

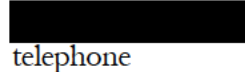
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Remanded	Appeal Number:	2200088
Decision Date:	10/4/2022	Hearing Date:	08/12/2022
Hearing Officer:	Scott Bernard	Record Open to:	08/12/2022

Appearance for Appellant:



(Personal Representative) *via* Jamie Silva (Taunton MEC) *via* telephone

Appearance for MassHealth:



*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:	Remanded	Issue:	Long Term Care (LTC) Start Date
Decision Date:	10/4/2022	Hearing Date:	08/12/2022
MassHealth's Rep.:	Jamie Silva	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 October 20, 2021, MassHealth denied the appellant application for LTC benefit because she did not give MassHealth the information it needed to determine her eligibility within the required time frame. (See 130 CMR 508.008; 516.001; Ex. 11). Through a notice dated December 8, 2021, MassHealth approved the appellant's application for MassHealth LTC benefits with a coverage start date of January 1, 2022. (See 130 CMR 516.006 and Exhibit (Ex.) 1, pp. 1-2). The appellant filed this appeal in a timely manner on January 5, 2022. (See 130 CMR 610.015(B); EOM 21-14; EOM 21-17; and Ex. 1, p. 4). Determination of the start date of coverage is valid grounds for appeal. (See 130 CMR 610.032).

The appellant's death certificate accompanied the appellant's fair hearing request, and for that reason, scheduling of the hearing was delayed while the appointment of a representative for the estate was pending. (See Ex. 1, Ex. 3, Ex. 4, Ex. 7). On July 13, 2022, the Board of Hearings was informed that an estate representative was appointed, at which time the hearing was scheduled. (Ex. 7, Ex. 8).

Action Taken by MassHealth

MassHealth approved the appellant's LTC November 1, 2021 reapplication for LTC benefits with a start date of August 1, 2021.

Issue

The appeal issue is whether an earlier start date can be approved.

Summary of Evidence

The appellant was an individual over the age of 65. (Ex. 9, pp. 3). The appellant was admitted to the nursing facility in the [REDACTED]. (Id.). MassHealth received the appellant's first application for LTC benefits on August 24, 2021. (Ex. 9, p. 2). MassHealth denied the application on October 20, 2021 because of missing verifications. (Ex. 11). The MassHealth representative stated that the denial was not appealed.¹ The verifications were submitted, and the case was reopened as a re-application with a receipt date of November 1, 2021. The re-application was then approved on December 8, 2021 with a maximum retroactive start date of August 1, 2021. (Ex. 1; Ex. 9, p. 6). This start date matches the SC-1 submitted by the facility. (Ex. 9, p. 3). The SC-1 indicated that the August 1, 2021 start date was due to the fact that the appellant did not have private funds or supplemental insurance to pay for her stay. (Id.). The appellant is deceased as of [REDACTED]. (Ex. 4, p. 5). An Aging Services Access Point (ASAP) found the appellant clinically eligible for MassHealth payment of nursing facility services on a short-term basis through September 26, 2021, because those services were medically necessary. (Ex. 9, p. 4).

The MassHealth representative stated that she was contacted by someone at the nursing facility asking for a start date earlier than August 1, 2021. The MassHealth representative stated that this is not possible as the re-application date of November 1, does not allow a start date earlier than August 1. The MassHealth representative also stated that August 1, 2021 was the start date requested the nursing facility in the SC-1.

The appellant's representative, the appellant's husband, stated that he and the nursing facility were seeking coverage for 10-11 days in July 2021. The reapplication only covers from August 1 through September 26, 2021. If MassHealth were to use the earlier application date of September 1, the 10 or 11 days in July the appellant was in the facility would be covered. The appellant's representative admitted that he missed the due date for submitting the requested verifications, which resulted in the denial of the September 1 application. The appellant had taken a turn for the worse at the beginning of [REDACTED] and died on [REDACTED]. (Ex. 7, p. 5). The appellant's representative stated that he was consumed with grief at that time and missed the due dates for submitting both the verifications and the appeal of the denial. The appellant's representative did subsequently submit some of the verifications which resulted in the reapplication date of November 1, which was approved, but this only resulted in the coverage start date of August 1. The appellant's representative needed MassHealth to cover earlier dates. The appellant's representative submitted copies of emails that indicated that he was being as diligent as he could at this time. (Ex. 10A; Ex. 10B).

The MassHealth representative wanted to add that this was an extremely long process. The MassHealth representative faulted the nursing facility, rather than the appellant's representative, for

¹ As stated above, as well as below, however, the appellant's representative did, in fact, request a hearing in a timely fashion under current emergency flexibilities.

the failure to follow through on submitting documents, assisting in appealing the first denial, and requesting a proper start date for coverage.

Findings of Fact

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

1. The appellant was an individual over the age of 65. (Ex. 9, pp. 3).
2. The appellant was admitted to the nursing facility on [REDACTED]. (Ex. 9, pp. 3).
3. MassHealth received the appellant's first application for LTC benefits on August 24, 2021. (Ex. 9, p. 2).
4. MassHealth denied the application on October 20, 2021 because of missing verifications. (Ex. 11).
5. The verifications were submitted, and the case was reopened as a re-application with a receipt date of November 1, 2021. (Testimony of the MassHealth representative).
6. The re-application was then approved on December 8, 2021 with a maximum retroactive start date of August 1, 2021. (Ex. 1; Ex. 9, p. 6).
7. The appellant's representative submitted the fair hearing request to the Board of Hearings on January 5, 2022. (Ex. 1, p. 4).
8. The SC-1 submitted by the facility requested a MassHealth payment date of August 1, 2021 because the appellant did not have private funds or supplemental insurance to pay for her stay. (Ex. 9, p. 3).
9. The appellant is deceased as of [REDACTED]. (Testimony of the MassHealth representative).
10. An ASAP found the appellant clinically eligible for MassHealth payment of nursing facility services on a short-term basis through September 26, 2021, because those services were medically necessary. (Ex. 9, p. 4).
11. The appellant requires a payment start date going back to July 16, 2021. (Testimony of the appellant's representative).

Analysis and Conclusions of Law

Under normal circumstances, BOH must receive the request for a fair hearing within 30 days of the after an applicant receives written notice from MassHealth of the intended action. (130 CMR 610.015(B)). In response to the COVID-19 Federal Public Health Emergency (FPHE), MassHealth, with federal approval, authorized certain flexibilities to expedite access to MassHealth coverage for

eligible individuals. (Eligibility Operations Memo (EOM) 22-10; EOM 21-17; EOM 21-14; EOM 21-09; EOM 20-09). Under all versions of these rules concerning flexibilities, individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for concerns related to member eligibility. (EOM 22-10; EOM 21-17; EOM 21-14; EOM 21-09; EOM 20-09). The appellant's representative submitted the request for a hearing on January 5, 2022. This was well within 120 days of both the October 20, 2021 and December 8, 2021 MassHealth notices. For that reason, BOH has jurisdiction to consider both the October 20 and December 8, 2021 notice. Thus, the August 24, 2021 application is protected for the purposes of decision making here.

MassHealth regulations state that start date of MassHealth Standard coverage (including LTC benefits) "...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...would have been eligible at the time services were provided." (130 CMR 516.006(A)(2)). The appellant's representative has asked that the coverage start date be retroactive back to [REDACTED], the date the appellant was admitted to the nursing facility. This is certainly possible using the August 24, 2021 application date. The record shows that it is more likely than not that the appellant received covered medical services upon admission to the nursing facility. What is unknown, however, is whether the appellant would have been eligible at the time these services were provided.

For the above stated reasons, the appeal is REMANDED.

Order for MassHealth

Determine the earliest date that the appellant would have been eligible for MassHealth based on the August 24, 2021 application date.

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