

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2178245
<b>Decision Date:</b>	01/21/2022	<b>Hearing Date:</b>	12/07/2021
<b>Hearing Officer:</b>	Patricia Mullen	<b>Record Open to:</b>	01/14/2022

**Appearance for Appellant:**




**Appearance for MassHealth:**  
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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Verifications
<b>Decision Date:</b>	01/21/2022	<b>Hearing Date:</b>	12/07/2021
<b>MassHealth's Rep.:</b>	Elizabeth Landry, Taunton MEC	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center		

## 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 September 13, 2021, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant did not submit requested verifications. (see 130 CMR 516.001 and Exhibit 1). The appellant filed this appeal in a timely manner on October 21, 2021<sup>1</sup>. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). The record was left open until January 14, 2022, to give the appellant the opportunity to submit verifications. (Exhibit 8).

## Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth.

## Issue

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<sup>1</sup> 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.

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001, in determining that the appellant did not submit requested verifications necessary for MassHealth to determine eligibility.

## **Summary of Evidence**

The appellant was represented telephonically by the BOM from the nursing facility, who was authorized by the appellant's guardian to represent the appellant at the hearing. (Exhibit 2). MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton. The MassHealth representative stated that the appellant submitted a MassHealth application on July 21, 2021, seeking a May 10, 2021 MassHealth start date. The MassHealth representative stated that MassHealth sent the appellant a Request for Information dated August 4, 2021. The MassHealth representative stated that the appellant did not submit all requested verifications and the application was denied by notice dated September 13, 2021. (Exhibit 1). The MassHealth representative stated that since the denial notice issued, the appellant submitted verification of his personal needs account (PNA). The MassHealth representative stated that MassHealth sent the appellant a second Request for Information dated September 17, 2021, seeking verification that a bank account had closed. (Exhibit 7, pp. 12-13). The MassHealth representative stated that a second denial notice issued on October 26, 2021 and verification of the bank account remains outstanding as of the date of hearing. (Exhibit 7, p. 14). The MassHealth representative explained that this particular bank account was not listed on the appellant's MassHealth application but was in MassHealth's system and was last verified on June 9, 2015 with a balance of \$99.00. (Exhibit 7, p. 4; exhibit 12). The MassHealth representative testified that she cannot see any statements for this account in MassHealth's system because documentation in the system prior to 2019 is archived and can no longer be accessed. The MassHealth representative stated that the bank account did not show up in MassHealth's bank match system. (Exhibit 9).

The appellant's representative stated that the appellant's guardian did not know about this account until he received the Request for Information and has been trying to get information from the bank ever since. The appellant's representative noted that the bank is outside of the United States and the appellant suffers from dementia and cannot provide any information with regard to this account. The appellant's representative stated that the appellant's guardian contacted the bank by telephone on October 14, October 25, and November 26, 2021 and has emailed the bank, but the bank has not sent any information. The appellant's representative stated that the appellant's guardian spoke to a customer service representative at the bank who told him something would be sent in 7-10 days, but nothing was received. The appellant's representative asked if the bank account could be considered inaccessible.

The record was left open for one month, until January 7, 2022, later extended to January 14, 2022, to give the appellant's guardian the opportunity to send a certified letter to the bank and obtain bank statements. (Exhibit 8).

By email dated January 10, 2022, the appellant's guardian reported that he sent the bank a certified

letter with return receipt. (Exhibit 10). The appellant's guardian noted that the letter was also faxed to the bank. (Exhibit 9). The certified letter lists the appellant's name, date of birth, the last 4 digits of his Social Security number, and the bank account number; guardianship documentation was included with the letter. (Exhibit 10, p. 3). The letter requests the date the account was closed and where closing proceeds went, or current statements if the account is still open. (Exhibit 10, p. 3). The appellant's guardian noted in the letter that he emailed the initial request to the bank on September 29, 2021 and received a reference number, which he provided in the letter. (Exhibit 10, p. 3). The certified mail receipt was signed. (Exhibit 10, pp. 7, 8).

In an email dated January 10, 2022, the hearing officer asked the appellant's guardian to telephone the bank again, now that the bank had the certified letter and guardianship documentation in its possession. (Exhibit 11). The hearing officer also asked if MassHealth could consider the asset inaccessible. (Exhibit 11). The MassHealth representative responded that in a case such as this, MassHealth would not usually consider the asset inaccessible. (Exhibit 11).

The appellant's guardian emailed that he called the bank and was put in a queue and given the option of a call back of more than an hour later; the guardian received the call back an hour later and was again placed in a queue and given the option of a call back in more than an hour. (Exhibit 12, p. 3). The appellant's guardian stated that if the option of a call back is not chosen, the call is dropped after between 15 and 90 minutes. (Exhibit 12, p. 3). The appellant's guardian noted that he received a second call back and was again placed back in the queue and given the same option. (Exhibit 12, p. 2). The appellant's guardian was never called back by a representative from the bank. (Exhibit 12). The appellant's guardian stated that in the time he has been the appellant's guardian, over a year, he has not seen any statements from this bank, and no statements were found in the paperwork gathered from the appellant's house. (Exhibit 12, p. 2). The appellant's guardian noted that the appellant has no family that he is aware of. (Exhibit 12, p. 2). The appellant's guardian stated that he has spent at least 40 hours trying to obtain verification of this account, but the bank simply will not comply and the guardian cannot go there in person as the bank is not even in the United States. (Exhibit 12, p. 2). The appellant's guardian noted that it appears the account was closed or has minimal funds in it as the last known balance was in 2015 and was \$99.00. (Exhibit 12, p. 2). The appellant's guardian asked that the account be considered inaccessible. (Exhibit 12, p. 2).

## **Findings of Fact**

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

1. The appellant submitted a MassHealth application on July 21, 2021, seeking a May 10, 2021 MassHealth start date.
2. MassHealth sent the appellant a Request for Information dated August 4, 2021.
3. The appellant did not submit all requested verifications and the application was denied by notice dated September 13, 2021.

4. MassHealth sent the appellant a second Request for Information dated September 17, 2021 seeking verification that a bank account had closed.
5. MassHealth issued a second denial notice issued on October 26, 2021.
6. The only outstanding verification is documentation for an out of the country bank account.
7. The bank account for which MassHealth seeks verification was not listed on the appellant's MassHealth application and is not appearing in an asset verification bank match in MassHealth's system.
8. The bank account for which MassHealth seeks verification. was last verified on June 9, 2015 with a balance of \$99.00.
9. The appellant's guardian has been his guardian for over a year and did not know about this bank account until he received MassHealth's Request for Information; no statements from this bank were found in the paperwork gathered from the appellant's house.
10. The appellant suffers from dementia, has no known family, and cannot provide any information with regard to this bank account.
11. The appellant's guardian contacted the bank by telephone on September 29, October 14, October 25, and November 26, 2021 and has emailed the bank, but the bank has not sent any information, other than to provide a reference number after the first phone call.
12. The appellant's guardian sent the bank a certified letter with return receipt that was signed at the bank; the appellant's guardian also faxed the letter to the bank.
13. The certified letter sent to the bank, lists the appellant's name, date of birth, last 4 digits of Social Security number, and bank account number; guardianship documentation was included with the letter; the letter requests the date the account was closed and where closing proceeds went, or current statements if the account is still open.
14. On January 11, 2022, the appellant's guardian called the bank and was put in a queue and given the option of a call back of more than an hour later; the guardian received the call back an hour later and was again placed in a queue and given the option of a call back in more than an hour; appellant's guardian noted that he received a second call back and was again placed back in the queue and given the same option, at which time he terminated the call.
15. The appellant's guardian noted that if the option of a call back is not chosen, the call is dropped after between 15 and 90 minutes.

## **Analysis and Conclusions of Law**

Corroborative Information. The MassHealth agency requests all corroborative information necessary to determine eligibility.

(1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of receipt of the application.

(2) The notice advises the applicant that the requested information 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).

Receipt of Corroborative Information. If the requested information, with the exception of verification of citizenship, identity, and immigration status, is received within 30 days of the date of the request, the application is considered complete. The MassHealth agency will determine the coverage type providing the most comprehensive medical benefits for which the applicant is eligible. If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied. (130 CMR 516.001(C)).

The hearing officer may not exclude evidence at the hearing for the reason that it had not been previously submitted to the acting entity, provided that the hearing officer may permit the acting entity representative reasonable time to respond to newly submitted evidence. 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.

CMR 610.071(A)(2).

#### Inaccessible Assets

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

(1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and

(2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

(1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or

(2) from the period beginning six months after the date of application or acquisition, whichever is later, if

(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized

representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or (b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

(130 CMR 520.006).

The bank account in question here does not meet the definition of an inaccessible asset pursuant to 130 CMR 520.006, however information with regard to the bank cannot be obtained, through no fault of the appellant or the appellant's guardian. The bank account was not listed on the appellant's MassHealth application, was not discovered in an asset verification bank match in MassHealth's system, and no statements from this bank were found in the appellant's home. The appellant suffers from dementia and is not able to provide information with regard to this bank account. The bank account was reported by the appellant in 2015, almost 7 years ago, presumably as part of a community MassHealth application or review. At that time, the bank account had a balance of \$99.00. The appellant's guardian has spent numerous hours over 5 months, making multiple attempts, including sending a certified letter, to get verification of this bank account, but the bank has not complied with the request. The bank is not in the United States and thus the guardian cannot visit the bank in person. I determine that under the unique circumstances in this case, MassHealth should not deny the appellant's MassHealth application for failure to submit verification of this particular bank account. If the account is still open, it most likely has a minimal balance of no more than \$99.00. MassHealth's denial notices dated September 13, 2021 and October 26, 2021 should be rescinded and MassHealth should make the appellant's eligibility determination based on the verifications submitted. The appeal is approved.

## **Order for MassHealth**

Rescind the notices dated September 13, 2021 and October 26, 2021, and reopen and process the appellant's MassHealth application dated July 21, 2021.


## **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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Patricia Mullen  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center

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