

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2176583
Decision Date:	10/26/2021	Hearing Date:	10/05/2021
Hearing Officer:	Alexandra Shube	Record Open to:	10/19/2021

Appearance for Appellant:
Via telephone:



Appearance for MassHealth:
Via telephone:
Elizabeth Landry, Taunton MEC



*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:	Denied	Issue:	LTC Eligibility – Start Date
Decision Date:	10/26/2021	Hearing Date:	10/05/2021
MassHealth’s Rep.:	Elizabeth Landry	Appellant’s Rep.:	██████████
Hearing Location:	Tewksbury MassHealth Enrollment Center	Aid Pending:	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 28, 2021, MassHealth approved the appellant's application for MassHealth long-term care benefits with a start date of March 1, 2021 (Exhibit 1). The appellant filed this appeal in a timely manner on August 28, 2021 (see 130 CMR 610.015(B) and Exhibit 2). A determination regarding scope of assistance is a valid basis for appeal (see 130 CMR 610.032).

The record in the appeal was held open until October 19, 2021.

Action Taken by MassHealth

MassHealth approved the appellant for MassHealth long-term care benefits with a start date of March 1, 2021.

Issue

The appeal issue is whether MassHealth was correct in determining the start date for the appellant’s MassHealth benefits.

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant is a single individual over the age of 65 and a resident in a nursing facility. On June 14, 2021, MassHealth received a long-term conversion application on behalf of the appellant, requesting a start date of October 15, 2020. On July 7, 2021, MassHealth issued an information request. MassHealth received all the requested verifications and on July 28, 2021 approved the appellant with a start date of March 1, 2021.

The MassHealth representative explained that there was a previous application received on October 22, 2020, which was denied on December 10, 2020. That application was handled by a different caseworker, who had no record of an appeal filed on the December 10 denial notice. For that reason, the earliest approval date MassHealth could approve was March 1, 2021, three months retroactive from the date of the June 14, 2021 conversion.

The appellant was represented at hearing via telephone by a Medicaid specialist who testified as follows: she is seeking the earlier October 15, 2020 start date based on an appeal that was filed by the facility in March on the December 10, 2020 denial notice. She explained that the facility had been shut down due to a Covid-19 outbreak and no one was there to physically get the mail and the denial was not issued in the electronic gateway.

At the request of the appellant, the record in the appeal was left open for the appellant to provide additional proof regarding the filing of an earlier appeal. The appellant was given until October 12, 2021 to provide the documentation and MassHealth was given until October 20, 2021 to review and respond to the appellant's submission.

On October 12, 2021, the appellant provided documentation showing that the facility faxed an appeal request to the Board of Hearings on May 24, 2021, not in March as testified. That appeal request was dismissed by the Board of Hearings on May 26, 2021 for being outside of the allowable time frame (usually 30 days, but 120 days during the Covid-19 emergency). In her response, the appellant argued that email communications between the facility and MassHealth showed that the facility, appellant, and her power of attorney did not receive the denial notice until April 7, 2021.¹ She argued that May 24, 2021 was within 120-days of their receipt of the notice on April 7, 2021. She stated that the facility was in a tremendous amount of upheaval due to Covid-19, the new billing coordinator at the facility who worked on the appellant's case was not hired until January 18, 2021, and the business office had a backlog of paperwork such that mail was not received by the appellant. She also stated that the denial notice was not sent to the power of attorney, only the appellant at the facility. If the October 15, 2020 start date could not be honored, the appellant argued

¹ The emails between the facility's billing coordinator and the previous MassHealth worker show communications beginning March 29, 2021 from the facility. MassHealth did not have a permission to share from the facility until April 7, 2021, at which point MassHealth informed the billing coordinator that the case was denied for missing verifications. MassHealth informed the facility on April 7, 2021 that a new application would be needed, but the facility could try to appeal the denial which was mailed in December 2020. In the meantime, MassHealth suggested the facility work to collect the missing information.

that May 24, 2021 be considered as the new conversion date because that was date the facility sent the SC-1 and screen. The documents sent by the appellant during the record open period show a fax to the Board of Hearings requesting an appeal on May 24, 2021. Included with that fax to the Board of Hearings was a copy of the December 10, 2020 denial notice, various financial verifications, and the SC-1. The documents provided do not show that the information was sent to MassHealth at that time, only to the Board of Hearings.

On October 18, 2021, MassHealth responded via email that it had reviewed the documents provided. She pointed out that on April 7, 2021 the previous case worker had advised the facility to appeal the December 2020 denial notice, which would have been within the 120-day time frame to file an appeal. But the facility sent the appeal request on May 24, 2021 which is past the 120-day time to file an appeal and she could not adjust the start date based on those documents.

On October 18, 2021, the appellant responded that she believed the emails between MassHealth and the facility showed that the appellant did not receive the notice and the power of attorney was not sent a copy of the notice. She again requested that May 24, 2021 be considered as the conversion application date.

The record was closed on October 19, 2021.

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 and a resident in a nursing facility (Testimony).
2. On June 14, 2021, MassHealth received a long-term conversion on behalf of the appellant, requesting a start date of October 15, 2020 (Testimony).
3. On July 28, 2021, the appellant was approved for MassHealth long-term care benefits with a start date of March 1, 2021 (Testimony and Exhibit 1).
4. The appellant timely appealed that notice on August 28, 2021 (Exhibit 2).
5. The appellant filed an earlier application on October 22, 2020 which was denied on December 10, 2020 (Testimony and Exhibit 7).
6. The December 10, 2020 denial notice was sent to the appellant at the facility (Exhibit 7).
7. The appellant appealed the December 10, 2020 notice on May 24, 2021 (Exhibit 7).
8. The Board of Hearings dismissed the May 24, 2021 appeal request for not being timely (Exhibit 7).

9. The record in the appeal was initially held open until October 12, 2021 for the appellant and until October 20, 2021 for MassHealth to review and respond to the appellant's submission (Exhibit 7).
10. Both parties timely submitted their documentation and responses and the record open period was closed on October 19, 2021 (Exhibit 7).

Analysis and Conclusions of Law

Pursuant to 130 CMR 516.006(A), the start date of coverage "may be retroactive to the first day of the third calendar month before the month of application..."

The Board of Hearings 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 third day after mailing;
- (2) unless waived by the 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 Director...

130 CMR 610.015(B).

Additionally, in MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have **up to 120 days**, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns. (Emphasis added).

The appellant has timely appealed an approval notice dated July 28, 2021 which approved the appellant for a start date of March 1, 2021. Based on the conversion date of June 14, 2021, this is the earliest possible start date MassHealth can reach. The appellant is looking for a start date of October 15, 2020. While there was an earlier application dated October 22, 2020 that could have reached back to the requested start date, that application was denied on December 10, 2020. The appellant did not appeal that notice until May 24, 2021, outside of the 120 days allowed by the Covid-19 flexibilities provided for in EOM 20-09.

The appellant's representative argued that the appellant did not receive the notice until April 7, 2021 and that the notice was not sent to her power of attorney. The notice was issued on December 10, 2020 to the appellant and that is when the 120 days begin, even if the appellant and the facility did not actually see it until April 7, 2021, at which time they still would have been able to file a timely appeal. MassHealth even informed the facility of the right to appeal in an email dated April 7, 2021, but the appellant did not do so until May 24, 2021. Furthermore, even if the December 10, 2020 notice was not sent to the power of attorney and MassHealth effectively failed to send written notice of the action (which it did not since the notice was sent to the appellant), pursuant to 130 CMR 610.015(B) an appeal must be filed within 120 days of the date of the agency action. The May 24, 2021 is well outside the 120-day time limit both to appeal an action by MassHealth where it failed to send written notice and under the Covid-19 flexibilities. For these reasons, the October 22, 2020 application cannot be honored.

MassHealth's July 28, 2021 decision regarding the March 1, 2021 start date was correct and correctly approved the appellant with the earliest possible start date. For these reasons, the appeal is denied.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]