

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2203184
Decision Date:	10/25/2022	Hearing Date:	09/30/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

Pro se via telephone

Appearance for MassHealth:

Kathryn Begin (Tewksbury MEC) *via* telephone
Karishma Raja (Premium Billing) *via* telephone
Gretchen Witworth (Premium Billing-
Observing) *via* 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

Appeal Decision:	Dismissed	Issue:	Premium Billing Tax Intercept/Vacating Dismissal
Decision Date:	10/25/2022	Hearing Date:	09/30/2022
MassHealth's Rep.:	Kathryn Begin; Karishma Raja	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Tewksbury 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 April 12, 2022, the Department of Revenue (DOR) informed the appellant that \$705.00 of her state tax refund would be transferred to MassHealth as a result of state tax refund intercept. (130 CMR 501.012 and Exhibit (Ex.) 1, pp. 3-4). The appellant filed this appeal in a timely manner on April 28, 2022. (130 CMR 610.015(B) and Ex. 1, p. 2). An agency action to recover payments for unpaid premiums through tax intercept is valid grounds for appeal. (130 CMR 610.032).

In a notice dated May 17, 2022, the Board of Hearings (BOH) scheduled the hearing for June 10, 2022. (Ex. 2). On that date, the hearing officer¹ attempted to contact the appellant at the telephone number provided to the Board but was not able to reach the appellant after two attempts². (Ex. 4). On June 13, 2022, BOH sent the appellant a notice stating the following:

Pursuant to Massachusetts General Laws, Chapters 30A and 118E and Title 130 of the Code of Massachusetts Regulations, Section 610.048, the Board of Hearings has dismissed

¹ The hearing officer scheduled to preside over the hearing on May 17 is not the same as the present hearing officer.

² The hearing officer also noted that he was not able to leave a voicemail because the mailbox was full. (Ex. 4).

the above appeal. The appeal is dismissed because a hearing was scheduled for 06/10/2022 at 11:00AM at Tewksbury MassHealth Enrollment Center Room 1, (on grounds of Tewksbury State Hospital, 367 East St., Tewksbury, MA 01876-1957, but you did not appear and did not request a rescheduling before the date of hearing.

You may request that this dismissal be vacated by explaining in writing why you did not attend the scheduled hearing and why you did not inform the Board of Hearings before the date of hearing. Be advised that these requests are not lightly granted and only written requests are considered. Your written request must be received by the Board of Hearings within 10 days of the date of this letter. (Ex. 5).

On July 29, 2022, the appellant contacted BOH by telephone stating that she did not receive the June 13 letter. (Ex. 6A). On August 16, 2022, BOH received the following letter from the appellant:

...I am writing to vacate the dismissal of a hearing that was supposed to occur on June 10, 2022. On this day, I had my phone with me in anticipation of the call to discuss the appeal. However, my phone did not ring. I know it did not ring because I had it under close watch with the ringer all the way up the entire morning and afternoon because I knew I had the hearing that day. When I never received a call, I followed up by calling the office and was told that I did not answer my phone, so the appeal was dismissed.

I am asking for the hearing to be rescheduled...(Ex. 6B).

In a notice dated September 12, 2022, BOH rescheduled the hearing to September 30, 2022. (Ex. 7). The hearing officer was able to contact the appellant on that date. The appellant's telephone number was not different from that used on June 10. (See Ex. 4).

As stated in the June 13, 2022 letter from BOH, the regulation concerning procedures and requirements for rescheduling is located at 130 CMR 610.048 and states:

(A) Rescheduling before the Day of the Hearing.

...

(B) Rescheduling following Failure to Appear at a Scheduled Hearing. If a party fails to request...to reschedule a hearing and fails to appear at the hearing, BOH will notify the party and any appeal representative in writing (at the address supplied by the party) that, if the party fails to demonstrate good cause within ten days of the notice, the appeal will be considered abandoned by such party. If the party who does not appear is an appellant and if, in the determination of the BOH Director or his or her designee, good cause, as defined in 130 CMR 610.048(D), has not been timely shown by such appellant, the appeal will be dismissed subject to the procedures set forth in 130 CMR 610.048(C), and aid pending, if any, will be discontinued...The BOH Director or his or her designee may at his or her discretion reschedule a hearing to another date at which time the party who failed to appear at the scheduled hearing will be required to establish good cause for the failure to appear. A finding by the hearing officer that good cause has not been shown will result in dismissal of the appeal.

(C) Procedures for an Appellant to Request Vacating a Dismissal.

- (1) The appellant will be informed by written notice of the dismissal and of the procedures for requesting that the dismissal be vacated.
- (2) A request to vacate a dismissal must be in writing and must be signed by the appellant. Such request must be received by BOH within ten days of the date of the dismissal notice. If the dismissal is for failure to appear at a hearing, such a dismissal will be vacated by the BOH Director or his or her designee upon a finding that the appellant has shown good cause for
 - (a) failure to appear at a scheduled hearing; and
 - (b) failure to inform BOH before the date of a scheduled hearing of his or her inability to appear at that hearing.

(D) Good Cause.

- (1) The following circumstances may constitute good cause subject to 130 CMR 610.048(D)(2):
 - (a) a death in the family;
 - (b) a personal injury or illness that reasonably prevents the party from attending the hearing;
 - (c) a sudden and serious emergency or act of nature that reasonably prevents the party from attending the hearing;
 - (d) an obligation or responsibility that a reasonable person in the conduct of his or her serious affairs would conclude takes precedence over attendance at the hearing;or
 - (e) the need for additional time to produce evidence or witnesses or obtain legal assistance; or
 - (f) for the purposes of 130 CMR 610.048(A) only, the agreement of the parties to reschedule.
- (2) In evaluating a party's good cause claim, the BOH Director or his or her designee considers the following factors:
 - (a) the amount of time during which the party had advance notice of the hearing;
 - (b) the party's ability to anticipate the circumstances that resulted in his or her inability to appear for the hearing;
 - (c) the party's ability to reschedule any conflicting event;
 - (d) delay by the party in notifying BOH of his or her inability to attend the hearing;and
 - (e) previous rescheduling requests or failure to appear for scheduled hearings that indicate a pattern of delay or noncompliance with the fair hearing rules.
- (3) If a party will be required to show good cause at the hearing, BOH will notify that party in advance that a hearing officer will address that issue. The party will also be notified that the party may bring documentation and witnesses in support of the good cause claim and that failure to demonstrate good cause may result in dismissal of the appeal.

The record shows that BOH scheduled a hearing for June 10, 2022. On that date, the hearing officer indicated that he twice attempted to contact the appellant but there was no answer and he was unable to leave a voicemail message because the mailbox was full. On June 13, 2022, BOH notified the appellant

in writing at the address supplied by the appellant that if she failed to demonstrate good cause within ten days of the notice, the appeal would be considered abandoned by the appellant. The record shows that the appellant did not respond within 10 days, and the appeal should have been dismissed at this time.

The appellant did not contact BOH until July 29, 45 days after the date of the June 13 notice. She did so by telephone and not writing. BOH did not receive the written explanation for the failure to appear for the June 10 hearing until August 16, 2022, more than two months after the June 13, 2022 notice requiring a written response within 10 days. Based on this information, the dismissal should not have been vacated, a new hearing date should not have been scheduled, and a new hearing should not have been held.

For the above stated reasons, the appeal is DISMISSED.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

Maximus Premium Billing, 200 Newport Avenue, 2nd Floor, Quincy, MA 02171