

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2203271
Decision Date:	7/13/2022	Hearing Date:	06/01/2022
Hearing Officer:	Christine Therrien		


Appearance for Appellant:
[Redacted] Conservator

Appearance for MassHealth:
K'eisha McMullen



*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:	Denied	Issue:	LTC – start date
Decision Date:	7/13/2022	Hearing Date:	06/01/2022
MassHealth's Rep.:	K'eisha McMullen	Appellant's Rep.:	
Hearing Location:	All parties appeared by phone		

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 3/30/22, MassHealth approved the appellant's application for MassHealth Long Term Care benefits beginning 11/1/21, with a patient-paid amount (PPA) of \$1,581.61 a month. (130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on 4/29/22. (130 CMR 610.015(B) and Exhibit 2). Determination of a start date is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined a MassHealth start date of 11/1/21.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.006, in determining that the appellant's LTC benefits start date of 11/1/21.

Summary of Evidence

The MassHealth representative testified that an application for Long Term Care benefits was received on 2/11/2022. The MassHealth representative testified that MassHealth approved the appellant's LTC application on 2/11/22 with a start date of 11/1/21. The MassHealth representative testified that MassHealth can only approve a start date that goes back to the first day of the third month prior to the

application date of 2/11/22.

The appellant was represented by her conservator. The appellant's representative submitted a brief detailing the events that transpired that lead to the appellant's application being delayed. (Exhibit 5). The appellant's representative testified that the appellant is seeking a start date of 2/3/20. The appellant was admitted to the LTC facility in [REDACTED]. The appellant's son informed the facility that he was the POA for the appellant and would be submitting a MassHealth application on behalf of the appellant. When the pandemic began the LTC facility focused on keeping residents safe. The LTC facility realized the appellant's son likely did not submit a MassHealth application. The appellant's bank account was held jointly with her son and only her social security was being deposited into this account. The appellant's son made two payments to the facility and then ceased making payments. The facility suspected the appellant's son was not the appellant's POA. In October 2020, the facility applied to be the Representative Payee for the appellant. The facility became the Representative Payee in December 2020. The conservator discovered that in February 2020, the appellant's son began transferring the appellant's social security income from the joint account into his personal account. The appellant's conservator does not know what happened to the social security income that was transferred out of the appellant's joint account and he plans to pursue reclaiming these funds. In January 2020, a facility representative received confirmation from the appellant's son that the MassHealth application was nearly complete. An application was never submitted. In September of 2020, the facility noted in their system that they were unable to reach the appellant's son. The facility realized the appellant's son was "dismissive in his responsibilities as Attorney-in-fact in his assistance with the MassHealth application." (Exhibit 5). In January 2021, the facility retained legal counsel to obtain a conservator for the appellant. On 1/15/21, a petition for appointment of a conservator was filed with the probate court. Due to the pandemic the petition took much longer to obtain than normal and was issued on 9/23/21. In December 2021, the appellant's conservator set up a new bank account to have her social security income deposited, but it took until March 2021 for the change to take place. The appellant's representative argues that the public health emergency (PHE) that was issued on 1/31/20, allowed the Department of Health and Human Services (HHS) tremendous flexibility to various providers including MassHealth. The appellant's representative states that "under the PHE, HHS granted waivers of compliance with certain provisions of federal law, specifically, that states cannot disenroll Medicaid beneficiaries for failure to pay premiums through the end of the month in which the PHE ends, and that the PHE cannot be included in the 60 day non-payment." The appellant's representative goes on to argue that:

MassHealth has implemented its own temporary changes to MassHealth eligibility related policies. These eligibility flexibilities are focused on providing maximum coverage during the pandemic. For example, due to the COVID-19 pandemic, three-month retroactive coverage has been reinstated for all Medicaid groups, including Medicaid applicants who are under the age of 65 and who do not require nursing home care. Previously, MassHealth applicants who were under the age of 65 and who do not require nursing home care, were only permitted a 10-day retroactive.

The appellant's representative concludes with citing the governor's executive order which extended filing deadlines for certain state agencies and the Supreme Judicial Court of Massachusetts's order extending time periods for the filing of all civil actions. The appellant's representative states that the appellant would have been eligible for MassHealth as of 2/3/20.

Findings of Fact

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

1. On 2/11/2022 MassHealth received an application for Long Term Care benefits.
2. MassHealth approved the appellant's LTC application on 2/11/22 with a start date of 11/1/21.
3. MassHealth can only approve a start date that goes back to the first day of the third month prior to the application date of 2/11/22.
4. The appellant was represented by her conservator.
5. The appellant is seeking a start date of 2/3/20.
6. The appellant's representative submitted a brief detailing the events that transpired that lead to the appellant's application being delayed.
7. The appellant was admitted to the LTC facility in [REDACTED].
8. The appellant's son informed the facility that he was the POA for the appellant and would be submitting a MassHealth application on behalf of the appellant.
9. The appellant's bank account was held jointly with her son and only her social security was being deposited into this account.
10. The appellant's son made two payments to the facility and then ceased making payments.
11. In January 2020, a facility representative spoke with the appellant's son who said he was working on the MassHealth application.
12. In February 2020, the appellant's son began transferring the appellant's social security income from the joint account into his personal account.
13. Around February 2020, the facility suspected the appellant's son was not the appellant's POA.
14. In September of 2020, the facility noted in their system that they were unable to reach the appellant's son.
15. In October 2020, the facility applied to be the Representative Payee for the appellant.
16. In December 2020, the facility became the Representative Payee.

17. In January 2021, the facility retained legal counsel to obtain a conservator for the appellant.
18. On 1/15/21, a petition for appointment of a conservator was filed with the probate court.
19. On 9/23/21, the conservator appointment was issued.
20. In December 2021, the appellant's conservator set up a new bank account to have her social security income deposited.
21. On 1/31/20, a PHE was declared.
22. MassHealth issued a "Covid Eligibilities Flexibilities for Covid-19" policy which was updated in August 2020.¹

Analysis and Conclusions of Law

MassHealth application dates determine when benefits begin. 130 CMR 516.001(2): Application for Benefits defines how the application date is determined.

(2) Date of Application.

- (a) The date of application is the date the application is received by the MassHealth agency.
- (b) An application is considered complete as provided in 130 CMR 516.001(C).
- (c) If an applicant described in 130 CMR 519.002(A)(1) has been denied SSI in the 30-day period before the date of application for MassHealth, the date of application for MassHealth is the date the person applied for SSI.

130 CMR 516.001

Regulation 130 CMR 516.001(C) provides that MassHealth may request additional information or documentation, if necessary to determine eligibility. The request is generally sent to the applicant within 5 days of receipt of the application and provides 30 days to return the needed documents. Pursuant to 130 CMR 516.001(D), if the verifications are not submitted within 30 days of the date of the request, MassHealth benefits may be denied.

516.006: Coverage Date

- (2) The begin date of MassHealth Standard, Family Assistance, or Limited 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. If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved. Retroactive eligibility does not apply to services rendered under

¹ See: <https://www.mass.gov/doc/masshealth-eligibility-flexibilities-for-covid-19-0/download>

a home- and community-based services waiver provided under section 1915(c) of the Social Security Act.

(emphasis added)

The appellant's conservator testified that the facility did not know the appellant's son was not the appellant's POA when the appellant was admitted. The facility suspected that the appellant's son provided false information about his POA status around the time he started transferring the appellant's social security out of their joint account in February 2020. When the facility suspected the appellant's son was not the appellant's POA the facility could have submitted an application on the appellant's behalf. The MassHealth LTC application Section II states:

I certify that the applicant or member set forth below cannot provide written designation and to the best of my knowledge does not otherwise have an individual who can act on his or her behalf such as an existing authorized representative, guardian, conservator, personal representative of the estate, holder of power of attorney, or an invoked health-care proxy.²

LTC facilities commonly submit applications on behalf of residents. The facility could have submitted an application for LTC benefits before the end of May 2020 and preserved a February 2020 start date while waiting for a conservator to be appointed. MassHealth eligibility flexibilities created due the PHE do not provide relief for the delays caused by inaction on the part of the facility. Additionally, none of the other orders issued by the governor or courts are relevant to the issue of the date of a MassHealth application. The furthest retroactive start date available from the 2/11/22 application is 11/1/21. MassHealth was correct in determining the start date. Therefore, this appeal is denied.

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.

Christine Therrien
Hearing Officer
Board of Hearings

² See. <https://www.mass.gov/doc/application-for-health-coverage-for-seniors-and-people-needing-long-term-care-services-0/download>

cc:

MassHealth Representative: Springfield MassHealth Enrollment Center

