

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Dismissed

**Appeal Number:** 2202448

**Decision Date:** 5/25/2022

**Hearing Date:** 05/04/2022

**Hearing Officer:** Radha Tilva

**Appearance for Appellant:**



**Appearance for MassHealth:**

Trish Rogers, 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

<b>Appeal Decision:</b>	Dismissed	<b>Issue:</b>	LTC – start date
<b>Decision Date:</b>	5/25/2022	<b>Hearing Date:</b>	05/04/2022
<b>MassHealth's Rep.:</b>	Trish Rogers	<b>Appellant's Rep.:</b>	Daughter, BOM
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<b>Aid Pending:</b>	No

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder. The issue on appeal involved an approval of long-term care benefits; however, appellant was disputing the eligibility start date. The appeal was filed on April 1, 2022 by appellant's daughter. A Power of Attorney was submitted with the appeal request form appointing appellant's daughter; however, a Power of Attorney is not valid upon death. No other letters of authority were submitted with the appeal request form. At hearing the appellant's daughter and the business office manager at the nursing facility appeared and informed the hearing officer that the appellant passed away on January 13, 2022 prior to the date they filed the appeal.

Pursuant to 130 CMR 610.004 an appeal representative is defined as

- 1) a person or an organization who agrees to comply with applicable rules regarding confidentiality and conflicts of interest in the course of representing an applicant or member, provided such person or organization
  - (a) has provided the BOH with written authorization from the applicant or member to act responsibly on his or her behalf during the appeal process; or
  - (b) has, under applicable law, authority to act on behalf of an applicant or member at an appeal or otherwise in making decisions related to health care or payment for health care including, but not limited to, a guardian, conservator, personal representative of the

- estate of an applicant or member, holder of power of attorney, or an invoked health care proxy; or
- (2) a person or organization who has been designated an authorized representative, as defined in 130 CMR 610.004: Authorized Representative, pursuant to a valid Authorized Representative Designation Form.

In addition, an appeal representative is defined at 130 CMR 610.016 as follows:

(A) An appellant has the right to be represented at his or her own expense by an appeal representative as defined in 130 CMR 610.004. If the person filing the appeal is not the appellant, all documentation required to demonstrate that the person requesting the appeal is an appeal representative in accordance with 130 CMR 610.004 must be submitted either at the time the hearing is requested or before the hearing is scheduled. The MassHealth agency must provide copies of all documents related to the fair hearing process to the appellant and to the appeal representative, if any. An appeal representative may exercise on the appellant's behalf any of the appellant's rights under 130 CMR 610.000.

***(B) If a timely request for a hearing is filed but the applicant or member has died prior to the filing, BOH must be informed of the death of the applicant or member at the time of a request for a hearing by the person filing the appeal. In addition, the filing of the appeal on behalf of such a deceased individual must be accompanied by one of the following:***

***(1) (a) written proof that the person filing the appeal is a personal representative of the applicant's or member's estate with a current and valid appointment from a court of proper jurisdiction; or (b) if there is no such personal representative, then written proof of a currently pending petition, docketed in a court of proper jurisdiction, which seeks the appointment of such a personal representative.*** In addition, the person filing the appeal must notify BOH in writing of the status of the pending petition every 30 days and, once a personal representative with a current and valid appointment has been established, the personal representative must submit written proof of such authority and a desire to pursue the appeal to BOH, within ten days of the appointment.

***(2) Failure to comply with all of the requirements in 130 CMR 610.016(B) may constitute grounds for dismissal.***

(Emphasis added). An appeal representative must have authority to act on behalf of an applicant at a hearing. The appellant's daughter was the named appeal representative, however, the authority she had as Power of Attorney extinguished upon the appellant's death. At the time the appeal was filed the member had already passed and the Board of Hearings should have, pursuant to 130 CMR 610.016(B), been informed of that. As no executor or administrator of the estate was appointed or filed at probate court, the individuals that presented themselves at hearing do not have proper authority to represent appellant at this time (130 CMR 610.015(B)(1)). Thus, as no authorized representative was present at hearing this appeal is DISMISSED (130 CMR 610.016(B)(2)).

## 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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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]