

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2204463
<b>Decision Date:</b>	11/23/2022	<b>Hearing Date:</b>	10/27/2022
<b>Hearing Officer:</b>	Kimberly Scanlon		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Jennifer Carroll



*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>	Eligibility
<b>Decision Date:</b>	11/23/2022	<b>Hearing Date:</b>	10/27/2022
<b>MassHealth's Rep.:</b>	Jennifer Carroll	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### 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 March 2, 2022, MassHealth denied the appellant's December 30, 2021 application because MassHealth determined that the appellant did not submit the requested information in a timely manner. (*See* 130 CMR 515.008 and Exhibit 1). On June 10, 2022, the Board of Hearings (BOH) received an appeal with the appellant's name listed; the appeal was not signed by the appellant or by an authorized representative. (Exhibit 2, p. 6). By notice dated June 17, 2022, BOH dismissed the appeal for lack of authority. (*See* 130 CMR 610.015, 610.035 and Exhibit 2, p. 6). In the notice of dismissal, BOH informed the appellant that a request to vacate the dismissal must be received by BOH within ten (10) days. (*See*, 130 CMR 610.048(C) and Exhibit 2, p. 7). The appellant did not submit a request to vacate. On August 11, 2022, an appeal identical to the appeal submitted on June 10, 2022 was submitted to BOH. (Exhibit 2, p. 9). By notice dated August 25, 2022, BOH dismissed the appeal for lack of timeliness and for no authority. (*See* Exhibit 2, pp. 9 and 12). In the notice of dismissal, BOH informed the appellant that a request to vacate the dismissal must be received by BOH within ten (10) days. (*See*, 130 CMR 610.048(C) and Exhibit 2, p. 13). The appellant did not submit a request to vacate. On September 23, 2022, the appellant submitted a signed appeal authorizing an appeal representative. (Exhibit 2, p. 15). The Board of Hearings scheduled a hearing. (Exhibit 3).

### Action Taken by MassHealth

MassHealth denied the appellant's application for failure to provide the information necessary to determine eligibility.

## **Issue**

The appeal issue is whether the appellant timely filed an appeal on a MassHealth denial notice dated March 2, 2022, pursuant to 130 CMR 610.015.

## **Summary of Evidence**

The appellant was represented telephonically at the hearing by his authorized representative. The MassHealth representative testified that on December 31, 2021, MassHealth received an application for long-term care services for the appellant. The appellant was admitted to a nursing facility on [REDACTED] (Testimony). The MassHealth representative testified that the earliest possible MassHealth start date on a December, 2021 application is September 1, 2021. (Exhibit 4). MassHealth sent the appellant a request for information dated January 18, 2022. (Exhibit 4, p. 3). The MassHealth representative testified that the appellant did not submit requested verification in a timely manner and the MassHealth application was denied by notice dated March 2, 2022. The MassHealth representative testified that the appellant still has not submitted all requested verifications.

The appellant's representative testified that the appellant is appealing the March 2, 2022 denial notice. The appellant's representative testified that she is having issues gathering the outstanding verifications. The appellant's representative stated that the appellant has a conservator who does not seem to know much about the appellant. The appellant's conservator was not present at the hearing. The appellant's representative submitted an appeal to BOH on June 10, 2022, however the appeal was not signed by the appellant and there was no documentation authorizing the appellant's representative to represent him at the hearing. (Exhibit 2). BOH dismissed the appeal for no authority on June 17, 2022 and the appellant did not submit a request to vacate this dismissal. (Exhibit 2, p. 6). On August 11, 2022, BOH received an appeal identical to the appeal submitted on June 10, 2022. (Exhibit 2, p. 9). BOH dismissed the appeal by notice dated August 25, 2022, for lack of timeliness, and for no authority. (Exhibit 2, p. 12). The appellant did not submit a request to vacate this dismissal. On September 23, 2022, BOH received an appeal signed by the appellant, authorizing the appellant's representative to represent him at the hearing. (Exhibit 2, p. 15).

## **Findings of Fact**

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

1. On December 31, 2021, MassHealth received the appellant's application for MassHealth Standard for long term care residents.
2. MassHealth sent the appellant a request for information dated January 18, 2022.
3. By notice dated March 2, 2022, MassHealth denied the appellant's application for failure to submit verifications to determine eligibility.

4. BOH received an appeal with the appellant's name on it on June 10, 2022; the appeal form was not signed by the appeal representative, or an authorized representative.
5. By notice dated June 17, 2022, BOH dismissed the appeal for no authority.
6. The appellant did not submit a request to vacate the dismissal.
7. BOH received an identical appeal on August 11, 2022 and dismissed the appeal for lack of timeliness and no authority on August 25, 2022.
8. The appellant did not submit a request to vacate the dismissal.
9. On September 23, 2022, the appellant submitted an appeal, signed by the appellant, authorizing the appellant's representative to represent him at the hearing.

## Analysis and Conclusions of Law

Time limitation on the Right to Appeal. The date of request for a fair hearing is the date on which the Board of Hearings receives such a request in writing. The Board of Hearings must receive the request for a fair hearing within the following time limits:

- (1) 30 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right to appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the third day after mailing.

(130 CMR 610.015(B)(1)).

In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, and re-stated in MassHealth Operations Memo (EOM) 22-10 dated August 1, 2022, MassHealth states, *inter alia*, the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
  - **Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.**

(Emphasis added).

Dismissal of a Request for Hearing

- (A) The Board of Hearings will dismiss a request for a hearing when:
  - (1) The request is not received within the time frame specified in 130 CMR 610.015.

(130 CMR 610.035(A)(1)).

When the Board of Hearings determines that the appeal shall be dismissed:

- (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.

130 CMR 610.048(C)(emphasis added).

MassHealth sent the appellant a denial notice dated March 2, 2022. At the hearing, MassHealth confirmed that this is the only denial notice for the appellant's December 31, 2021 application. The appellant had 120 days from March 2, 2022 to submit a timely appeal. 120 days from March 2, 2022 is June 30, 2022. The Board of Hearings did not receive an appeal from an authorized representative until September 23, 2022. (130 CMR 610.035(A)(1)).

As noted above, records show that the party at the hearing was informed by written notice of the dismissals and the procedures for requesting that the dismissals be vacated in June of 2022 and in August of 2022. The Board of Hearings did not receive a request to vacate either dismissal in accordance with the requirements set forth in 130 CMR 610.048(C). BOH scheduled a hearing to determine if the appellant might be appealing a denial notice later than the one issued on March 2, 2022. It was learned at the hearing that the only denial notice issued by MassHealth is the one dated March 2, 2022.

The appellant's representative did not dispute the fact that the appellant did not provide all of the information necessary to determine eligibility. Moreover, the authorized representative failed to demonstrate the reason for the failure to submit requested verifications. Because the appellant's appeal was not received within the timeframe specified above, this appeal is dismissed. However, even if this appeal had been timely, it would be denied for failure to provide information necessary to determine eligibility as required by 130 CMR 515.008.

For the reasoning set forth above, this 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.

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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center

