

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2177220
Decision Date:	11/10/2021	Hearing Date:	10/20/2021
Hearing Officer:	Rebecca Brochstein	Record Open Date:	10/27/2021

Appearances for Appellant:



Appearances for MassHealth:

Meghan Adie, Tewksbury 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

Appeal Decision:	Dismissed in Part; Denied in Part	Issue:	Long-term care eligibility
Decision Date:	11/10/2021	Hearing Date:	10/20/2021
MassHealth's Rep.:	Meghan Adie, Tewksbury MEC	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated August 24, 2021, MassHealth denied the appellant's application for benefits for failure to provide all requested verifications (Exhibit 1). The appellant filed a timely request for hearing on September 22, 2021 (Exhibit 2). After hearing on October 20, 2021, the record was held open until October 27, 2021, for additional information. Determination of eligibility is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's request for benefits for failure to provide all requested information.

Issue

The issue in this appeal is whether MassHealth erred in denying the appellant's application.

Summary of Evidence

An eligibility worker from the Tewksbury MassHealth Enrollment Center appeared at the hearing telephonically and testified as follows: A MassHealth senior application was filed on the appellant's behalf on January 13, 2021. The application – which was an old version of the senior application – did not have the long-term care box checked and did not include a long-term care supplement. MassHealth did not process the application and instead mailed the appellant the updated version of the application. On March 10, 2021, MassHealth received in return the same outdated version of the application, again without the long-term care box checked (nursing facility was checked off as “no”) and without the long-term care supplement. On March 25, 2021, MassHealth processed this as a community application, considering the appellant to reside in the community. On that date, MassHealth sent her a request for information, seeking verification of pension and bank accounts. On April 2, 2021, MassHealth received an SC-1 and a short-term screening through June 30, 2021. The MassHealth worker testified that on April 5, 2021, MassHealth sent the appellant a “no-eligibility letter” and a senior application requesting that she indicate that she was applying for long-term care and also complete the long-term care supplement.

The MassHealth representative testified that on July 29, 2021, some of the requested verifications were received. On August 24, 2021, MassHealth issued a denial of the community application, as there was still no long-term care application and some of the requested information remained outstanding. On August 30, 2021, MassHealth received a long-term care senior application, and the missing bank information was then received on September 22, 2021. MassHealth thereafter denied the application due to income, as the applicant was still being looked at as a community case at that time.

The MassHealth representative testified that as of October 8, the application was being processed for long-term care, and had been transferred to a case worker in the long-term care unit. She stated that a new request for information was sent out from that unit on October 8.¹

The appellant was represented by an attorney, who appeared telephonically. She also submitted a memorandum along with exhibits in support of her position. See Exhibit 4. She maintained that the appellant does not have a record of receiving any notices from MassHealth regarding the processing of the application. She stated that the applications omitted the long-term care information inadvertently, but that the submission of the SC-1, the short-term screen, and the private pay letter on April 2 should have alerted MassHealth to the appellant's intent to apply for and need for long-term care coverage.

The attorney maintained that in other similar cases, MassHealth has provided the applicant a copy of the Senior Affordable Care Act (SACA) application to cure the existing application deficiencies.

¹ The MassHealth representative testified that her system shows the long-term care application date is July 1, 2021. She indicated that she does not work in that unit so is not familiar with how the worker settled on that date.

She added that after no action from MassHealth following the March 25 request for information, the appellant's power of attorney, with the facility's assistance, submitted verifications on July 29 that included the appellant's bank balance and pension statement. Thereafter, on August 23, 2021, the attorney contacted MassHealth to inquire about the status of the application. The following day, MassHealth issued a notice of denial of the community application; this notice did not include a request for the completed SACA application, even though the SC-1 and the nursing facility screening had been submitted on April 2. See Exhibit 4 at 3.

The appellant's representative argued that MassHealth was obliged, but failed, to determine the most comprehensive medical benefit for which the appellant was eligible. She argued that the original application and corroborative information provided to MassHealth, including the SC-1 and the screening, clearly indicated that the appellant was residing in a nursing home and was in need of long-term care benefits. The attorney contended that if MassHealth receives an application with inconsistent or incomplete information, it must request responses to all of the unanswered questions necessary to determine the most comprehensive eligibility for the applicant. In the appellant's view, the inconsistent information should have triggered MassHealth to issue a written request for a complete SACA application. However, the attorney argued, following the initial request for information on March 25, MassHealth did not issue any further verification requests or denials until she became involved months later. She contended that MassHealth's failure to send a notice of the application status violated the appellant's due process rights. See Exhibit 4 at 5-7.

After the hearing, the record was held open for the MassHealth representative to consult with a manager as to whether MassHealth could honor an earlier application date. The MassHealth representative subsequently reported that the manager is "not willing to agree to use the application received in March 2021 as a LTC app since it had no indication that it was for LTC and it was noted that a no eligibility letter and new SACA was sent once the SC1 was received." See Exhibit 5.

Findings of Fact

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

1. The appellant has been a resident of a nursing facility since November 2020.
2. On January 13, 2021, the appellant filed an outdated version of the MassHealth senior application. The application did not indicate that the appellant was applying for long-term care coverage and did not include the long-term care supplement.
3. MassHealth did not process the January 13, 2021 application and instead mailed the appellant the updated version of the application.
4. On March 10, 2021, the appellant again filed an outdated version of the MassHealth senior application. Once again, the application did not indicate that the appellant was applying for long-term care coverage and did not include the long-term care supplement.

5. On March 25, 2021, MassHealth processed the March 10 application as a community application, considering the appellant to be a resident of the community. On that date, MassHealth sent a request for information.
6. On April 2, 2021, the appellant submitted an SC-1 and a short-term screening through June 30, 2021.
7. On April 5, 2021, MassHealth determined the appellant was not eligible based on information submitted. MassHealth again sent the appellant a senior application requesting that she indicate that she was applying for long-term care and also complete the long-term care supplement.
8. The appellant does not have a record of receiving the April 5 notification.
9. On July 29, 2021, MassHealth received some of the requested verifications.
10. On August 24, 2021, MassHealth issued a denial of the community application. At that time, there was still no long-term care application on file and some of the information that had been requested remained outstanding.
11. On August 30, 2021, the appellant submitted the correct long-term care senior application.
12. On September 22, 2021, the appellant submitted the missing bank information. MassHealth thereafter issued a community notice denying the appellant benefits due to income.
13. As of October 8, 2021, the appellant's application was being processed as a request for long-term care benefits and had been transferred to a case worker in the long-term care unit. That unit sent a request for information on that date.
14. The long-term care application is currently pending.

Analysis and Conclusions of Law

To apply for MassHealth benefits, an individual in need of long-term-care services in a nursing facility, or his or her authorized representative, must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center (MEC). 130 CMR 516.001(A)(1).

Under 130 CMR 516.001(A)(3), MassHealth treats missing or inconsistent information provided in paper or in-person applications filed at a MassHealth Enrollment Center as follows:

- (a) If an application is received at a MassHealth Enrollment Center or MassHealth outreach site and the applicant did not answer all required questions on the Senior

Application or if the Senior Application is unsigned, the MassHealth agency is unable to determine the applicant's eligibility for MassHealth.

(b) The MassHealth agency requests responses to all of the unanswered questions necessary to determine eligibility. The MassHealth agency must receive such information within 15 days of the date of the request for the information.

(c) If responses to all unanswered questions necessary to determine eligibility are received within 15 days of the date of the notice, referenced in 130 CMR 516.001(A)(3)(b), the MassHealth agency will request any corroborative information necessary to determine eligibility, as provided in 130 CMR 516.001(B) and (C).

(d) If responses to all unanswered questions necessary for determining eligibility are not received within the 15-day period referenced in 130 CMR 516.001(A)(4)(b), the MassHealth agency notifies the applicant that it is unable to determine eligibility. The date that the incomplete application was received will not be used in any subsequent eligibility determinations. If the required response is received after the 15-day period, the eligibility process commences and the application is considered submitted on the date the response is received, provided that if the required response is submitted more than one year after the initial incomplete application, a new application must be completed.

(e) Inconsistent answers are treated as unanswered.

In this case, the appellant seeks to have MassHealth honor an earlier application date and to treat the community application that she did file as one for long-term care benefits.² However, there is no indication on this record that MassHealth failed to follow proper procedures under the regulations set forth above. The appellant twice filed an outdated version of the MassHealth application (the senior benefit request). After receiving the wrong application for the second time, MassHealth nevertheless went on to process it, sending the appellant a request for verifying financial information. In response, the appellant submitted a copy of an SC-1 and a nursing home screening, suggesting for the first time that the appellant was seeking long-term care benefits. But the appellant had still not complied with MassHealth's regulatory requirements by submitting the proper MassHealth application, and had also not completed the long-term care supplement form. MassHealth communicated to the appellant on April 5, 2021, that she was not eligible for benefits based on the information provided, and requested that she complete the correct paperwork to apply for long-term care benefits.

The appellant maintains that, when faced with inconsistent information that was provided, MassHealth did not actually request that the appellant file the complete application and supporting documentation as required in 130 CMR 516.001(A)(3). The appellant also states that she has no record of receiving MassHealth's April 5 notification. However, the record indicates that

² In her memo, the appellant's attorney appears to concede the January application and to argue only for the March 10 application date. See Exhibit 4 at 8.

MassHealth repeatedly asked the appellant to file the correct application with verifying information, and, once it became apparent that the appellant was seeking long-term care rather than community benefits, that she also complete the necessary long-term care paperwork. The appellant submitted some of the verifying information, but did not provide the long-term care application with the proper supplement until August. The appellant has not demonstrated that MassHealth failed to comply with the applicable regulations.

Further, had the appellant wished to protest MassHealth's alleged failure to act on the March application, she would have had to file an earlier appeal. Under 130 CMR 610.015(B), the time frame for appealing inaction on a MassHealth application, unless waived, is 120 days from the date of the application.³ For the March 10 application date, that deadline would have been July 8, 2021 (and it would have been months earlier for the January application). The appellant did not file her appeal with the Board of Hearings until September 22, 2021.

The original issue in this appeal was the August 24 denial notice for failure to submit verifications requested as part of the community application. As the MassHealth representative indicated at hearing, those particular verifications were later received, thereby resolving that issue prior to hearing. That aspect of the appeal is therefore dismissed. To the extent the appellant wished to use this action to establish an earlier long-term care application date, the appeal is denied for the reasons set forth above.

This appeal is dismissed in part and denied in part.

Order for MassHealth

None.

³ The same time frame applies for allegations that MassHealth failed to send notice of an agency action.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Tewksbury MEC

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