

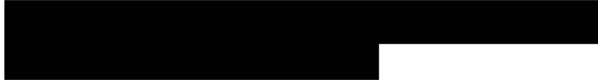
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DISMISSED	Appeal Number:	2176997
Decision Date:	10/22/2021	Hearing Date:	10/15/2021
Hearing Officer:	Christopher Taffe		

Appearances for Appellant:



Appearance for MassHealth:

Trish Clancy of the Taunton MEC
(by phone)



*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:	DISMISSED	Issue:	Jurisdiction – Authority – Appeal Representative – Estate
Decision Date:	10/22/2021	Hearing Date:	10/15/2021
MassHealth's Rep.:	T. Clancy	Appellant's Rep.:	[REDACTED]
Hearing Location:	Taunton 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 August 6, 2021, MassHealth denied Appellant's application for an upgrade or conversion of her prior MassHealth benefits to MassHealth Standard Long-Term Care (LTC) benefits due to the failure to produce verifications. See Exhibit 1; 130 CMR 515.008.

On [REDACTED], Appellant passed away. (Testimony)

On September 13, 2021 an appeal request was filed on behalf of the deceased Appellant with the Board of Hearings. See Exhibit 1. The four-page September 13, 2021 filing consisted of (1) a fax cover sheet, (2) a copy of the August 6, 2021 notice, (3) Section 2 of a MassHealth Authorized Representative Designation (ARD) form; and (4) a completed Fair Hearing Request (FHR) form. See id.

The instructions of the ARD form state in part the following for section II:

"If you cannot designate an authorized representative in writing and you do not have an existing authorized representative or other person who is authorized by law to act on your behalf, a person (not an organization) who certifies that he or she will act responsibly on your behalf can be your authorized representative if that person fills out Section II of this form."

Section 2 of the ARD form was filled out by Karen Thompson, the Business Office Manager of the skilled nursing facility where Appellant had resided from [REDACTED] until her passing in [REDACTED]. The form was dated and signed by Ms. Thompson on June 10, 2021, prior to Appellant's passing.¹ See id.

The FHR form was filled out with Ms. Corbin's name and the reason for the appeal was "*I want to preserve my original application date while my case is [reviewed?]*". It was signed by Ms. Thompson as an ARD, who appoints herself as an Appeal Representative. The FHR form was dated 9/13/2021, the day it was sent in, and more than one month after Appellant's passing. See id.

There was no statement anywhere on the September 13, 2021 filing that suggested or indicated Appellant had passed away over a month prior to the filing. See id.

Between the filing date of September 13, 2021 and the hearing date of October 16, 2021, the Board of Hearings did not receive any notice that the Appellant had passed until it came up during the hearing.

Ms. Thompson stated that a decision had been made in the late spring of 2021, after some talks with the Appellant's family, to begin the process of appointing a Conservator with the appropriate Probate Court. After the Appellant had passed, there was a need to convert or replace the existing Probate Court action with a new action to appoint a Personal Representative for the Appellant's Estate. As of the hearing date, there had been no effort yet to formally begin this process of initiating the Estate Administration action in an appropriate Probate Court, but Ms. Thompson indicated that recent discussion with the late Appellant's family indicated this would begin in the near future.

The Fair Hearing Rules at 130 CMR 610.016 read as follows:

610.016: Appeal Representative

(A) An appellant has the right to be represented at his or her own expense by an appeal representative as defined in 130 CMR 610.004. If the person filing the appeal is not the appellant, all documentation required to demonstrate that the person requesting the appeal is an appeal representative in accordance with 130 CMR 610.004 must be submitted either at the time the hearing is requested or before the hearing is scheduled. The MassHealth agency must provide copies of all documents related to the fair hearing process to the appellant and to the appeal representative, if any. An appeal representative may exercise on the appellant's behalf any of the appellant's rights under 130 CMR 610.000.

(B) If a timely request for a hearing is filed but the applicant or member has died prior to the

¹ It is unknown whether this form was ever submitted to the MassHealth agency, but the August 6, 2021 denial notice that Ms. Thompson was a CC who received a copy of the notice. See Exhibit 1 and 130 CMR 516.008. Additionally, it is noted that the instructions on the last page of the ARD form explicitly state that "*The authority of a Section I or Section II authorized representative will end upon the death of the applicant or member.*" The full and current ARD form may be found and viewed at <https://www.mass.gov/doc/authorized-representative-designation-form-english-0/download> (last viewed on October 19, 2021)

filing, BOH must be informed of the death of the applicant or member at the time of a request for a hearing by the person filing the appeal. In addition, the filing of the appeal on behalf of such a deceased individual must be accompanied by one of the following:

- (1) (a) written proof that the person filing the appeal is a personal representative of the applicant's or member's estate with a current and valid appointment from a court of proper jurisdiction; or
(b) ***if there is no such personal representative, then written proof of a currently pending petition, docketed in a court of proper jurisdiction, which seeks the appointment of such a personal representative. In addition, the person filing the appeal must notify BOH in writing of the status of the pending petition every 30 days and, once a personal representative with a current and valid appointment has been established, the personal representative must submit written proof of such authority and a desire to pursue the appeal to BOH, within ten days of the appointment.***
- (2) ***Failure to comply with all of the requirements in 130 CMR 610.016(B) may constitute grounds for dismissal.***
(Bolded emphasis added.)

In this case, the person filing the appeal submitted an ARD form after the Appellant's death, but a review of the instructions to the agency's current ARD form makes it clear that this type of ARD status is not valid after the member's death. In other words, the stated inability of the applicant or member to sign the ARD form, and for Section II of the ARD form to be used instead, was clearly not to include situations like this where the member or applicant has passed away. Further, 130 CMR 610.016 is also very clear that the Board of Hearings must be notified of the Appellant's death. There was no mention of the death by the person who worked at the facility where Appellant resided prior to her death.² At no point was the information of Appellant's death or the status of any probate action brought to the attention of the Board of Hearings, and, as of the hearing date, the process to begin Estate Administration has still not yet commenced.

Another BOH regulation at 130 CMR 610.035 appears to be very on point and reads as follows:

610.035: Dismissal of a Request for a Hearing

(A) BOH will dismiss a request for a hearing when

...

(10) BOH learns that the applicant or member has passed away prior to the date of filing and scheduling of the hearing and is not informed until the date of the hearing and there is no full compliance with 130 CMR 610.016(B).

For these reasons, the Board of Hearings has no jurisdiction to hear this appeal request, and the

² As a business office manager of a nursing facility, Ms. Thompson has interacted with the Board of Hearings, the MassHealth agency, and the Fair Hearing process multiple times in the past, including other cases where she was a proper Appeal Representative under 130 CMR 610.000. This issue could have been potentially cured or avoided had she informed the Board of Hearings of the Appellant's passing in a more timely manner and provided the Board of Hearings with an appropriate update of any pending Probate Court proceedings. In contrast, this is not a situation where the person doing the filing is a grieving family member who has never interacted with MassHealth or the Fair Hearing Rules before and is trying to do a filing in good faith and made a procedural mistake.

appeal will be dismissed per 130 CMR 610.016(B)(2) and 130 CMR 610.035(A)(4) and (A)(6).

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Appeals Coordinator @ Taunton MEC

