

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part

Appeal Number: 2200632

Decision Date: 4/26/2022

Hearing Date: 02/22/2022

Hearing Officer: Scott Bernard

Appearance for Appellant:




Appearance for MassHealth:
Yisell Medina (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

Appeal Decision:	Approved in part; Denied in part	Issue:	Long Term Care (LTC) Start Date
Decision Date:	4/26/2022	Hearing Date:	02/22/2022
MassHealth's Rep.:	Yisell Medina	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 January 12, 2022 MassHealth approved the appellant's application for MassHealth LTC benefits with an eligibility start date of August 1, 2021. (See 130 CMR 516.006; Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on January 26, 2022. (See 130 CMR 610.015(B) and Ex. 2). Contesting the start date is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 516.006, in determining the eligibility start date and whether an earlier start date can be approved.

Summary of Evidence

The MassHealth representative testified to the following. The appellant is an individual over the age of 65. (Ex. 3; Ex. 5, pp. 2, 3). The appellant applied for MassHealth LTC benefits on November 22, 2021 seeking a retroactive start date of December 21, 2020. (Ex. 5, pp. 2, 3). In a notice dated January 12, 2021, MassHealth approved the appellant's application for LTC benefits with a start date of August 1,

2021. (Ex. 1). The MassHealth representative stated that this was the earliest coverage start date MassHealth could approve based on the application date of November 22, 2021. The MassHealth representative testified that MassHealth determined that the patient paid amount (PPA) was \$811.03 per month from August 1, 2021 through December 31, 2021. (Ex. 5, p. 4). This was based on the appellant's Social Security income of \$1,099.00 per month less deductions for the personal needs allowance (PNA) of \$72.80 and health insurance of \$215.17). (Ex. 5, p. 4). The appellant's PPA increased beginning January 1, 2022 to \$1,022.28 per month. The MassHealth representative stated that the appellant's Social Security income increased to \$1,321.10 due to a cost of living adjustment effective January 1. (Ex. 5, p. 4). The appellant's health insurance deduction also increased slightly to \$226.02 and the PNA deduction of \$72.80 remained the same. (Ex. 5, p. 4).¹

The MassHealth representative stated that the November 22, 2021 application was the appellant's second application for LTC benefits. The appellant submitted the first application on January 9, 2021 also seeking a coverage start date of December 22, 2020. (Ex. 6, p. 1). In the application, the appellant named her son as her authorized representative. (Ex. 6, p. 1). MassHealth sent the first request for information (VCT-1) on March 9, 2021, requesting that the appellant submit certain documentation by April 8, 2021. (Ex. 6, pp. 2-5). Copies were sent to the appellant at her address and to the appellant's son at his address. (Ex. 6, pp. 2-5). MassHealth did not receive the requested documentation by April 8, 2021. On April 15, 2021, the nursing facility submitted some of the requested verifications. (Ex. 6, pp. 6-17). On April 20, 2021 MassHealth sent notices to the appellant at her daughter's address and the appellant's son informing them that it had denied the application because the appellant did not submit all the requested verifications within the required timeframe. (Ex. 6, pp. 18-26). On May 12, 2021, MassHealth received further verifications from the nursing facility. (Ex. 6, pp. 27-61). The facility included a copy of the April 20 denial² with this submission. (Ex. 6, p. pp. 28—29). For that reason, MassHealth reactivated the application as of that date. On May 24, 2021, MassHealth sent a second request for information with a due date of June 23, 2021 to both the appellant and her son's address. (Ex. 6, pp. 62-65). MassHealth did not receive the requested documentation by June 23, 2021. For that reason MassHealth sent notices to the appellant and her son on June 30, 2021 informing them that it had denied the application because the appellant did not submit all the requested verifications within the required timeframe. (Ex. 6, pp. 66-75). This was the final denial of the March 3, 2021 application. The appellant did not appeal either the first or second denial notices. The nursing facility did submit further documentation on July 1, 2021, however. (Ex. 6, pp. 76-79).

The MassHealth representative stated that MassHealth received no further information until the application on November 21, 2021. The MassHealth representative stated that in November 2021, the appellant's representatives made MassHealth aware that they filed a request for protective services on July 22, 2021 but MassHealth could not honor a start date earlier than August 1, 2021 because the regulations did not permit it to do so. (See Ex. 2, pp. 3-6).

¹ The copy of the approval notice that is in the record as Ex. 1 states that the PPA would change from \$811.03 to \$1,022.28 beginning January 1, 2022. (Ex. 1). The copies of approval notices also dated January 12, 2022, which are included as part of the MassHealth submissions in Ex. 6, state that the appellant's eligibility begins on August 1, 2021 but that beginning on January 1, 2022 the appellant will owe the facility \$811.03 every month. (Ex. 6, pp. 225-241). This appears to be a mistake.

² Specifically the copy addressed to the appellant's son.

The social worker confirmed that the nursing facility believed that there was evidence of elder exploitation by the appellant's son. The appellant is an individual who has cognitive deficits and an activated Health Care Proxy (her daughter). (Ex. 2, p. 8). The appellant's son had access to the appellant's bank accounts and the bank statements submitted pursuant to the LTC application indicated that he was using her funds for his own purposes. The social worker notified Bristol Elder Services in May and July 2021 in order to have them investigate whether there was elder exploitation occurring. The social worker stated that the facility submitted the intake reports to the Board of Hearings. (Ex. 2, pp. 3-10). The social worker stated that Bristol Elder Services continues its investigation.

The social worker stated that at the time of the initial application, the nursing facility had some but not all the information MassHealth was seeking. The social worker stated that the MassHealth representative had informed her in August 2021 that the appellant could be approved as of July 1, 2021 but this later changed to August 1. The social worker stated that the nursing facility received no payment on behalf of the appellant for any time prior to August 1, 2021. The health care proxy, the appellant's daughter, was also present at the hearing. She stated that she never received the two denials concerning the first application but did confirm that MassHealth had addressed these correctly. (See Ex. 6, pp. The social worker stated that normally the facility also receives copies of denials but did not receive the denials of the first application. The social worker stated that had the facility received these they would have appealed.

The appellant's daughter stated that she had not received the denial letters and the social worker stated the facility would have appealed the denials if they had received them. The appellant's daughter and the social worker confirmed that the addresses on the denial notices were those of the appellant's daughter and son. The appellant's daughter stated that she is now receiving copies of the notices from MassHealth.

Findings of Fact

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

1. The appellant is an individual over the age of 65. (Ex. 3; Ex. 5, pp. 2, 3).
2. The appellant is an individual who has cognitive deficits and an activated Health Care Proxy (her daughter). (Ex. 2, p. 8).
3. The appellant submitted the first application on January 9, 2021 seeking a coverage start date of December 22, 2020. (Ex. 6, p. 1).
4. In the application, the appellant named her son as her authorized representative and therefore he received copies of MassHealth notices. (Ex. 6, p. 1).
5. MassHealth sent the first request for information on March 9, 2021, requesting that the appellant submit certain documentation by April 8, 2021. (Ex. 6, pp. 2-5).
6. Copies were sent to the appellant at her daughter's address and to the appellant's son at his

address. (Ex. 6, pp. 2-5).

7. The appellant did not submit that information by April 8, 2021 but did submit some of the requested verifications on April 15, 2021. (Ex. 6, pp. 30-42).
8. On April 20, 2021 MassHealth sent notices to the appellant at her daughter's address and the appellant's son informing them that it had denied the application because the appellant did not submit all the requested verifications within the required timeframe. (Ex. 6, pp. 18-26).
9. On May 12, 2021, MassHealth received further verifications from the nursing facility. (Ex. 6, pp. 27-61).
10. The facility included a copy of the April 20 denial notice addressed to the appellant's son with this submission. (Ex. 6, p. pp. 28—29).
11. MassHealth reactivated the application as of May 12, 2021. (Testimony of the MassHealth representative).
12. On May 24, 2021, MassHealth sent a second request for information with a due date of June 23, 2021 to both the appellant at her daughter's address and her son's address. (Ex. 6, pp. 62-65).
13. MassHealth did not receive the requested documentation by June 23, 2021. (Testimony of the MassHealth representative).
14. On June 30, 2021, MassHealth sent notices to the appellant at her daughter's address and her son informing the appellant that it had denied the application because the appellant did not submit all the requested verifications within the required timeframe. (Ex. 6, pp. 66-75).
15. This was the final denial of the March 3, 2021 application. (Testimony of the MassHealth representative).
16. The appellant did not appeal either the first or second denial notices. (Testimony of the MassHealth representative).
17. The nursing facility submitted documentation on July 1, 2021. (Ex. 6, pp. 76-79).
18. MassHealth received no documentation from July 1, 2021 until November 22, 2021. (Testimony of the MassHealth representative).
19. On November 22, 2021, the appellant applied for MassHealth LTC benefits seeking a coverage start date of December 21, 2020. (Ex. 5, pp. 2, 3).
20. In a notice dated January 12, 2021, MassHealth approved the appellant's application for LTC benefits with a start date of August 1, 2021, which was the earliest date MassHealth could approve based on the application date. (Ex. 1; Testimony of the MassHealth representative).

21. The appellant appealed this notice on January 26, 2022. (Ex. 2).

22. The nursing facility believed that the appellant's son, who had access to her bank accounts, was using those resources for his own benefit and notified Bristol Elder Services in May and July 2021 in order to investigate possible elder abuse. (Ex. 2, pp. 3-10).

Analysis and Conclusions of Law

In order to apply for MassHealth, an individual in need of LTC services in a nursing facility (or his or her authorized representative) must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center (MEC). (130 CMR 516.001(A)(1)(b)). The date of application is the date the application and corroborative information is received by the MassHealth agency. (130 CMR 516.001(A)(2)(a),(b); 516.001(C)). The beginning date of LTC 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. (130 CMR 516.006(A)(2)).

The record shows by a preponderance of the evidence that MassHealth correctly determined the coverage start date. The appellant applied for LTC benefits on November 22, 2021. Based on this application date, the earliest coverage start date permitted would be the first day of the third month prior to application, which was August 1, 2021.

The appellant's representatives argue that the coverage start date of December 22, 2020 requested in the first application from January 2021 should be used instead. They submitted evidence that the appellant's son, who had access to the appellant's bank account, appeared to be using the appellant's funds for his own purposes. The facility's social worker stated that she reported this to Bristol Elder Services as potential elder abuse. The appellant's representatives also assert that they did not receive the two denials MassHealth issued concerning this application. The appellant's representatives did not clearly indicate how the appellant's son's alleged abuse affected receipt of the notices from MassHealth. It is true that the appellant's son was named as the appellant's authorized representative in the first application and therefore received a copy of MassHealth notices. The record also shows, however, that MassHealth sent a copy of all notices to the appellant at her daughter's address. The record also clearly shows that the facility at least was aware of the first denial because it submitted a packet of documents on the appellant's behalf on May 12, 2021 which included a copy of that denial. Appeal of that notice would have preserved the original application date. The appellant's representatives provided no explanation for the failure to appeal the notice. As such, the earliest application date that can be considered here is the reapplication date, which was May 12, 2021.

MassHealth sent the second denial on June 30, 2021. Since April 2020, MassHealth has allowed individuals up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns, for the duration of the COVID-19 outbreak national emergency. (See Eligibility Operations Memo 20-09). There is no evidence, however, that the Board of Hearings received a request for a hearing at any point prior to January 26, 2022. January 26, 2022 is beyond 120 days from June 30, 2021. Therefore, the appeal of the January 12, 2022 notice cannot also stand in as an appeal of the June 30, 2021 notice under these standard emergency rules.

Again, it must be stated that the appellant's representatives' that they did not receive the June 30 denial. The regulations state "[i]n the absence of evidence or testimony to the contrary, it will be presumed that a notice was received by an appellant on the fifth day after the date of the notice, regardless of whether the fifth day after the date of the notice falls on a Saturday, Sunday, legal holiday, or other day on which the BOH is closed..." (130 CMR 610.015(C)(2)). Here we have testimony that the appellant's representatives did not receive the notice. Despite the fact that the appellant's daughter confirmed that MassHealth had addressed the June 30 denial correctly, she asserted that she did not receive it. It is plausible that the notice did get lost in the mail. It is also plausible, given the fact that the appellant's son was under investigation for elder exploitation instigated by the nursing facility, he may have chosen to not share his copy of the notice with either the nursing facility or his sister.

Generally, the date of request for a fair hearing cannot exceed 120 days "unless waived by the BOH Director or his or her designee." (130 CMR 610.015(C)(2)). There appears to be sufficient reason to waive the 120 limitation in this case and treat the January 26, 2022 appeal as an appeal of the June 30, 2021 denial as well as the January 12, 2022 determination. As stated above, it is plausible that the appellant's representatives did not receive a copy of the June 30 notice. Furthermore, the record shows that the appellant's representatives submitted a new application on November 22, 2021, which is less than 120 days after the June 30 denial. It is true that the appellant's representatives probably should have demonstrated a better grasp of the rules and regulations concerning time limits in applying for LTC on the appellant's behalf. The appellant, however, is a person with cognitive deficits and should not be punished for the somewhat confused way that her first application was handled. The January 26, 2022 appeal should therefore be treated as an appeal of the June 30, 2021 denial despite being submitted more than 120 after that notice. This would mean that the reapplication date of May 12, 2021 has been preserved and the approval of the appellant's application for LTC benefit should use that date for determining the coverage start date.

For the above stated reasons, the appeal is DENIED IN PART with regard to using the initial application date of January 9, 2021 to determine the coverage start date.

The appeal is APPROVED IN PART, however, with regard to using the reapplication date of May 12, 2021 as the basis of determining the coverage start date.

Order for MassHealth

Issue a new notice approving the appellant for LTC coverage beginning February 1, 2021, which is the first day of the third month prior to May 12, 2021.

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

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