

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part	<b>Appeal Number:</b>	2176122
<b>Decision Date:</b>	10/19/2021	<b>Hearing Date:</b>	09/24/2021
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Cara Miller & Karen Ryan



*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

<b>Appeal Decision:</b>	Approved in Part	<b>Issue:</b>	Start Date
<b>Decision Date:</b>	10/19/2021	<b>Hearing Date:</b>	09/24/2021
<b>MassHealth's Reps.:</b>	Karen Ryan & Cara Miller	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone		

### Authority

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

### Jurisdiction

Through notices dated April 26, 2021 and June 23, 2021, MassHealth denied the appellant's application for long-term care benefits for failure to provide information necessary to complete the application. (130 CMR 516.001; Exhibit 1A; Exhibit 1B). Through a notice dated July 19, 2021, MassHealth determined the appellant eligible for long-term care coverage effective April 1, 2021. (130 CMR 516.006(A); 130 CMR 519.002; Exhibit 1C).

The representative at hearing filed an appeal on July 6, 2021. (Exhibit 2A). The Board of Hearings dismissed this appeal as the individual requesting the appeal was not an applicant, member, or resident as defined in 130 CMR 610.004. (130 CMR 610.035(A)(7)). Additionally, no documentation was provided to demonstrate that the individual filing the appeal had authority to serve as an appeal representative. (130 CMR 610.000). On August 12, 2021, the representative at hearing filed a second appeal accompanied by a valid Authorized Representative Designation (ARD) form signed by the appellant on November 17, 2020. (Exhibit 2B).

In April 2020, in response to the Coronavirus Disease 2019 (COVID-19) national

emergency, MassHealth implemented new protocols to support public health efforts to expedite medical care and maintain care for both new MassHealth applicants and existing members. (Eligibility Op. Memo 20-09). These new protocols include allowing members up to 120 days, rather than the standard 30 days, to request a fair hearing for member eligibility-related concerns. (130 CMR 610.015; Eligibility Op. Memo 20-09). As the filing of the appeal for all three notices was within the 120-day period allowed for requesting a hearing, this decision will address eligibility issues for notices issued in April 2021, June 2021 and July 2021. (130 CMR 610.015; Eligibility Op. Memo 20-09).

Although the Board of Hearings dismissed the appeal filed in July 2021, the basis for the dismissal does not impact the ability of the Board of Hearings to accept a corrected request for hearing that was filed within 120 days of the April and June 2021 notices.

Denial of assistance and a determination regarding the scope or amount of assistance are both valid grounds for appeal. (130 CMR 610.032).

## **Action Taken by MassHealth**

MassHealth determined the appellant eligible for MassHealth long-term care as of April 1, 2021.

## **Issue**

Whether MassHealth was correct in determining the appellant's eligibility start date.

## **Summary of Evidence**

All parties appeared by telephone. Documents from MassHealth were incorporated into the hearing record as Exhibit 5.

MassHealth received the appellant's first application for long-term care in December 2020 seeking coverage as of a date in November 2020. (Testimony; Exhibit 4). The application was incomplete. (Testimony; Exhibit 4). MassHealth sent the appellant a request to complete the unanswered questions. (Testimony; Exhibit 4). The appellant had 15 days from the request to provide a response. The appellant failed to respond to the request. (Testimony; Exhibit 4). Therefore, MassHealth notified the appellant that they were unable to determine eligibility. (Testimony; Exhibit 4).

On March 8, 2021, MassHealth received a second application for long-term care also seeking coverage as of a date in November 2020. (Testimony; Exhibit 4). On March 12, 2021, MassHealth sent a request for information. (Testimony; Exhibit 4). MassHealth did not receive information necessary to determine eligibility. Therefore, on April 26, 2021, MassHealth determined the appellant ineligible for failure to provide information necessary to complete the application. (Testimony; Exhibit 1A; Exhibit 4).

On May 12, 2021, MassHealth received information from the appellant and restamped the application. (Testimony; Exhibit 4). The information was not sufficient for MassHealth to determine eligibility. (Testimony; Exhibit 4). MassHealth sent the appellant a request for information. (Testimony; Exhibit 4). The appellant did not respond to this request. On June 23, 2021, MassHealth issued a notice denying the application for failure provide information necessary to determine eligibility. (Testimony; Exhibit 1B; Exhibit 4).

On July 6, 2021, the Board of Hearings received a request for a hearing signed by an individual who was not the appellant and did not provide any information indicating the authority of the individual to file an appeal on behalf of the appellant. (Exhibit 5). The Board of Hearings dismissed the appeal.

On July 12, 2021, MassHealth received a third application for long-term care benefits. (Testimony; Exhibit 4). The appellant provided the information necessary to determine eligibility and MassHealth sent a notice approving coverage as of April 1, 2021. (Testimony; Exhibit 1C; Exhibit 4).

## **Findings of Fact**

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

1. MassHealth received an application for long-term care in December 2020 seeking coverage as of a date in November 2020.
2. The application was incomplete.
3. MassHealth sent the appellant a request to complete the unanswered questions.
4. The appellant failed to respond to the request.
5. MassHealth notified the appellant that they were unable to determine

eligibility.

6. On March 8, 2021, MassHealth received an application for long-term care seeking coverage as of a date in November 2020.
7. On March 12, 2021, MassHealth issued a request for information.
8. MassHealth did not receive information necessary to determine eligibility.
9. On April 26, 2021, MassHealth determined the appellant ineligible for failure to provide information necessary to determine eligibility.
10. On May 12, 2021, MassHealth received information from the appellant and restamped the application.
11. The information was not sufficient for MassHealth to determine eligibility.
12. MassHealth sent the appellant a request for information.
13. The appellant did not respond to this request.
14. On June 23, 2021, MassHealth issued a denial notice for failure to provide information necessary to determine eligibility.
15. On July 6, 2021, the Board of Hearings received a request for a hearing signed by an individual who was not the appellant and did not provide any information indicating the authority of the individual to file an appeal on behalf of the appellant.
16. The Board of Hearings dismissed the appeal.
17. On July 12, 2021, MassHealth received a third application for long-term care benefits.
18. The appellant provided the information necessary to determine eligibility.
19. MassHealth sent a notice approving coverage as of April 1, 2021.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing

MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Pursuant to 130 CMR 515.008, applicants or members must cooperate with MassHealth in providing information to establish and maintain eligibility. Applicants and members must comply with the rules and regulations governing MassHealth. (130 CMR 515.008). MassHealth may request additional information and documentation, if necessary, to determine eligibility. (130 CMR 516.001).

To obtain the necessary information and documentation, MassHealth sends the applicant written notification requesting verifications to corroborate information necessary to determine eligibility, generally within five days of the receipt of the application. (130 CMR 516.001(B)). The notice must advise the applicant that the requested verifications 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, with the exceptions of verification of immigration status, is not provided within 30 days of the date of the request, MassHealth benefits may be denied. (130 CMR 516.001(C)).

The appellant's representative did not dispute the fact that the appellant received proper notices requesting information. (130 CMR 516.001). The appellant's representative did not clearly dispute the fact that the appellant didn't provide information necessary to determine eligibility until July 2021.

As noted above, the Board of Hearings has authority to address eligibility issues for notices issued within a 120-day period for requesting a hearing under new protocols implemented in response to the Coronavirus Disease 2019 (COVID-19) national emergency. (Eligibility Op. Memo 20-09). Pursuant to 130 CMR 610.071(A)(2), the effective date of any adjustments to the appellant's eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted. In this case, the supporting evidence was submitted on July 12, 2021. Under the regulations governing the fair hearing process, MassHealth can possibly determine eligibility as of December 1, 2020 if all eligibility conditions were met at that time.

The Board of Hearings does not have jurisdiction over any action taken before

April 12, 2021 as an adequate appeal was not filed on August 12, 2021. Both parties referred to a denial notice issued on January 7, 2021. The date to file that appeal expired on May 7, 2021.

This appeal is approved in part as MassHealth can only act on notices issued in April and June 2021.

## **Order for MassHealth**

Determine eligibility honoring an application received on March 8, 2021 to be able to consider eligibility as of December 1, 2020 if all conditions were met.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290