

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part and Remanded	Appeal Number:	2179084
Decision Date:	5/17/22	Hearing Date:	12/22/2021
Hearing Officer:	Scott Bernard	Record Open to:	4/25/2022

Appearance for Appellant:




Appearance for MassHealth:

Jessica Barney (Taunton MEC) *via* telephone



*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:	Approved in part and Remanded	Issue:	Long Term Care (LTC) Verifications
Decision Date:	5/17/22	Hearing Date:	12/22/2021
MassHealth's Rep.:	Jessica Barney	Appellant's Rep.:	
Hearing Location:	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 November 18, 2021, MassHealth denied the appellant's application for MassHealth LTC benefits because MassHealth determined that she had not given it the information it needed to decide her eligibility within the required time frame. (See 130 CMR 515.008, 516.001 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on December 1, 2021. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

At the appellant's representative's request, the record was kept open with extensions until April 26, 2022 at which time the record closed. (See Exs. 6-16).

Action Taken by MassHealth

MassHealth denied the appellant's LTC application for failure to submit requested verifications in a timely manner.

Issue

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 516.001 and 515.008, in determining that the appellant did not submit requested verifications in a timely manner; whether the appellant was able to submit the requested verifications pursuant to the appeal process; if not, whether the appellant has shown that the verifications are not reasonably available.

Summary of Evidence

The MassHealth representative testified to the following. The appellant was admitted to the prior nursing facility [REDACTED]. On September 15, 2021, MassHealth received a conversion request from the present facility with a requested LTC start date of August 1, 2021. On October 14, 2021, MassHealth sent the appellant a request for information. In a notice dated November 18, 2021, MassHealth denied the request for LTC benefits for failure to submit verifications. (See Ex. 1). The MassHealth representative stated MassHealth was seeking verification the appellant has applied for Social Security; a copy of a pension statement showing the appellant's gross income, net income and income deductions; and statements from the appellant's bank in Puerto Rico¹ from October 1, 2020 to present with an explanation and supporting documentation for all deposits and withdrawals of \$1500 or more. The MassHealth representative stated that the appellant had been discharged from the first nursing facility and admitted to the present facility on [REDACTED].

The appellant's representative confirmed that the MassHealth representative's testimony was accurate. The appellant's representative stated that his facility submitted the LTC conversion application because after it admitted her, it discovered that her short-term coverage had ended prior to her leaving the first nursing facility. The appellant's representative stated that his facility asked for a coverage start date backdated to her stay at the prior facility.

The appellant's representative stated that his facility has been working with the appellant's daughters to obtain documentation. The appellant cannot speak because she is ventilated and only understands Spanish. The daughter of the appellant who lives locally also only understands Spanish and does not have access to the appellant's bank account in Puerto Rico. The appellant's representative stated that that bank is located only in Puerto Rico, where the appellant lived originally. The appellant does not have a local bank. The appellant does have a daughter who lives in Puerto Rico, who tried to obtain the bank statements, but the bank would not permit her to access those statements. The appellant's daughter then got power of attorney, but the bank would not accept that authority. By that time, the time for submitting the bank statements to MassHealth had expired.

Currently, the appellant's representative's facility is working to get the MassHealth request for information form translated into Spanish and completed to send to the appellant's daughter in Puerto Rico to bring to the bank in order to get the statements. Meanwhile, the appellant's daughter who lives locally is trying to find out where she can obtain the pension statements. The facility's social worker has worked with the appellant and applied for Social Security, and the appellant's representative did have a printout confirming that the application was submitted.

The appellant's representative requested more time to allow the appellant's daughter in Puerto Rico to approach the bank again with the newly translated request for information documents and, if that fails, possibly have the daughter attempt to obtain conservatorship in order to allow her to obtain the statements. The appellant's representative requested the record remain open until March 1, 2022. The hearing officer stated that he would be willing to let the hearing record stay open for 30 days with the option to request more time if needed. For that reason, the record was left open until

¹ The name of the bank has been excluded here for reasons of privacy.

January 21, 2022 for the appellant's representative to submit the following:

1. Verification that the appellant has applied for Social Security;
2. A copy of the appellant's pension statement showing gross income, net income, and deductions;
3. Statements from the Puerto Rican bank from October 1, 2020 to the present with an explanation and supporting documentation for all deposits and withdrawals of \$1500 or more. (Ex. 6).

On January 21, 2022, the appellant's representative faxed the Board of Hearings requesting the record remain open an additional 30 days because the facility's attempts to retrieve the requested information from the bank were unsuccessful. (Ex. 7). The appellant's representative explained that the bank had not accepted the daughter's power of attorney or the MassHealth request form the appellant signed. (*Id.*). The appellant's representative did state that the facility submitted proof of the appellant's application for Social Security to the MassHealth representative. (*Id.*). The hearing officer informed the appellant's representative and the MassHealth representative that he would extend the record open for the appellant's representative until February 21, 2022. (Ex. 8).

On February 18, 2022, the appellant's representative faxed a number of documents and wrote the following in the cover letter:

[W]e have been trying to obtain the bank statements for our patient...with no success. [The bank] has been unresponsive most times and uncooperative when we were able to reach a live person. I've sent MassHealth's RFI letter and MassHealth's statement request form with a copy of the hearing's Record Open notice. We consulted with an attorney to see if they could act on her behalf, and aside from asking how the patient would pay for services, stated there probably wasn't much more they could do. The patient cannot speak and doesn't have access online to her account. Customer service says to have member call their IT department but again, the patient can't speak. The bank manager insists they need someone to come to Puerto Rico in person or they can't help us. We've asked that he send that in writing but thus far, has not responded. The patient cannot leave the hospital and doesn't have anyone who can go to Puerto Rico on her behalf.

We feel that we have exhausted our options but if there is something else that we can try to do to get this information we would gladly do it attached are the remaining documents requested and copies of our request documents and emails to [the bank]. I don't know if asking for additional time would help, but she really needs long term care coverage. (Ex. 9, p. 3).

The fax contained proof of the appellant's application for Social Security, a copy of pension statements dated from May through September 2021, as well as the appellant's 2020 tax form for her pension. (Ex. 9, pp. 4-13). The fax also contained documentation of the facility's attempts to contact the bank from January 6, 2022 through February 14, 2022, as described in the cover letter. (Ex. 9, pp. 14-30).

The MassHealth representative and the appellant's representative colloqued in emails on February 25, March 1, March 2, and March 11, 2022. (Ex. 10; Ex. 11; Ex. 12). The MassHealth representative stated that she performed an internet search and that the bank did have locations in the continental United States. (Ex. 10, p. 1). The appellant's representative responded that the facility reached out to the branch of the bank in South Florida and spoke to a customer service representative, who told the facility that they did not have access to information concerning accounts in Puerto Rico. (Ex. 11, p. 5). The customer service representative advised speaking to the bank in Puerto Rico. (Id.). When the appellant's representative informed the customer service representative that he had already done this, the customer service representative stated that there was not anything else she could do except provide the customer service line in Puerto Rico. (Id.). This turned out to be the customer service line in the United States. (Id.).

The MassHealth representative responded by stating that the appellant's income was being solely deposited into this account and MassHealth needed the statements to make an eligibility determination. (Ex. 11, pp. 4-5). She recommended that the facility try to file for conservatorship. (Id.). The appellant's representative started that the facility's legal department does think that the court would grant conservatorship due to the appellant being mentally competent but that he would ask again. (Id.). The MassHealth representative suggested having the appellant call the bank with her daughter. (Ex. 11, p. 3). The appellant's representative explained that the facility had already tried this but the bank would not speak with the daughter because she was not the account holder. (Ex. 11, p. 2). This was despite explaining to the bank that the appellant was not able to speak. (Ex. 11, pp. 1-2). In response to a question from the appellant's representative, the MassHealth representative stated that MassHealth could not use the Asset Verification System to verify the account because AVS did not communicate with this bank. (Ex. 11, pp. 2-3).

In the meantime, the appellant's representative requested another 30-day extension. (Ex. 11, p. 4; Ex. 12). The hearing officer extended the record open until March 26, 2022. (Ex. 12). On March 24, 2022, the appellant's representative emailed the following:

I am writing with an update on [the appellant's] case. Since our last email exchange, we have made several more attempts to get the bank statements requested.

As stated previously, because [the appellant] has capacity to make her own decisions, the courts will not appoint a guardian or conservator. She can appoint a durable power of attorney and is agreeable to that, so [the nursing facility]'s administration is willing to pay to send her daughter to Puerto Rico to get the statements. We called [the bank]...to verify this would be acceptable before we booked the flight and the daughter made child care arrangements for her four children. The branch manager...said the statements could only be provided to the persons named on the account or if the DPOA were from the court in Puerto Rico. I told him this was unreasonable and was told there is nothing he can do. Then on advice from our OGC, I tried going to the bank's administration and tried to engage the CEO of [the bank]...to ask for assistance. I sent him an email explaining what was going on and copies of the correspondence, including MassHealth's notices, and requested some assistance. I received a "Read" notification when the email was opened but no response. On Monday 3/14, at the request of [the] senior attorney at the OGC, I

sent a second email to [the branch manager] and...[the bank's] VP of Customer Information requesting a contact in their legal department so our attorney could speak with one of theirs. I didn't receive any "Read" notifications but on Wed 3/16 received an email from...[the bank's] VP and Sr. Counsel stating she had received our email and asking for a list of items to "start our application". We have put together the documents requested and asked OGC to review them with [the bank's VP and Sr. Counsel] to be sure that they are acceptable and will allow them to release the statements to [the appellant]' daughter before she gets on a plane to [Puerto Rico]. [Our senior attorney] has reached out to her three times since then requesting to speak with her but has received no response. We will not be able to produce the bank statements by tomorrow.

I understand [the MassHealth representative]'s point that MassHealth has received statements from this bank in the past but the circumstances were likely very different – Member had online access or received paper statements, had someone else on their account who could access it, member could speak for themselves or were incapacitated mentally and a conservator could be appointed. [the appellant] has none of these. Per the automated call-in system today, her account balance is \$2.90. She spends her \$113.77 monthly pension on her phone, online purchases and occasionally helping her daughter and grandchildren.

I have recommended to the patient she open a local bank account and have her pension deposited there as she will not be able to return to Puerto Rico for the foreseeable future due to her condition. She is willing to do this and we will work with her and her daughter to get that done.

We will continue to try to get [the bank] to cooperate with, or at least respond to, our attorney and [the nursing facility] will pay to send her daughter to Puerto Rico to get the statements if they will release them to her. Other than that, I feel we exhausted our options to get these statements.

Will MassHealth accept a notarized witnessed affidavit/attestation of the balance of her account at [the bank] so she can be approved for long term care? If so, I can submit that tomorrow/Friday. (Ex. 13, pp. 1-2).

The appellant's representative also attached documentation of the facility's attempts to contact the bank. (Ex. 13, pp. 3-17). In response to this, the hearing officer extended the record open until April 25, 2022. (Ex. 14).

On April 25, 2022, the appellant's representative wrote the following:

I hope this finds you both well. It has now been a month since our conversation below and I'm sorry to report that we are no closer to getting [the bank] to cooperate with us than we were a month ago. [The senior attorney] from...[our] Office of General Counsel has made several attempts to speak with [the bank]'s Legal department with no response to calls or email. We've told the bank that we were

even willing to pay to send [the appellant's] daughter to Puerto Rico to get the statements but wanted to make sure the documents she had would be sufficient for them to release the statements. We have had no response to [our senior attorney]'s calls or email.

I was also made aware today of a new Request For Information letter that was sent out 4/8/22 asking for items that have previously been submitted – Proof of application for Social Security, proof of pension amount, LTC supplement A, SC1 ...and the bank statements from [the bank] 10/20 to current. My understanding from our conversation on 3/25 was that with the exception of the bank statements, all items requested have been satisfactorily provided. I was asked to accept another 30 days to try to get the bank statements before you would consider whether 130 CMR 516.003(G) would apply here. That 30 days ended yesterday, so I'm not sure why a new RFI was issued on 4/8, asking for information already provided.

We have been advised by the MassHealth utilization nurse that [the appellant's] needs to be placed in a long term care skilled nursing facility now. She is no longer in level to remain at [our nursing facility]. We cannot place her without long term care coverage. We have made every good faith effort to meet the request for these bank statements. Therefore, I ask again - Will MassHealth accept a notarized witnessed affidavit/attestation of the balance of her account at [the bank] so she can be approved for long term care? (Ex. 15, pp. 1).

Again the appellant's representative attached documentation that supported the assertions in his email. (Ex. 15, pp. 2-5). On April 26, 2022, the hearing officer informed both parties that he would take the matter under advisement at which time the hearing record closed. (Ex. 16).

Findings of Fact

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

1. The appellant was admitted to the first nursing facility [REDACTED]. (Testimony of the MassHealth representative).
2. The appellant was discharged to the present nursing facility [REDACTED]. (Testimony of the MassHealth representative).
3. On September 15, 2021, MassHealth received a conversion request with a LTC start date of August 1, 2021. (Testimony of the MassHealth representative).
4. On October 14, 2021, MassHealth sent the appellant a request for information. (Testimony of the MassHealth representative).
5. In a notice dated November 18, 2021, MassHealth denied the request for LTC benefits for failure to submit verifications. (Ex. 1).

6. MassHealth was seeking verification the appellant has applied for Social Security; a copy of a pension statement showing the appellant's gross income, net income and income deductions; and statements from the appellant's Puerto Rican bank from October 1, 2020 to current with an explanation and supporting documentation for all deposits and withdrawals of \$1500 or more. (Testimony of the MassHealth representative; Ex. 1; Ex. 5).
7. The appellant cannot speak because she is ventilated and only understands Spanish. (Testimony of the appellant's representative).
8. The daughter of the appellant who lives locally also only understands Spanish and does not have access to her bank account in Puerto Rico. (Testimony of the appellant's representative).
9. The bank is located in Puerto Rico, where the appellant lived originally. (Testimony of the appellant's representative).
10. Although the bank has branches in the continental United States, the information being sought is not available through those branches. (Ex. 11, p. 5).
11. The appellant does not have a local bank. (Testimony of the appellant's representative).
12. The appellant does have a daughter who lives in Puerto Rico, who tried to obtain the bank statements, but the bank would not permit her to access those statements. (Testimony of the appellant's representative).
13. The appellant's daughter then got power of attorney, but the bank would not accept that authority. (Testimony of the appellant's representative).
14. At the appellant's representative's request, the record was left open so that he could obtain and submit the following:
 1. Verification that the appellant has applied for Social Security;
 2. A copy of the appellant's pension statement showing gross income, net income, and deductions;
 3. Statements from the Puerto Rican bank from October 1, 2020 to the present with an explanation and supporting documentation for all deposits and withdrawals of \$1500 or more. (Ex. 6).
15. After the hearing, the appellant's representative submitted verification that the appellant has applied for Social Security as well as a copy of the appellant's pension statement showing gross income, net income, and deductions. (Ex. 7; Ex. 9, pp. 14-30).
16. The appellant's representative requested timely extensions of the record open until April 25, 2022 at which point the record closed. (Ex. 7; Ex. 9; Ex. 11; Ex. 13; Ex. 16).

17. The appellant's representative submitted extensive documentation of the facility and the appellant's daughters' efforts to obtain the requested statements from the Puerto Rican bank during the record open period. (Exs. 7-15).

Analysis and Conclusions of Law

MassHealth applicants must cooperate in providing information necessary to establish eligibility and must comply with all the rules and regulations of MassHealth. (130 CMR 515.008(A)). Once MassHealth receives an application for LTC benefits it will send the applicant written notification (generally within five days) requesting all corroborative information necessary to determine eligibility. (130 CMR 516.001(B)(1)). The notice advises the applicant that the requested information must be received within 30 days of the date of the request and explains the consequences of failure to provide the information. (130 CMR 516.001(B)(2)). If the requested information is received within 30 days², MassHealth will determine the coverage type providing the most comprehensive benefits for which the applicant is eligible. (130 CMR 516.001(C)). If the requested information is not received within 30 days of the request, MassHealth benefits may be denied. (Id). Except with respect to the verifications of citizenships and immigration status, MassHealth will permit, on a case-by-case basis, self-attestation of individuals for all eligibility criteria when documentation does not exist at the time of application or renewal, or is not reasonably available, such as in the case of individuals who are homeless or have experienced domestic violence or a natural disaster. (130 CMR 516.003(G)).

The record shows by a preponderance of the evidence that the appellant has not been able to submit the information MassHealth requested as necessary to establish eligibility. After the appellant submitted the conversion request, MassHealth sent the appellant a request for information that was due by a specific date. The appellant did not submit the requested documentation by that date. MassHealth then denied the appellant's conversion request. This was then appealed in a timely manner. At the hearing, the appellant's representative credibly testified about the facility's efforts to obtain the requested verifications, including the difficulty in obtaining statements from the appellant's bank in Puerto Rico. Pursuant to a request to keep the record open, the appellant's representative did manage to submit two out of three of the requested verifications. The appellant's representative also documented his effort to obtain bank statements from the Puerto Rican bank. It is clear from his description of the many attempt to contact the bank and his documentation of those attempts that the bank statements are not at this time reasonably available. The appellant should be permitted to provide a self-attestation concerning the information MassHealth would be seeking through the bank statements.

For the above stated reasons, the appeal is APPROVED IN PART and REMANDED.

² There is an exception for information concerning citizenship, identity, and immigration status. (130 CMR 516.001(C)). None of these categories of information are relevant to this case, however.

Order for MassHealth

Allow the appellant to submit a self-attestation concerning the information it was seeking through the bank statements. Once MassHealth has obtained this verification it should issue an eligibility with appeal rights.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

[REDACTED]