

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2178788
<b>Decision Date:</b>	01/26/2022	<b>Hearing Date:</b>	12/23/2021
<b>Hearing Officer:</b>	Rebecca Brochstein		

**Appearances for Appellant:**



**Appearances for MassHealth:**

David Gelin, 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

<b>Appeal Decision:</b>	Dismissed	<b>Issue:</b>	Eligibility
<b>Decision Date:</b>	01/26/2022	<b>Hearing Date:</b>	12/23/2021
<b>MassHealth's Rep.:</b>	David Gelin, Tewksbury MEC	<b>Appellant's Rep.:</b>	Pro Se
<b>Hearing Location:</b>	Board of Hearings (Remote)		

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder. The appeal pertained to MassHealth's December 16, 2020, notice approving the appellant for MassHealth Buy-In. See Exhibit 1. The appellant filed an appeal on November 17, 2021. See Exhibit 2. As the fair hearing request was not timely, the appeal must be dismissed.

By regulation, the Board of Hearings must receive a request for a fair hearing within 30 days after an applicant or member receives written notice from the MassHealth agency of the intended action. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing. Computation of this time is made on the basis of calendar days except where expressly provided otherwise. See 130 CMR 610.015(B) and (C).

MassHealth Eligibility Operations Memo 20-09, issued at the outset of the COVID-19 pandemic, extended the time frame for filing appeals. It provides that during the COVID-19 outbreak national emergency, and through the end of the month in which such national emergency period ends, individuals have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

In this case, the notice dated December 16, 2020, is presumed to have been received on December 21, 2020. There is no evidence that the appellant did not receive the notice by that date. The 120th day following December 21, 2020, is April 20, 2021. As the fair hearing request was not received until November 17, 2021, it was not timely under the regulations.<sup>1</sup>

For the foregoing reasons, this appeal is dismissed.

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<sup>1</sup> Even if this appeal had been timely, the appellant could not have obtained the relief he seeks (an upgrade to his MassHealth benefit). The MassHealth representative testified that the appellant would have to establish eligibility for the Frail Elder Waiver in order to qualify for an upgraded MassHealth coverage type. As of the hearing date, the appellant had not been evaluated for the waiver.

## **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.

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Rebecca Brochstein  
Hearing Officer  
Board of Hearings

cc: Tewksbury MEC