

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2179111
<b>Decision Date:</b>	01/24/2022	<b>Hearing Date:</b>	01/11/2022
<b>Hearing Officer:</b>	Paul C. Moore	<b>Record Closed:</b>	01/12/2022

**Appellant Representative:**



**MassHealth Representative:**

Scott Michael, Taunton MassHealth  
Enrollment Center (by 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Coverage Start-Date
<b>Decision Date:</b>	01/24/2022	<b>Hearing Date:</b>	01/11/2022
<b>MassHealth Rep.:</b>	Scott Michael	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (remote)		

### 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 16, 2021, MassHealth approved the appellant's application for long-term care coverage effective June 1, 2021 (Exh. 1). The appellant's estate, through the estate's special personal representative, timely requested a fair hearing contesting the coverage start-date on December 1, 2021 (Exh. 2). Limitations on the scope or amount of MassHealth assistance is grounds for appeal to the Board of Hearings (BOH) (130 CMR 610.032).

The record of the appeal remained open for one day for the special personal representative and the MassHealth representative to submit additional evidence.

### Action Taken by MassHealth

MassHealth approved the appellant's MassHealth application with a coverage start-date of June 1, 2021.

## Issue

The appeal issue is whether MassHealth was correct in awarding the appellant a coverage start-date of June 1, 2021, or if the appellant was entitled to an earlier start-date.

## Summary of Evidence

A representative from the Taunton MassHealth Enrollment Center (“MassHealth representative”) testified by telephone that the appellant’s estate submitted an application for long-term care coverage on September 29, 2021 (“application two”). The MassHealth representative stated that MassHealth received all needed verifications, and approved the appellant (who was over age 65) for coverage effective June 1, 2021 (Exh. 1). The MassHealth representative noted that there was a previous MassHealth application (“application one”) filed by the appellant, prior to her passing away, received on April 1, 2021.<sup>1</sup> The MassHealth representative indicated that application one was denied for missing verifications, and an appeal hearing was held on that denial before another hearing officer of the BOH on August 9, 2021. The MassHealth representative submitted for the record a copy of the prior BOH decision on appeal number 2155549, issued on November 26, 2021 (Exh. 4C). He indicated that the previous appeal was denied by the BOH hearing officer after a record-open period in which the appellant was afforded additional time to submit missing verifications, but did not do so (Testimony).<sup>2</sup>

The special personal representative of the appellant’s estate testified by telephone that she was not appointed as the estate’s representative by the probate court until September 7, 2021, and had no involvement in the prior appeal hearing (Exh. 6). She was appointed as special personal representative for the appellant’s estate while a record-open period was already ongoing in connection with appeal number 2155549. She did not receive a copy of the record-open form associated with the previous appeal until September 14, 2021. She submitted to the hearing officer a copy of an e-mail she received from the previous appeal representative, [REDACTED],<sup>3</sup> an assistant business office manager at the facility where the appellant resided, forwarding the record-open form in connection with the previous appeal to the special personal representative (Exh. 8).<sup>4</sup>

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<sup>1</sup> Pursuant to the Order Appointing Special Personal Representative for the appellant’s estate dated September 7, 2021, the appellant died on [REDACTED] (Exh. 6).

<sup>2</sup> Per the appeal decision in appeal number 2155549, the record was held open until September 9, 2021 for the submission of still-missing verifications, and then upon a request by the appellant, the record-open period was extended until October 14, 2021 (Exh. 4C).

<sup>3</sup> Initials are used to protect confidentiality.

<sup>4</sup> The record-open form in connection with appeal number 2155549 stated that the following verifications were due by October 14, 2021 (the date the record of the appeal was to close): question on application regarding appellant’s marital status must be answered, and questions 9 through 14 on page 23 of supplement A must be answered; a copy of a current pension stub; SC-1 Form; nursing facility screening form; and letter from Lincoln Heritage [insurance company] regarding three life insurance policies owned by the appellant (Exh. 5).

The special personal representative testified that to her knowledge, a complaint for judicial review of the appeal decision denying appeal number 2155549 has not been filed in Superior Court, adding that the attorneys representing for the nursing facility where the appellant resided were handling that (Testimony).

The special personal representative stated that she did not know that MassHealth treated the September 29, 2021 submission (application two) as an entirely new application. In connection with application two, the special personal representative received a new request for verifications from the MassHealth representative, including documentation to prove the value of several life insurance policies owned by the appellant, updated bank statements of the appellant for an account she owned at Rockland Trust, and a pension stub. Thus, at that time, she was working on two separate verification requests, although there was some overlap in the requests. The special personal representative testified that she believes she sent application two to MassHealth, but did not sign application two. Instead, she simply sent MassHealth a duplicate copy of application one, containing the signature of the appellant and the authorized representative designated by the appellant, [REDACTED] dated March 30, 2021 (Testimony, Exh. 4A).

The MassHealth representative acknowledged that he processed application two as a new application, and sent out a new request for verifications in connection with that application to the special personal representative on October 12, 2021. These verifications were due back to MassHealth on November 11, 2021. He specifically requested that unanswered questions concerning the appellant's marital status and unanswered questions on supplement A be answered; that updated Rockland Trust bank statements be submitted; that a pension stub be submitted; and that a letter from Lincoln Heritage insurance company be submitted containing the cash surrender values of the life insurance policies owned by the appellant. He noted that ultimately, all the requested verifications were submitted, including a letter from the insurance company, which reflected that the combined cash surrender value of all three policies was under \$2,000.00, the asset limit to qualify for long-term care coverage (Exh. 5). Pursuant to a SC-1 Form submitted by the nursing facility, the appellant was admitted to facility on [REDACTED], and is requesting MassHealth coverage to start on that date (Exh. 4E). Based on these submissions, the MassHealth representative was able to approve application two, with a retroactive coverage date of June 1, 2021 (the first day of the third month prior to the month of application two) (Testimony, Exh. 4).

The special personal representative testified that once she received the new request for verifications in connection with application two, she assumed the record-open period in connection with appeal number 2155549 had been extended until November 11, 2021. She pointed out that the appeal decision denying appeal number 2155549 contains a finding of fact that does not correspond with the items requested on the record-open form in connection with that appeal; specifically, Finding of Fact number 8 in the appeal decision states, "[t]he appellant's representative failed to submit verification of income, bank statements, and life insurance within the required time limit" (Exh. 4C). The special personal representative pointed out that bank statements were not part of the requested verifications itemized on the record-open form for appeal number 2155549 (Testimony).

The MassHealth representative submitted into evidence a copy of an e-mail correspondence he sent to the hearing officer who heard appeal number 2155549, to the special personal representative and to [REDACTED] on October 20, 2021, which states in relevant part:

I received a NEW application dated 9/29/2021. It was assigned to me on 10/05/2021 by my management team and I sent out the request for information (VC1) on 10/12/2021. It was the new application that I received that prompted me to have the case re-assigned to me and a new info request be sent out. This was separate from the hearing record open period.

(Exh. 4D)

At the close of the hearing, the hearing officer left the record of this appeal open for the special personal representative to submit a copy of any email she received from [REDACTED] forwarding the record-open form in connection with appeal number 2155549 to the special personal representative, and also left the record open for the MassHealth representative to submit a copy of the complete application one submitted to MassHealth by the appellant prior to her death. Following the hearing, on the afternoon of the hearing day, the hearing officer received from the special personal representative a copy of an email the personal representative received from [REDACTED] on September 14, 2021 (Exh. 8).

On the morning of January 12, 2022, the hearing officer received via e-mail from the MassHealth representative a copy of application one received by MassHealth on April 1, 2021 (Exh. 9). Application one is identical to application two, except that application one contains an authorized representative designation (ARD) form signed by the appellant on March 30, 2021, appointing S.K. as an authorized representative for the appellant (*Id.*, p. 25).<sup>5</sup>

## Findings of Fact

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

1. The appellant, who was over age 65, entered a nursing facility on [REDACTED] 2021 (Testimony, Exh. 4E).
2. The nursing facility is requesting a coverage start-date of March 13, 2021 (*Id.*).
3. The appellant filed an application (application one) for MassHealth long-term care coverage on April 1, 2021 (Testimony).
4. Application one was denied by MassHealth for missing verifications by notice dated May 18, 2021 (Exh. 4C).

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<sup>5</sup> On both application one and application two, the appellant and/or her authorized representative failed to answer the question, "Are you legally married," and also failed to answer questions 9 through 14 of supplement A (Exh. 4B, Exh. 9).

5. The appellant died on [REDACTED] (Exh. 6).
6. The appellant, through her appeal representative [REDACTED] filed a request for a fair hearing on the May 18, 2021 denial with the BOH on July 22, 2021 (Exh. 4C).
7. An appeal hearing on the May 18, 2021 denial was held on August 9, 2021 before a hearing officer of the BOH (*Id.*).
8. At the close of the prior appeal hearing (appeal number 2155549), the hearing officer left the record of the appeal open until September 14, 2021 for the appellant to submit missing verifications (*Id.*).
9. Upon the appellant's request, the record-open period in connection with appeal number 2155549 was extended by the hearing officer until October 14, 2021 (*Id.*).
10. The record-open form in connection with appeal number 2155549 stated that the following verifications were due by October 14, 2021 (the date the record of the appeal was to close): question on application regarding appellant's marital status must be answered, and questions 9 through 14 on page 23 of supplement A must be answered; a copy of a current pension stub; SC-1 Form; nursing facility screening form; and letter from Lincoln Heritage [insurance company] regarding three life insurance policies owned by the appellant (Exh. 5).
11. The probate court appointed a special personal representative for the appellant's estate on September 7, 2021 (Exh. 6).
12. The special personal representative of the appellant's estate received a copy of the record-open form in connection with appeal number 2155549 from [REDACTED] on September 14, 2021 (Exh. 8).
13. On September 29, 2021, the special personal representative of the appellant's estate submitted a duplicate copy of application one to MassHealth (Testimony).
14. MassHealth treated the September 29, 2021 submission by the special personal representative as a new MassHealth application (Testimony).
15. MassHealth sent out a new request for verifications in connection with application two to the special personal representative on October 12, 2021, due back to MassHealth on November 11, 2021 (Testimony, Exh. 5).
16. In the October 12, 2021 information request in connection with application two, MassHealth requested that unanswered questions concerning the appellant's marital status and unanswered questions on supplement A be answered; that updated Rockland Trust bank statements be submitted; that a pension stub be submitted; and that a letter from Lincoln Heritage insurance company be submitted containing the cash surrender values of the life insurance policies

owned by the appellant (Testimony).

17. The MassHealth representative sent e-mail correspondence to the special personal representative and to [REDACTED] on October 20, 2021, which states in relevant part: “I received a NEW application dated 9/29/2021. It was assigned to me on 10/05/2021 by my management team and I sent out the request for information (VC1) on 10/12/2021. It was the new application that I received that prompted me to have the case re-assigned to me and a new info request be sent out. This was separate from the hearing record open period” (Testimony, Exh. 4D).
18. The special personal representative assumed that once she received the new request for verifications in connection with application two, the record-open period in connection with appeal number 2155549 (denied application one) was extended until November 11, 2021 (Testimony).
19. All verifications requested for application two were received by MassHealth, and MassHealth approved application two by notice dated November 16, 2021, with a coverage start-date of June 1, 2021 (Exh. 1).
20. The special personal representative filed a timely appeal of the November 16, 2021 MassHealth approval notice, contesting the coverage start-date (Exh. 2).
21. On November 26, 2021, an appeal decision issued for appeal number 2155549, denying the appeal because not all verifications were timely submitted; among other things, the appeal decision states in Finding of Fact number 8, “[t]he appellant’s representative failed to submit verification of income, bank statements, and life insurance within the required time limit” (Exh. 4C).
22. Bank statements of the appellant were not requested at the close of the appeal hearing in appeal number 2155549 (Exh. 5).
23. There is no evidence that the appellant’s estate filed a Superior Court complaint for judicial review of the BOH appeal decision in appeal number 2155549 (Testimony).

## **Analysis and Conclusions of Law**

A MassHealth applicant or member must cooperate with MassHealth in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of the MassHealth program including recovery (130 CMR 515.008(A)). If the requested information is not received, MassHealth benefits may be denied (130 CMR 516.001).

Further, an applicant over age 65 who is institutionalized must verify the value of all countable assets pursuant to 130 CMR 520.007.

In the instant appeal, the appellant's first application was initially denied due to missing verifications, and appeal hearing was held. After a lengthy-record open period, not all verifications were submitted, and an appeal decision issued denying the appeal.

If the appellant's estate disagreed with the outcome of the prior appeal decision, the remedy, as set forth in the appeal decision itself, was to file a complaint for judicial review in Superior Court. There is no evidence that that occurred.

With regard to the appellant's estate's second application submitted on September 29, 2021 (the subject of the present appeal), MassHealth communicated clearly to the special personal representative via e-mail that it was treating the September, 2021 submission as a new application.<sup>6</sup> Any new application for benefits is handled by MassHealth in the same way, as set forth at 130 CMR 516.001(B):

(B) 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.

The special personal representative testified that she did not consider the September 29, 2021 submission to MassHealth to be a new application. However, she acknowledged that she received a request for information from MassHealth on or about October 12, 2021, which sought different information than the information still needed in connection with the previous appeal on application one. At that point, the special personal representative assumed that the deadline set for submission of verifications for the new application (September 29, 2021) also extended the deadline for the record-open submissions in connection with appeal number 2155549. This assumption was incorrect.

Ultimately, the September 29, 2021 application was approved by MassHealth by notice dated November 16, 2021.

Pursuant to 130 CMR 516.006(A)(2):

**The begin date of MassHealth Standard, Family Assistance, or Limited**

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<sup>6</sup> It is not clear that [REDACTED] had authority to submit a new application to MassHealth on the appellant's behalf on September 29, 2021, although MassHealth accepted the submission. The appellant executed an Authorized Representative Designation form appointing [REDACTED] as her authorized representative in March, 2021, as a Section I ARD (person) (Exh 9). Pursuant to the ARD Form instructions: **"The authority of a Section I or Section II authorized representative will end upon the death of the applicant or member."** See, <https://www.mass.gov/doc/authorized-representative-designation-form-english-0/download> (last checked January 20, 2022). The special personal representative would have had authority to submit a new application to MassHealth as a Section III ARD (representative appointed by law) (emphasis added).



**coverage may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided.** If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved. Retroactive eligibility does not apply to services rendered under a home- and community-based services waiver provided under section 1915(c) of the Social Security Act.

(Emphasis added)

Based on a September, 2021 application date, the earliest coverage “begin date” is the first day of the third calendar month before the month of application, as set forth above. In this case, that is June 1, 2021.

Notwithstanding that the appellant had already passed away in [REDACTED], there was no error in MassHealth’s decision to award the appellant a coverage start-date of June 1, 2021.

Accordingly, the appeal is DENIED.

## **Order for MassHealth**

None.

## **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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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Justine Ferreira, Appeals Coordinator, Taunton MEC