

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in Part;
Denied in Part

Appeal Number: 2203745

Decision Date: 1/3/2023

Hearing Dates: 10/13/2022;
12/22/2022

Hearing Officer: Rebecca Brochstein

Appearances for Appellant:



Appearances for MassHealth:

Chanthy Kong, Tewksbury MEC
Mark Carey, MH Operations Integrity Unit



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in Part; Denied in Part	Issue:	Overpayment
Decision Date:	1/3/2023	Hearing Dates:	10/13/2022; 12/22/2022
MassHealth Reps.:	Chanthy Kong Mark Carey	Appellant's Rep.:	Pro Se
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

Through a notice dated May 11, 2022, the MassHealth Operations Integrity Unit notified the appellant that a Bureau of Special Investigations review determined the appellant or members of her household had received MassHealth benefits to which they were not entitled. Based on this conclusion, MassHealth determined that she must repay a total of \$31,723.14 for these benefits (130 CMR 501.012; Exhibit 1). The appellant filed a timely appeal on May 16, 2022 (130 CMR 610.015(B); Exhibit 2). The Board of Hearings dismissed the appeal for failure to provide a copy of the notice, but later vacated the dismissal (Exhibits 3 and 4). Determination of an overpayment is a valid basis for appeal (130 CMR 610.032). After hearing on October 13, 2022, the hearing officer reconvened the matter for additional evidence (Exhibits 7 and 8).

Action Taken by MassHealth

MassHealth adopted the findings of a Bureau of Special Investigations review that the appellant and members of her household received MassHealth benefits to which they were not entitled for the period of February 25, 2017, to December 31, 2018. MassHealth notified the appellant that she owed a total of \$31,723.14 for these benefits.

Issue

The appeal issue is whether the appellant and members of her household received MassHealth benefits to which they were not entitled during the time period at issue.

Summary of Evidence

MassHealth was represented by a case worker from the Tewksbury MassHealth Enrollment Center as well as an auditor from the MassHealth Operations Integrity Unit. The representative from MassHealth Operations testified that the Bureau of Special Investigations (BSI)¹ received a referral alleging that the appellant has been living out of state in New Hampshire while receiving MassHealth benefits. The BSI report, which was dated September 27, 2022, was entered into evidence. The report includes the following information:

- MassHealth's database shows the appellant and her two children are currently receiving MassHealth benefits, and have reported an address in a Massachusetts city.
- The Registry of Motor Vehicles database verified that the appellant had a Massachusetts license issued to a New Hampshire address. The RMV system shows the appellant at the Massachusetts address between January 24, 2017, and March 22, 2018. An out-of-state license check verified that the appellant also has an active New Hampshire license issued to the New Hampshire address on March 22, 2018.
- The public school system of the Massachusetts city verified that the appellant's son was a student there from March 2016 to March 7, 2017, at which point he transferred to a school in New Hampshire. The appellant was listed as his guardian.
- The public school system of the New Hampshire city verified that the appellant's son has been enrolled as a student there from March 7, 2017, to the present. School records show the appellant is his guardian and that they live at the New Hampshire address.
- The owner of the New Hampshire home verified that the appellant has resided at the New Hampshire address since February 25, 2017.

The MassHealth Operations representative testified that because the appellant and her children resided in New Hampshire between February 25, 2017, and December 31, 2018 (the period of the investigation), they were not eligible for MassHealth during that time.² He stated that the appellant owes MassHealth \$31,723.14 for MassHealth benefits (claims and capitation payments) paid on the

¹ BSI is a unit within the Office of the State Auditor. See Exhibit 5.

² He noted that the family is still receiving MassHealth benefits, but that the overpayment determination only covers the period of the audit.

family's behalf.³ On May 11, 2022, MassHealth sent the appellant a notice of Recovery of Overpayment of Member Benefits, instructing her to repay that amount. See Exhibit 1.

The appellant appeared at the hearing telephonically and testified on her own behalf. She confirmed that she was a New Hampshire resident during the time period at issue. She testified that she was not aware she still had MassHealth coverage when she moved because she stopped receiving notices, and does not recall getting any requests to verify her address. The appellant testified that she and her two children had been living in a basement apartment in Massachusetts that was infested with mold and rats, and that she moved to New Hampshire when an apartment became available near her family. She stated that she did not know that she would not be able to keep her family's MassHealth coverage when she moved out of state, maintaining that she was not thinking clearly because of the stress of her housing situation. She argued that when she brought her son to the hospital for urgent treatment of his appendix in 2017, the hospital should have advised her of the problem with her insurance.

After the hearing, the hearing officer reconvened the matter for additional evidence—specifically, for MassHealth to provide copies of any notices that were sent to the appellant between 2016 and 2019, and to testify to the appellant's responses to any such notices. MassHealth submitted the notices to the Board of Hearings, as requested, in advance of the second hearing on December 22, 2022. See Exhibits 7-9. The notices included the following:

- February 18, 2017: Approval notice for daughter; separate notice requesting verification of residency and completion of an absent parent form (due by May 19, 2017)⁴
- August 1, 2018: Approval notice for appellant, effective July 22, 2018
- November 12, 2018: Request to complete job update form
- December 22, 2018: Termination notice for appellant's daughter based on information provided by a state or federal agency that affects her eligibility. Coverage set to end on January 5, 2019.
- October 10, 2019: Approval notices for appellant's daughter and son
- November 4, 2019: Approval notice for appellant

At the reconvened hearing, the MassHealth representative testified that she was only able to see limited information in the system from the period at issue and could not say whether the appellant had submitted the residency verification and absent parent form. She confirmed that MassHealth benefits were terminated for all three members of the household on January 5, 2019, and were then approved again in October for the children (retroactive to February 4, 2019), and in November for

³ This consists of \$19,753.66 in benefits paid on behalf of the appellant, \$5,840.48 paid for one child, and \$6,129 paid for the other child. See Exhibit 5.

⁴ The MassHealth case worker testified that MassHealth sent another notice to the appellant on November 15, 2017, again requesting the appellant verify her residency and complete an absent parent form. This notice is not in evidence.

the appellant (retroactive to October 25, 2019). See Exhibit 9.⁵

The MassHealth representative testified that the appellant has also had an open MassHealth case through the Department of Transitional Assistance. She stated that it is possible the appellant's benefits did not terminate prior to January 2019 because of her open DTA case.

The appellant stated that she takes responsibility for not notifying MassHealth of her move but stated that she was not aware that she had to do so, emphasizing that she was in an "emergency" situation with her children that necessitated the move. She stated that she is a single mother with little money and no one to help guide her. She testified that she did not receive any notices from MassHealth requesting additional information from her, and that she never represented to MassHealth that she was living in Massachusetts when she wasn't. She indicated that she does not know how her coverage continued, noting that she never completed an eligibility review form during this period.

Findings of Fact

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

1. The appellant and her two children were previously approved for MassHealth Standard benefits.
2. In or around February 2017, the appellant and her children moved from Massachusetts to New Hampshire. A New Hampshire landlord confirmed they have resided at his property since February 25, 2017, and the appellant enrolled her son in a New Hampshire school as of March 7, 2017.
3. The appellant did not report to MassHealth that she and her children had moved to New Hampshire.
4. On February 18, 2017, MassHealth notified the appellant that her daughter had been approved for MassHealth benefits, and requested that the appellant provide verification of her residency and complete an absent parent form by May 19, 2017.
5. The appellant did not receive MassHealth's request for information and did not provide the documentation that MassHealth requested by the deadline of May 19, 2017.
6. MassHealth did not terminate the appellant's family's coverage despite not receiving a response to the request for verification of residency and the absent parent form.

⁵ All the notices in evidence prior to the October and November 2019 approvals were mailed to the appellant's original address in Massachusetts. The October and November 2019 approval notices were mailed to the appellant at a new address (in a different Massachusetts town). The appellant indicated that she moved to this address when she returned from New Hampshire and still lives there now.

7. The appellant had an open case with the Department of Transitional Assistance during some or all of the audit period.
8. On November 15, 2017, MassHealth again requested that the appellant verify her residency and complete an absent parent form.
9. On August 1, 2018, MassHealth notified the appellant that she had been approved for coverage.
10. On December 22, 2018, MassHealth notified the appellant that her daughter's coverage would end on January 5, 2019, because of information received from another state or federal agency.
11. On January 5, 2019, MassHealth terminated the coverage of all three family members.
12. The appellant moved back to a different town in Massachusetts in 2019.
13. In October 2019, MassHealth approved coverage for the children retroactive to February 4, 2019. In November 2019, MassHealth approved coverage for the appellant retroactive to October 25, 2019.
14. The Massachusetts Bureau of Special Investigations (BSI) received a referral alleging that the appellant had been living in New Hampshire while receiving MassHealth benefits.
15. On September 27, 2022, BSI issued a report that concluded the appellant and her children were residing in New Hampshire between February 25, 2017, and December 31, 2018.
16. On May 11, 2022, MassHealth sent the appellant a notice of Recovery of Overpayment of Member Benefits. The notice informed the appellant that she owes MassHealth a total of \$31,723.14, for benefits (claims and capitation payments) paid on the family's behalf.

Analysis and Conclusions of Law

Under 130 CMR 501.012, MassHealth has the right to recover payment for medical benefits to which the member was not entitled, regardless of who was responsible and whether or not there was fraudulent intent. In this case, MassHealth moved to recover payment for benefits paid on behalf of the appellant and her two minor children for the period of February 25, 2017, to December 31, 2018. The basis of the overpayment determination was a finding that the appellant's family were residents of New Hampshire during this time.

As a condition of eligibility for MassHealth, an applicant or member must be a resident of the Commonwealth of Massachusetts. For individuals over the age of 21, residency is determined under 130 CMR 503.002(A) as follows.

Unless otherwise specified (1) individuals 21 years of age or older are residents of the Commonwealth if they are living in the Commonwealth and either (a) intend to reside in the Commonwealth, with or without a fixed address; or (b) have entered the Commonwealth with a job commitment or are seeking employment, whether or not they are currently employed; or (2) individuals 21 years of age or older who are not capable of stating intent as defined in 42 CFR 435.403(c) are residents of the Commonwealth if they are living in the Commonwealth. (3) For any other non-institutionalized individuals 21 years of age or older not subject to 130 CMR 503.002(A)(1) or (2), their residence is determined in accordance with 45 CFR 233.40, the rules governing residence under the Transitional Assistance to Families with Dependent Children (TAFCD) program.

For individuals under the age of 21, residency is established under 130 CMR 503.002(B):

Unless otherwise specified (1) individuals younger than 21 years old are residents of the Commonwealth if they are capable of indicating intent and are either married or emancipated from their parents and meet the requirements of 130 CMR 503.002(A)(1); or (2) individuals younger than 21 years old not described in 130 CMR 503.002(B)(1) are residents of the Commonwealth if they are (a) living in the Commonwealth, with or without a fixed address; or (b) living with their parent or caretaker who is a resident of the Commonwealth in accordance with the requirements of 130 CMR 503.002(A)(1).

MassHealth has provided substantial evidence that the appellant and her family were residents of New Hampshire during the audit period, and the appellant does not dispute this finding. She argues only that she did not know she had to notify MassHealth of the address change and did not intentionally misrepresent her residency to the agency.

While the issue of the family's residency is not in dispute, it is notable that MassHealth did not terminate their coverage much earlier than January 2019. In particular, the record indicates that MassHealth sought verification of residency from the appellant on February 18, 2017, setting forth a deadline of May 19, 2017. Even though the appellant did not provide the requested documentation by this deadline, it does not appear that MassHealth moved to terminate the family's coverage.

Under 130 CMR 502.006(D), [e]xcept as specified in 130 CMR 502.003(H)(2), MassHealth benefits terminate or downgrade no sooner than 14 days from the date of termination or downgrade notice unless the MassHealth member timely files an appeal and requests continued MassHealth benefits pending such appeal or reinstatement of benefits as described in 130 CMR 610.036: *Continuation of Benefits Pending Appeal*.

Pursuant to this provision, MassHealth had reason to send a termination notice to the appellant as of the missed verification deadline, with benefits set to end as soon as early as 14 days later, or June 2, 2017. It is not clear why MassHealth did not follow these procedures, though the agency suggested it may be related to the appellant's open case with the Department of Transitional Assistance. Regardless of the reason, MassHealth's decision not to terminate the appellant's benefits at that

point ultimately, and unnecessarily, extended her family's period of improper coverage for an additional year and a half. Under these circumstances, it is reasonable to adjust the end point of the overpayment to the date when MassHealth should have terminated the family's coverage, or June 2, 2017.

This appeal is approved in part and denied in part.

Order for MassHealth

Adjust the overpayment period to February 25, 2017, through June 2, 2017. Recalculate the overpayment in accordance with this adjustment and notify the appellant of the new figure.

Implementation of this Decision

If this decision is not implemented within 30 days after the date hereon, you should contact MassHealth. If you experience further problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Tewksbury MEC

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