] PNA[;] Private Pay Letter[;] SC1[;] Screen[.]” (Id.).. (Ex. 1, p. 2; Ex. 6, p. 10).

7. The denial was appealed in a timely manner on June 21, 2021. (Ex. 1, p. 1).
8. On June 15, 2021, the daughter submitted the Private Pay Letter, the SC-1, and the Screen. (Ex. 1, pp. 14-17; Testimony of the MassHealth representative).
9. At some point between the date of denial notice and the date of the hearing, the appellant’s representatives submitted the requested information concerning the PNA. (Testimony of the MassHealth representative).
10. The appellant’s daughter became her father’s power of attorney in March 2021. (Testimony of the appellant’s daughter; Ex. 5, p. 7).
11. The appellant’s son, the former power of attorney, handed the appellant’s daughter the [REDACTED] card and informed her that the pension was located with [REDACTED]. (Testimony of the appellant’s daughter; Ex. 5, p. 21).
12. A representative at [REDACTED] informed the daughter that the account was not at [REDACTED]. (Testimony of the appellant’s daughter; Ex. 5, p. 21).
13. The appellant’s daughter spoke to someone at the Veteran’s Administration, who told her that he did not know how to obtain the information from [REDACTED] as the VA had no access to that information. (Ex. 5, pp. 30-31; Testimony of the appellant’s daughter).
14. Between June 3 and August 31, 2021, the appellant’s daughter made 41 calls to [REDACTED] at three different telephone numbers. (Testimony of the appellant’s daughter; Testimony of the appellant’s representative; Ex. 5, p. 21).
15. The appellant’s daughter mailed requests for statements to [REDACTED] on July 15, and August 31, 2021. (Ex. 5, p. 6; Ex. 7).
16. The appellant’s daughter has tried using [REDACTED] online portal but every time she enters her father’s Social Security Number she is informed it is not the correct number. (Testimony of the appellant’s representative).
17. At the request of the appellant’s representative the record remained open so that she and the appellant’s daughter could continue trying to obtain the [REDACTED] Statements. (Ex. 8).
18. The appellant’s representatives were given until October 4, 2021 to submit statements from March 2021 to the present (excluding June and July, which had already been submitted) with an explanation of any transactions exceeding \$1,000 and MassHealth was given until October 12 to confirm in writing the receipt of verifications and specify any that remained outstanding. (Ex. 8).
19. On September 30, 2021, the appellant’s representative submitted the August 2021 [REDACTED] statement, which indicated there was a starting balance of \$1,462.41 and an ending

balance of \$1,461.66 updated Bank statements. (Ex. 9, pp. 7, 9-20).

20. The appellant's representative wrote in the cover email that the appellant's daughter had mailed [REDACTED] for a third time and had not yet received a response. (Ex. 9, pp. 1, 5).
21. The appellant's representative requested an extension of the record open and was given until November 3 to do so (MassHealth's deadline was extended to November 12). (Ex. 10).
22. On October 28, 2021, the appellant's representative (through a colleague) emailed the hearing officer requesting that a decision be made based on the information already submitted. (Ex. 11; See also Ex. 12, Ex. 13).
23. On October 29, MassHealth confirmed that it had received a copy of the September [REDACTED] statement, which the appellant's daughter submitted on October 28, 2021. (Ex. 13).
24. On November 4, 2021, after assessing the submissions, the hearing officer informed the parties that he would take the matter under advisement and write a decision at which time the record closed. (Ex. 14).

Analysis and Conclusions of Law

MassHealth requires verification of eligibility factors including income, assets, residency, citizenship, immigration status, and identity. (130 CMR 516.003). MassHealth applicants must cooperate in providing information necessary to establish eligibility and must comply with all the rules and regulations of MassHealth. (130 CMR 515.008(A)). Once MassHealth receives an application for LTC benefits it will send the applicant written notification (generally within five days) requesting all corroborative information necessary to determine eligibility. (130 CMR 516.001(B)(1)). The notice advises the applicant that the requested information must be received within 30 days of the date of the request and explaining the consequences of failure to provide the information. (130 CMR 516.001(B)(2)). If the requested information is received within 30 days⁹, MassHealth will determine the coverage type providing the most comprehensive benefits for which the applicant is eligible. (130 CMR 516.001(C)). If the requested information is not received within 30 days of the request, MassHealth benefits may be denied. (Id).

The record shows that on April 12, 2021, MassHealth sent the appellant a request that he submit certain specified verifications by May 12, 2021. The record shows that the appellant did not submit any of the requested documents by May 12, 2021. For that reason, the decision to deny the application was supported by a preponderance of the evidence.

After this, the appellant (through his representatives) appealed the denial in a timely fashion and submitted all but one set of verifications prior to the hearing. The outstanding verifications consisted of statements from [REDACTED]. During the hearing, the appellant's representatives, particularly the appellant's daughter, testified credibly and in detail about the difficulty of acquiring the [REDACTED]

⁹ There is an exception for information concerning citizenship, identity, and immigration status. (130 CMR 516.001(C)). None of these categories of information are relevant to this case, however.

statements. The appellant's representative stated that she had tried contacting [REDACTED] by telephone on many occasions between June 3 and August 31, 2021 and had not been able to reach a responsive human. The appellant's representatives submitted evidence showing the appellant's daughter had submitted a written request for statements to [REDACTED] in July and received no response. A second request was sent three days prior to the hearing. At the appellant's representatives' request, the record was left open after the hearing to allow them further time to await the result of the second written request and then submit the requested statements. (See 130 CMR 610.065(A)(4); (B)(4), (6),(8); 610.071(F)). On September 30, the appellant's representative requested an extension of the record open period because [REDACTED] had continued being unresponsive. The appellant's representative submitted a [REDACTED] statement for August 2021 that was received in the meantime. The appellant's representative also showed that the appellant's daughter had submitted a third written request to [REDACTED]. On October 28, prior to the close of the record open extension, the appellant's representative requested that a decision be made. MassHealth stated it had received a statement for September from the appellant's representatives but no other information.

Except with respect to the verifications of citizenships and immigration status, MassHealth will permit, on a case-by-case basis, self-attestation of individuals for all eligibility criteria when documentation does not exist at the time of application or renewal, or is not reasonably available, such as in the case of individuals who are homeless or have experienced domestic violence or a natural disaster. (130 CMR 516.003(G)). The appellant's representatives have demonstrated that despite their best efforts, [REDACTED] has been completely unresponsive to their requests for the statements. The appellant's representatives have submitted [REDACTED] statements from June through September 2021. The appellant's representatives can supplement this information with self-attestation.

This does not mean that the appellant's representatives are off the hook for reporting the information sought. [REDACTED] respond to the July, August and/or September written requests for statements, the appellant's representatives would still be obligated to report this information MassHealth within 10 days. (See 130 CMR 515.008(B)). What is clear from this case is that the failure to submit this requested verification was not the result of a failure to cooperate or comply with the request. (See 130 CMR 515.008(A)).

Order for MassHealth

In lieu of the statements from [REDACTED], the appellant's representatives will submit a self-attestation concerning the [REDACTED] account. MassHealth will make an eligibility determination based on the available information submitted.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA 02150

[REDACTED]