

# Office of Medicaid BOARD OF HEARINGS

## Appellant Name and Address



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2155739
<b>Decision Date:</b>	11/17/2021	<b>Hearing Date:</b>	09/07/2021
<b>Hearing Officer:</b>	Samantha Kurkijy	<b>Record Open:</b>	10/05/2021

## Appearance for Appellant:




## Appearance for MassHealth:

Ghislaine Karcouche—Chelsea MEC  
Eileen Smith—Chelsea 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>	Denied	<b>Issue:</b>	Verifications
<b>Decision Date:</b>	11/17/2021	<b>Hearing Date:</b>	09/07/2021
<b>MassHealth Rep.:</b>	Ghizlaine Karcouche; Eileen Smith	<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 July 15, 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 5.) The appellant filed an appeal in a timely manner on July 28, 2021. (130 CMR 610.015(B); Exhibit 2.) Denial of assistance is a valid ground for appeal. (130 CMR 610.032.) A hearing was held on September 7, 2021. (Exhibit 3.) The record was left open until September 21, 2021 for the appellant to submit additional information and MassHealth was given until September 28, 2021 to respond. (Exhibit 7.) At the appellant's request, the record open period was extended until September 28, 2021 and MassHealth was given until October 5, 2021 to respond. (Exhibit 7.) The hearing officer was on periods of medical leave due to a serious illness, which extends the deadline for rendering a hearing decision pursuant to 130 CMR 610.015(D)(4)(b).

## Action Taken by MassHealth

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

## Issue

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

## Summary of Evidence

The MassHealth representative testified that the appellant, who is a resident of a nursing facility, submitted a MassHealth long-term care application on May 28, 2021. He is requesting a benefit start date of June 8, 2021. On June 4, 2021, MassHealth issued a Request for Information with a due date of July 4, 2021. On July 15, 2021, MassHealth denied the appellant's application for failure to submit verifications. The appellant submitted an appeal on July 28, 2021.

The MassHealth representative testified that the missing verifications consist of the following: documents for bank accounts ("BA1" and "BA2"); life insurance policies ("LI1" and "LI2"); burial contract; burial life insurance; and personal-needs account ("PNA"). The MassHealth representative testified that these items were requested both on the June 4, 2021 Request for Information and the July 15, 2021 denial notice.<sup>1</sup>

The appellant was represented by his power of attorney. She testified the appellant already submitted the burial contract twice, and submitted both LI1 and LI2 and verifications for BA2. She testified that the nursing facility submitted the PNA to MassHealth and that she sent verifications for BA1, although she had been having trouble getting statements from the appellant's representative payee and could only get a statement from June. She testified that the appellant never had an account at a third bank ("BA3"). The appellant's representative noted that she accidentally sent MassHealth the original face and cash values of LI1 and LI2 with her second submission in July of 2021 and does not have copies, but that both LI1 and LI2 were assigned to the funeral home and that funeral home document lists both accounts. She testified that the document submitted to MassHealth from the funeral home is the funeral contract and the only documentation the funeral home gives out.

The MassHealth representative confirmed at hearing that she was able to find verifications in the system for BA2 and the PNA. She testified that BA1 was reported on the appellant's case in 2019 and that she would need a letter from BA3 stating that the appellant never had an account there.<sup>2</sup> The MassHealth representative testified that she had only received the goods and services from the funeral home, and not the burial contract. She testified that the contract must be irrevocable, and if the funeral home does not give out contracts, she must receive a written statement from the funeral home verifying that fact. She initially testified that LI2 was assigned to the funeral home but that

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<sup>1</sup> This information is not accurate, as the verifications for the PNA and BA2 were not listed on the MassHealth denial notice.

<sup>2</sup> The parties were confused as to whether BA1 and BA3 are accounts at the same bank.

she does not see that LI1 was assigned to the funeral home, and then confirmed that she had the change of ownership forms for both policies. She testified she needed documentation of the face and cash values of LI1 and LI2, as she did not see the appellant's submission of these documents in the system.

The hearing record was left open until September 21, 2021 for the appellant to submit the outstanding information and MassHealth was given until September 28, 2021 to respond. The appellant was to submit the following:

...current face and cash surrender values of [LI1 and LI2] and documents confirming the policies were irrevocably assigned to the funeral home; current face and cash surrender values for burial life insurance, and clarify if this is the same life insurance as [LI1 or LI2]; irrevocable burial contract or letter from funeral home explaining that they do not issue burial contracts/explaining what they issue; and statements from May 2020 to May 2021, including verification of all withdrawals \$1,000 and over and verification of any deposits (regardless of amount) for [BA1 and BA3] or a letter from the bank stating one or both of the accounts do not exist.

(Exhibit 7.)

On September 21, 2021, the appellant's representative submitted verifications, but the MassHealth representative and hearing officer could not open the e-mails. On September 24, 2021, the appellant requested an extension to the record open period so that the documents could be faxed. The record open period was extended for the appellant until September 28, 2021 and MassHealth was given until October 5, 2021 to respond. The appellant submitted documents from LI1 and LI2, dated, September 7, 2021, listing the owner of the policies as the appellant. The appellant provided bank statements from BA1, with the earliest statement being October 14, 2020 through November 13, 2020. In addition, the appellant's submission included the resignation of the appellant's power of attorney. The power of attorney documentation shows that the appellant's representative is nominated as successor trustee. In addition, the appellant's representative explained that the representative payee reported that she did not receive the appellant's first check until October 2020.

On September 29, 2021, the MassHealth representative<sup>3</sup> reported the following: the appellant did not submit statements for BA1 from May 2020 to September 2020; the funeral contract was received but the money for flowers is not allowed and will be considered a countable asset; LI1 and LI2 have not been assigned, as the paperwork still lists the appellant as owner; the burial life insurance is the same as the other policies and is no longer an issue; and MassHealth cannot process the application.<sup>4</sup>

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<sup>3</sup> A new MassHealth representative took over the case.

<sup>4</sup> Multiple e-mails were exchanged by the parties after the record closed. These communications were

## Findings of Fact

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

1. The appellant is a resident of a nursing facility.
2. He submitted a MassHealth long-term care application on May 28, 2021 and is requesting a benefit start date of June 8, 2021.
3. On June 4, 2021, MassHealth issued a Request for Information with a due date of July 4, 2021.
4. On July 15, 2021, MassHealth denied the appellant's application for failure to submit verifications.
5. The appellant submitted a timely appeal on July 28, 2021.
6. At hearing, the MassHealth representative testified that the missing verifications consist of the following: document for BA1 and BA2; documents for LI1 and LI2; burial contract; burial life insurance; and PNA. All of these items were requested on the June 4, 2021 Request for Information and all of the items, except verifications pertaining to the PNA and BA2, are listed on the July 15, 2021 denial notice.
7. The appellant's representative testified that she submitted some of the missing documents to MassHealth numerous times, and that she accidentally submitted some original documents to MassHealth.
8. The appellant's representative has been having difficulty getting statements for BA1 from the appellant's representative payee.
9. The appellant's representative testified that LI1 and LI2 were assigned to the funeral home and that funeral home document lists both accounts.
10. The MassHealth representative testified she had the change of ownership forms for both LI1 and LI2.
11. The hearing record was left open until September 21, 2021 for the appellant to submit the outstanding information and MassHealth was given until September 28, 2021 to respond. The appellant was to submit the following:

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excluded from evidence. The appellant requested an additional record open period on October 1, 2021, which was denied.

...current face and cash surrender values of [LI1 and LI2] and documents confirming the policies were irrevocably assigned to the funeral home; current face and cash surrender values for burial life insurance, and clarify if this is the same life insurance as [LI1 or LI2]; irrevocable burial contract or letter from funeral home explaining that they do not issue burial contracts/explaining what they issue; and statements from May 2020 to May 2021, including verification of all withdrawals \$1,000 and over and verification of any deposits (regardless of amount) for [BA1 and BA3] or a letter from the bank stating one or both of the accounts do not exist.

(Exhibit 7.)

12. After two extensions to the record open period, the appellant submitted the following: documents from LI1 and LI2, dated, September 7, 2021, listing the owner of the policies as the appellant; bank statements from BA1, with the earliest statement being October 14, 2020 through November 13, 2020, and an explanation that the representative payee reported that she did not receive the appellant's first check until October 2020; and the resignation of the appellant's power of attorney. The power of attorney documentation shows that the appellant's representative is nominated as successor trustee.
13. On September 29, 2021, the MassHealth representative reported the following: the appellant did not submit statements for BA1 from May 2020 to September 2020; the funeral contract was received but the money for flowers is not allowed and will be considered a countable asset; LI1 and LI2 have not been assigned, as the paperwork still lists the appellant as owner; the burial life insurance is the same as the other policies and is no longer an issue; and MassHealth cannot process the application.

## **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).)

The MassHealth representative testified as to the verifications that were still outstanding at the time of the hearing and the appellant was afforded a record open period and extensions. At the close of the record open period, the MassHealth representative reported that statements for BA1 from May 2020 to September 2020 were still outstanding. However, the appellant provided credible evidence that the representative payee did not receive the appellant’s first check until October 2020, when the account was opened. It follows that there are no statements prior to October 2020. The appellant satisfied this verification. However, the verifications showing that LI1 and LI2 were assigned to the funeral home were first requested by MassHealth on June 4, 2021. As of September 7, 2021, those verifications had been pending for approximately three months. While the appellant may have submitted the change of ownership forms to the life insurance company, the documentation from the life insurance company clearly shows that the ownership of the policies had not been changed. The appellant has had ample time to provide verification that the change of ownership has been accomplished, and there is no compelling reason in the record to allow him additional time through a further record open period.<sup>5</sup>

The appellant has not met his burden in this case. Accordingly, the appeal is denied.

## **Order for MassHealth**

None.

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<sup>5</sup> The appeal process is separate from, and not an extension of, the MassHealth eligibility process. Additionally, there is nothing in the regulations that states appellants are entitled to a record open period.

## 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.

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Samantha Kurkja  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett

