

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |                  |                        |            |
|-------------------------|------------------|------------------------|------------|
| <b>Appeal Decision:</b> | Approved; remand | <b>Appeal Number:</b>  | 2176727    |
| <b>Decision Date:</b>   | 11/26/2021       | <b>Hearing Date:</b>   | 10/13/2021 |
| <b>Hearing Officer:</b> | Cynthia Kopka    | <b>Record Open to:</b> | 10/15/2021 |

**Appearance for Appellant:**



**Appearance for MassHealth:**

Eileen Smith, Chelsea



*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; remand | <b>Issue:</b>            | LTC eligibility |
| <b>Decision Date:</b>     | 11/26/2021       | <b>Hearing Date:</b>     | 10/13/2021      |
| <b>MassHealth's Rep.:</b> | Eileen Smith     | <b>Appellant's Rep.:</b> | ██████          |
| <b>Hearing Location:</b>  | Chelsea (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

By notice dated June 11, 2021, MassHealth denied Appellant's application for MassHealth benefits because Appellant failed to submit required information. Exhibit 4 at 8. By notice dated August 4, 2021, MassHealth approved Appellant for MassHealth Standard long-term care benefits effective March 1, 2021. Exhibit 1. Appellant filed this appeal in a timely manner on August 31, 2021. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through October 15, 2021 to allow Appellant to submit additional evidence. Exhibit 5.

## Action Taken by MassHealth

MassHealth approved Appellant for MassHealth Standard long-term care benefits effective March 1, 2021. Exhibit 1.

## Issue

The appeal issue is whether MassHealth was correct in determining the start date of long-term care coverage.

## Summary of Evidence

A MassHealth eligibility representative appeared by telephone and testified as follows. MassHealth

received Appellant's application for long term care benefits on April 23, 2021. Appellant seeks January 23, 2021 as the coverage start date. On May 6, 2021, MassHealth issued an information request seeking Appellant's bank statements from April 2020 through April 2021, with "the source of all deposits except social security." Exhibit 4 at 15-16. On May 28, 2021, MassHealth received the requested bank statements and a letter from the facility which stated that the deposits made by "NHUS" were unemployment checks.

MassHealth denied the application on June 11, 2021 for failing to provide the requested information. On the denial, MassHealth wrote "[p]lease send source of the deposits from unemployment NHUS. The letter from the nursing home is not sufficient proof." *Id.* at 9. On June 23, 2021, MassHealth received sufficient proof of the source of the unemployment deposits. MassHealth relogged the application on June 30, 2021 and issued a new information request for updated bank statements. On August 4, 2021, MassHealth approved Appellant's application effective March 1, 2021, which is the earliest retroactive start date available based on the June 30, 2021 reapplication date. MassHealth did not receive an appeal of the June 11, 2021 denial to preserve the April 23, 2021 application date.

Appellant's representative appeared by phone and testified as follows. Appellant is a relatively young woman who was diagnosed with ALS and was in denial about her prognosis for some time. It was not until April 2021 that Appellant's representative was successful in getting Appellant agree to apply for MassHealth. Appellant's representative requested January 23, 2021 as the start date due to a misunderstanding of the earliest retroactive date available. After hearing, Appellant's representative submitted an updated SC-1 requesting January 1, 2021 as the start date of coverage. Exhibit 6. Appellant's representative testified that she requested the present appeal for both the June 11, 2021 denial and August 4, 2021 approval with the March 1, 2021 start date. Appellant's representative submitted the NHUS statements as soon as she could but faced delays due to the pandemic and unemployment staff working remotely.

## **Findings of Fact**

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

1. On April 23, 2021, MassHealth received Appellant's application for long term care benefits.
2. Appellant initially requested January 23, 2021 as a coverage start date, but amended this request to January 1, 2021. Exhibit 6.
3. On May 6, 2021, MassHealth issued an information request seeking Appellant's bank statements from April 2020 through April 2021, with "the source of all deposits except social security." Exhibit 4 at 15-16.
4. On May 28, 2021, MassHealth received the requested bank statements and a letter from the facility which stated that the deposits made by "NHUS" were unemployment checks.

5. On June 11, 2021, MassHealth denied the application for failing to provide the requested information. On the denial, MassHealth wrote “[p]lease send source of the deposits from unemployment NHUS. The letter from the nursing home is not sufficient proof.” *Id.* at 8.
6. On June 23, 2021, MassHealth received sufficient proof of the source of the unemployment deposits. MassHealth relogged the application on June 30, 2021 and issued a new information request for updated bank statements.
7. On August 4, 2021, MassHealth approved Appellant’s application effective March 1, 2021, based on the June 30, 2021 reapplication date. Exhibit 1.
8. Appellant requested a fair hearing on August 31, 2021. Exhibit 2.

## **Analysis and Conclusions of Law**

At issue in this appeal is the earliest retroactive date of coverage MassHealth considered when determining Appellant’s eligibility. MassHealth, having not received notice of appeal of the June 11, 2021 denial, calculated eligibility based on the reapplication date of June 30, 2021. 130 CMR 516.002(A) and (B). MassHealth did not dispute that a timely appeal of the June 11, 2021 denial would preserve the April 23, 2021 application date.

The Board of Hearings (BOH) must receive a request for a fair hearing within certain time frames per regulation 130 CMR 610.015(B). Typically, an appeal of a MassHealth notice must be received by BOH within 30 days of the applicant’s receipt of the notice. 130 CMR 610.015(B)(1). *See also* 130 CMR 610.034 (“The request for a fair hearing must be received by BOH within the time limits set forth in 130 CMR 610.015.”). If the Board of Hearings does not receive the appeal within the regulatory time limits, it will dismiss the request for hearing. 130 CMR 610.035(A)(1). On April 7, 2020, in response to the national emergency caused by the COVID-19 pandemic, MassHealth extended the filing deadline for eligibility-related matters to 120 days. *See* Eligibility Operations Memo (EOM) 20-09.

Appellant requested this fair hearing on August 31, 2021, which within 81 days of the June 11, 2021 denial and 24 days of the August 4, 2021 approval. Therefore, the present appeal is timely to challenge both notices, as the COVID-19 emergency is ongoing. Appellant successfully preserved the April 23, 2021 application date.

The first day of MassHealth eligibility may be as early as the first day of the third month before the date of the application as long as the individual was otherwise eligible for coverage as of that date. 130 CMR 520.004(A)(1) and (C)(2). Under this regulation, Appellant may be eligible for coverage as early as January 1, 2021 based on the April 23, 2021 application date. Accordingly, this appeal is approved and remanded back to MassHealth for a determination of the date Appellant was otherwise eligible for coverage.

## **Order for MassHealth**

Preserve the April 23, 2021 application date and redetermine eligibility with the earliest potential retroactive date of January 1, 2021.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA 02150, 617-551-2028

[REDACTED]