Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2202262
Decision Date:	6/9/2022	**Hearing Date:**	05/06/2022
Hearing Officer:	Radha Tilva		

Appearance for Appellant:
[redacted] Mother

Appearance for MassHealth:
Kelly Souza, Taunton MEC Rep.

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	**Issue:**	Eligibility
Decision Date:	6/9/2022	**Hearing Date:**	05/06/2022
MassHealth's Rep.:	Kelly Souza	**Appellant's Rep.:**	Pro se
Hearing Location:	Taunton MassHealth Enrollment Center	**Aid Pending:**	No

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 February 11, 2022, MassHealth determined that appellant was eligible for MassHealth Standard benefits effective February 11, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on March 24, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that appellant is eligible for MassHealth Standard benefits effective February 11, 2022.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant is eligible for MassHealth Standard benefits effective February 11, 2022.

Summary of Evidence

The MassHealth representative that appeared at hearing via telephone testified that MassHealth sent a review to appellant on September 15, 2021 which stated that appellant needed to submit the

review form by October 30, 2021 (see Exhibit 4). The notice also stated that if appellant does not fill out and send back the review form MassHealth will no longer pay the Medicare premium (*Id.*). The representative stated that the form was only sent to appellant as there was no authorized representative (ARD) on file at the time.

On February 11, 2022 the review form was received and MassHealth issued an approval notice for MassHealth Standard benefits (MassHealth testimony). No other notice was sent to appellant explaining that the Buy-In benefit was being terminated (MassHealth testimony). The MassHealth representative explained that appellant's MassHealth Standard benefits continued as a result of a COVID-19 protection, however, appellant's Buy-In benefits were not and there was a gap in the coverage for the months of December and January. The representative was unclear as to why no automatic renewal was done in this case.

The appellant was represented by his mother who testified that they never received the renewal form and did not know about MassHealth ending the Buy-In benefit until she got correspondence from the Social Security office. At that point the mother called Social Security and MassHealth. The MassHealth office told her they could not speak to her until an ARD form was on file which she sent in on or around January 3, 2022. On January 11, 2022 the mother spoke with a MassHealth representative who sent a copy of the renewal form which was basically a 25-page application. The mother testified that she keeps good records of all the documents and mailings she received and would have remembered a 25-page application had she got one. On January 18, 2022 the mother stated that she spoke to MassHealth again after filling out the application with a specialist and she was told that they were all set. On January 29, 2022 the appellant learned that it was not all set and so faxed in the completed application on February 11, 2022. The appellant's mother testified that she spoke to someone in the Buy-In department at MassHealth who told her that they could only go retroactive one month. The appellant's mother testified that her son has been a member of MassHealth and Medicare Buy-In since 1998 and they have never had to fill out a renewal form until now.

Findings of Fact

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

1. MassHealth sent a review to appellant on September 15, 2021 which stated that appellant needed to submit the review form by October 30, 2021.

    a. The notice also stated that if appellant does not fill out and send back the review form MassHealth will no longer pay the Medicare premium.

    b. The notice was only sent to appellant as there was no ARD on file, however, appellant's representative stated that they never received it.

2. No termination notice was sent to appellant.

3. On February 11, 2022 after figuring out that the Buy-In benefit was terminated appellant submitted the renewal and sent it in.

4. MassHealth issued a notice approving appellant for MassHealth Standard benefits on February 11, 2022 which appellant appealed.

5. MassHealth terminated the Buy-In benefit, but kept appellant protected on MassHealth Standard as a result of the COVID-19 protection.

6. Appellant has been receiving MassHealth Standard and Buy-In since 1998 and has never been asked to complete a renewal.

Analysis and Conclusions of Law

502.007: Continuing Eligibility

(A) Annual Renewals. ***The MassHealth agency reviews eligibility once every 12 months.*** Eligibility may also be reviewed as a result of a member's change in circumstances, or a change in MassHealth eligibility rules, or as a result of a member's failure to provide verification within requested time frames. The MassHealth agency updates eligibility based on information received as a result of such review. The MassHealth agency reviews eligibility

(1) by information matching with other agencies, health insurance carriers, and information sources;

(2) through a written update of the member's circumstances on a prescribed form;

(3) through an update of the member's circumstances in person, by telephone, or on the MAHealthConnector.org account; or

(4) based on information in the member's case file.

(B) Eligibility Determinations. The MassHealth agency determines, as a result of this review, if

(1) the member continues to be eligible for the current coverage type;

(2) the member's current circumstances require a change in coverage type, premium payment, or premium assistance payment; or

(3) the member is no longer eligible for MassHealth.

(C) Eligibility Reviews. MassHealth reviews eligibility in the following ways.

(1) Automatic Renewal. Households whose continued eligibility can be determined based on electronic data matches with federal and state agencies will have their eligibility automatically renewed.

(a) If the data match results in no change in benefits or in a more comprehensive for all members of the household, the MassHealth agency will notify the head of household that eligibility has been reviewed using the automatic renewal process.

(b) In addition, if the member's coverage type changes to a more comprehensive benefit, the member will be sent a notice informing him or her of the start date for the new coverage. The start date of the new coverage is described at 130 CMR 502.006, except that premium assistance payments under MassHealth Family Assistance begin

in the month of the MassHealth agency's eligibility determination or in the month that the insurance deduction begins, whichever is later in accordance with 130 CMR 506.012(F)(1)(d).

(2) Prepopulated Renewal Application. Households whose continued eligibility cannot be determined based on electronic data matches with federal and state agencies and households whose eligibility would change to a less comprehensive benefit for at least one member of the household as a result of the data matches will be required to complete a prepopulated renewal application.

(a) The MassHealth agency will notify the head of the household of the need to complete the renewal application.

(b) The head of the household will be given 45 days from the date of the request to return the paper prepopulated renewal application, log onto his or her MAHealthConnector.org account to complete the renewal application online, or call the MassHealth agency to complete the renewal application telephonically.

1. If the renewal application is completed within 45 days, eligibility will be determined using the information provided by the individual with verification confirmed through electronic data matches if available. If verification through electronic data match is unsuccessful, the MassHealth agency will request required verifications as described in 130 CMR 502.003 and the individual continues to receive benefits pending verification.

2. If the renewal application is not completed within 45 days, the MassHealth agency will a. use information received from electronic sources, if available, and redetermine eligibility; or

b. if information is not available from electronic sources, terminate MassHealth coverage as described at 130 CMR 502.006(B).

3. If the individual submits the prepopulated renewal application within 90 days of the termination date, as described in 130 CMR 502.007(C)(2)(b)2., and is determined eligible for a MassHealth benefit, the date of coverage for MassHealth is determined by the coverage type for which the individual is now eligible, in accordance with 130 CMR 502.006(A). The begin date of MassHealth coverage may be retroactive to the date of the termination if the individual requests retroactive coverage and has incurred covered medical services since the date of the termination.

4. If the prepopulated renewal application is returned, but the required verifications are not submitted with the form, a second 90-day period starts on the date that the prepopulated form is returned.

5. If the prepopulated renewal application is not submitted within 90 days of the previous termination date, a new application is required.

(c) If the member's coverage type changes, the start date for the new coverage type is determined as follows.

1. If the member's coverage type changes, the start date for the new coverage type is effective as described in 130 CMR 502.006(A).

2. However, premium assistance payments under MassHealth Family Assistance begin in the month of the MassHealth agency's eligibility determination or in the month the insurance begins, whichever is later in accordance with 130 CMR 506.012(F)(1)(d).

(3) Periodic Data Matches. The MassHealth agency matches files of MassHealth members with other agencies and information sources as described in 130 CMR 502.004 to update or

verify eligibility.

(a) If the electronic data match indicates a change in circumstances that would result in potential reduction or termination of benefits, the MassHealth agency will notify the member of the information that was received through the data match and require the member to respond within 30 days of the date of the notice.

1. If the member responds within 30 days and confirms the data is correct, eligibility will be determined using the confirmed data from the electronic data match.

2. If the member responds within 30 days and provides new information, eligibility will be determined using the information provided by the member. Additional verification from the member will be required. 3. If the member does not respond within 30 days, eligibility will be determined using available information received from the electronic data sources. If information necessary for eligibility determination is not available from electronic data sources, MassHealth coverage will be terminated

(b) If the electronic data match indicates a change in circumstances that would result in an increase or no change in benefits, the MassHealth agency will automatically update the case using the information received from the electronic data match and redetermine eligibility. If the member's coverage type changes to a more comprehensive benefit, the member will be sent a notice informing him or her of the start date for the new benefit. The effective date of the more comprehensive benefit is determined in accordance with 130 CMR 502.006(A).

(Emphasis added). MassHealth argues that the Buy-In coverage terminated as appellant failed to complete the renewal within the deadline. Based on the regulations above, in particular, 130 CMR 502.007(C)(2)(b)(2)(b), MassHealth has regulatory support to terminate coverage in the absence of appellant's failure to submit a renewal application. However, MassHealth has been maintaining coverage for most individuals who have health coverage as of March 18, 2020 based on a federal public health emergency (see Eligibility Operations Memo 21-17, November 2021). The memorandum lists the following as exceptions of limited circumstances when coverage will end: if an individual requests termination of eligibility, is no longer a resident of Massachusetts, or is deceased (*Id*.). In addition, under the revised guidelines benefits are grouped into tiers and members will be allowed to move between coverage types if they are in the same federally defined tier (*Id*.). Both MassHealth Standard and Medicare Buy-In are Tier I coverage types. Therefore, a member with MassHealth Standard and Buy-In can move to just an ordinary MassHealth Standard coverage type and Buy-In can be terminated under the memorandum (*Id*.).

The issue here, however, is that MassHealth failed to send a termination notice to appellant after the October 30, 2021 deadline listed in its September 15, 2021 notice. MassHealth's failure to provide notice of its decision to terminate deprived appellant the opportunity to appeal the termination as required under the regulations and submit the renewal application at an earlier date. 130 CMR 502.008(A) states that the MassHealth agency provides all applicants and members a written notice of the eligibility determination for MassHealth. The notice contains an eligibility decision for each member who has requested MassHealth, and either provides information so the applicant or member can determine the reason for any adverse decision or directs the applicant or member to such information. 130 CMR 502.008(B) states that MassHealth also provides members a notice, in accordance with 130 CMR 610.015: Time Limits, of any loss of coverage, or any changes in coverage type, premium, or premium

assistance payments and 130 CMR 502.008(C) requires the notices described in 130 CMR 502.008(A) and (B) to provide information about the applicant's and member's right to a fair hearing. In the absence of a notice with the right to a fair hearing the appellant is deprived of their due process rights and MassHealth has failed to take proper action. Had MassHealth issued a termination notice providing appellant with appeal rights and at least 14 days' notice of the termination as required under 130 CMR 502.006(B)(2), the appellant could have either asked for a continuation of benefits pending the appeal or submitted the renewal at an earlier date. Therefore, this appeal is APPROVED and Buy-In should be reinstated retroactive to cover December 2021 and January 2022.

Order for MassHealth

Approve Buy-In benefit so there is no lapse in coverage.

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.

Radha Tilva
Hearing Officer
Board of Hearings

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

Appellant Representative: [redacted]