

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2205550
<b>Decision Date:</b>	10/20/2022	<b>Hearing Date:</b>	08/22/2022
<b>Hearing Officer:</b>	Alexis Demirjian	<b>Record Open to:</b>	10/18/2022

**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>	Denied	<b>Issue:</b>	Outstanding Verifications
<b>Decision Date:</b>	10/20/2022	<b>Hearing Date:</b>	08/22/2022
<b>MassHealth's Rep.:</b>	Jennifer Carroll	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center Room 2 Remote	<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

Through a notice dated June 17, 2022, MassHealth denied the appellant's application for MassHealth benefits because the Appellant did not submit the information MassHealth needed to decide his eligibility within the required time frame. (See 130 CMR 515.008 and Exhibit 3). The appellant filed this appeal in a timely manner on July 19, 2022 (see 130 CMR 610.015(B) and Exhibit 2).<sup>1</sup> The Appellant subsequently filed an additional application for MassHealth benefits and because the Appellant did not submit the information to MassHealth needed to decide his eligibility within in a timely manner ON DATE. The Appellant filed an appeal in that matter and asked for the matter to be incorporated into this appeal, that appeal was granted, and the two denials are addressed in this decision. Denial of an application for assistance is valid grounds for appeal before

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<sup>1</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, and restated in MassHealth Operations Memo (EOM) 20-10 dated August 1, 2022, MassHealth states 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;
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

the Board of Hearings. (See 130 CMR 610.032 (A)(1)).

## Action Taken by MassHealth

MassHealth notified Appellant that he is not eligible for MassHealth benefits because he did not submit the information it needed to decide his eligibility within the required time frame.

## Issue

The issue of this consolidated Appeal is whether the Appellant provided the corroborative information necessary to determine eligibility within required time frames.

## Summary of Evidence

On August 22, 2022, a MassHealth representative appeared at the hearing and testified as follows: On February 25, 2022, MassHealth received a long-term care application on behalf of Appellant. On March 11, 2022, MassHealth sent a request for information. On April 20, 2022, MassHealth denied the application for failure to provide all the requested verifications. As of the date of the hearing, all verifications listed in the March 11th request for information were outstanding.

On July 1, 2022, the Appellant filed a new application for MassHealth long-term care benefits. (See, Exhibit 17) On July 13, 2022, MassHealth denied the application for benefits due to failure to provide requested verifications. *Id.*

Appellant's representative appeared at the hearing by telephone and stated that he was working to obtain the outstanding verifications, and the Appellant's representative requested additional time to try to obtain the missing verifications. A few days before the hearing, the Appellant's representative submitted several documents to the Board of Hearings indicating that the packet included. The Appellant's representative failed to provide a copy to MassHealth. The Hearing Notice specifically states, "material to be considered at the hearing ***must be sent to the Board of Hearings and to other participants prior to the hearing so that all persons attending the hearing can refer to and speak from the same documents.*** (See Exhibit 1, ***Emphasis added***)

Since the Appellant failed to adhere to the directions in the Hearing Notice, MassHealth did not have the Appellant's documents in hand during the hearing, nor did it have adequate time to review the purported missing verifications prior to the hearing date, thus it was not able to offer testimony as to the adequacy of the documentation provided by the Appellant's representative to the Board of Hearings. At the Appellant's request a Record Open period was granted to allow MassHealth to review and report on the documentation.<sup>2</sup>

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<sup>2</sup> Pursuant to 130 CMR 610.04 a Record Open is a period of time determined by the hearing officer that, if allowed by the hearing officer within his or her discretion, permits either party to a fair hearing the opportunity to submit post-hearing documentation, relevant evidence, or legal arguments.

The Record Open period allowed for the Appellant to submit any additional evidence or verification by September 21, 2022, and MassHealth was given until October 5, 2022, to review to and respond to the Appellant's submissions including the one that was submitted only to the Board of Hearings.<sup>3</sup>

Following the August 22, 2022 Hearing, on August 24, 2022, the Appellant filed a Request for Fair Hearing for the July 2022 denial and stated the reason for the appeal was stated as follows: "the decision is contrary to the regulations." (See *Exhibit 2A*). The Appellant's representative requested the appeal of the July 2022 Denial be consolidated into the Appeal heard on August 22, 2022. The Appellant did not include a full denial notice with the Request for Fair Hearing, nor did the Appellant's representative submit any additional information regarding the July 2022 denial nor did the Appellant's representative request an additional day of hearing to address the July 2022 denial notice. Regardless, the issue of these appeals were the same, did the Appellant submit verifications and corroborating evidence in a timely manner so that MassHealth could make an eligibility determination. Accordingly, and at the behest of the Appellant's representative, the matters were consolidated.

On September 9, 2022, MassHealth reported to the Board of Hearings and the Appellant's Representative that while she had received many of the outstanding verifications, there were still several outstanding verifications missing and an eligibility determination still could not be made. (See *Exhibit 10*) MassHealth listed the outstanding verifications in this communication. *Id.* The Appellant's representative did not respond to this correspondence. The Board of Hearings and MassHealth did not receive any additional submissions from the Appellant between September 9, 2022, and September 21, 2022, which was the final day for the Appellant's representative to submit the documentation. The Appellant's representative did not request an extension of the Record Open period.

On October 3, 2022, MassHealth reported that she still had not received the verifications listed in the September 9, 2022 email, accordingly MassHealth was unable to process the application and the decision to deny the Appellant's benefits remained unchanged. (See *Exhibit 11*) In response to MassHealth's email the Appellant's representative sent an email with an attached email noting that he was "confused" by the October 3, 2022 email. (See *Exhibit 12*) The letter went on to state that the Appellant's representative mailed documents on September 23, 2022, it should be noted that this was two days after the record was closed for Appellant's submissions. *Id.* As noted above, the Appellant's representative did not request an enlargement of the Record Open period and as such the September 23, 2022 submission was submitted late.

On October 4, 2022, MassHealth responded to the Appellant's representative's letter indicating that the last verifications she received were on August 23, 2022. (See *Exhibit 13*) The Appellant's representative indicated that he would email the September 23<sup>rd</sup> submission to MassHealth. *Id.*

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<sup>3</sup> The Appellant's representative initially asked for a 60 day record open period. The Hearing Officer granted a month-long record open period and provided instructions on how to request an enlargement of that period.

On October 4, 2022, the Appellant's representative submitted a packet of information to MassHealth and the Board of Hearings which included a receipt for certified mail addressed to MassHealth Enrollment Center, notably the receipt indicates the documents were received by MassHealth on September 28, 2022, a full seven days after the Record Open period had closed for the Appellant to submit additional documentation. Again, at no point did the Appellant's representative seek an enlargement of the Record Open period prior to September 21<sup>st</sup> as required by the Hearing Officer, nor did he explain why the documents were not submitted timely.

Even though the Appellant's submission was made after the Record Open period had closed, the Appellant's representative indicated that he would like MassHealth to have the opportunity to review the late submission. The regulations allow for the Hearing Officer to use its discretion to allow for a Record Open period, to accommodate the Appellant representative's request and not prejudice the Appellant for the late filing, a final and brief extension was made to allow MassHealth a period of two weeks, to review the submission received on October 4, 2022, giving MassHealth the opportunity to review and respond by Tuesday, October 18, 2022. See Exhibit 15.

On October 7, 2022, MassHealth reported that it had reviewed the documents received on October 4, 2022 and determined that there were still several outstanding verifications, thus an eligibility determination could not be made for the Appellant. (See Exhibit 15)

On October 14, 2022, seven minutes shy of close of business, the Appellant's representative sent an additional packet of information to the Board of Hearings and MassHealth via email. The Record Open period had only been enlarged to allow MassHealth to review the late submission of information submitted by the Appellant's representative on October 4, 2022, not for the Appellant to submit any additional evidence. (See Exhibit 16) Nonetheless, that submission has been incorporated into the record as Exhibit 16. The October 14, 2022 submission included a cover letter in which the Appellant's representative affirms the fact that there are still outstanding verifications. *Id.* As of the October 18, 2022, the Appellant still has not submitted all the information necessary for MassHealth to determine the Appellant's eligibility for MassHealth benefits and the record in this matter finally closed.

## Findings of Fact

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

1. On February 25, 2022, Appellant filed an application for MassHealth long-term-care benefits. (*Testimony; Exhibit 8*)
2. On March 11, 2022, MassHealth sent the Appellant a request for information, this notice included the information that if the Appellant failed to submit the requested documentation that may result in benefits being denied. (*Testimony; Exhibit 8*)
3. Mass Health requested the verifications be submitted by April 10, 2022. (*Testimony; Exhibit 8*)

4. The Appellant failed to submit the verifications on or before April 10, 2022. (*Testimony, Exhibit 8*)
5. On April 20, 2022, MassHealth denied Appellant's long-term care application for failure to provide all the requested verifications. (*Testimony; Exhibit 8*)
6. As of the date of the hearing, MassHealth had still not received any of the verifications requested in the March 11<sup>th</sup> letter. (*Testimony*)
7. The record was left open until September 21, 2022, for Appellant to produce the missing verifications and until October 5, 2022, for MassHealth to respond. (*Exhibit 9*)
8. On August 24, 2022, the Appellant filed a Request for Fair Hearing related to a new application submitted on July 1, 2022 and denied on July 17, 2022 for failure to submit verifications within the required time frame. (*Exhibit 2a*)
9. The Appellant's representative requested that the Appeal of the July 17, 2022 Denial be incorporated into the pending Appeal which was heard on August 22, 2022. (*Exhibit 2a*)
10. The Appellant's representative's request was granted.
11. The Appellant's representative did not submit any additional evidence directly related to the July 17, 2022 Denial and nor did he request an additional day of hearing to present arguments.
12. On September 9, 2022, MassHealth indicated that they had reviewed the packet submitted only to the Board of Hearing prior to the hearing and that MassHealth had only received after the hearing. (*Exhibit 10*)
13. MassHealth reported that while some documentation had been received it was still missing a considerable amount of information. (*Exhibit 10*).
14. On October 3, 2022, the MassHealth representative indicated that she had not received the documents related to the outstanding verification request and reaffirmed their denial of the applications. (*Exhibit 5*)
15. The Appellant did not submit any addition documentation to the Board of Hearings or MassHealth until October 4, 2022. (*Exhibit 15*)<sup>4</sup>
16. At the request of the Appellant's representative, a brief Record Open period was allowed solely to allow MassHealth to review the submission made on October 4, 2022. (*Exhibit 15*)

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<sup>4</sup> In the Appellant's October 4, 2022 submission, a return receipt for certified mail was included that documented that some item had been received by MassHealth on September 28, 2022. There is no evidence to document what was included in that piece of mail.

17. On October 7, 2022, MassHealth reported that it still not received several verifications or corroborative documentation necessary to determine eligibility. (*Exhibit 15*)
18. On October 14, 2022, the Appellant's representative submitted an additional packet of information, in which he conceded that bank statements which were necessary to determine the Appellant's eligibility were not submitted and currently unavailable. (*Exhibit 16*)

## **Analysis and Conclusions of Law**

The issue of this consolidated Appeal is whether the Appellant provide the corroborative information necessary to determine eligibility within required time frames.

Applicants for MassHealth have an obligation to cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining other health insurance. (See 130 CMR 515.008).

Once an application for MassHealth long-term-care benefits has been submitted, the MassHealth agency requests all corroborative information necessary to determine eligibility. (See 130 CMR 516.001.) 130 CMR 516.001(B) provides the following with respect to corroborative information:

- (1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of receipt of the application.
- (2) The notice advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information.

130 CMR 516.001(C) sets forth the process regarding the receipt of corroborative information, and provides as follows:

If the requested information, with the exception of verification of citizenship, identity, and immigration status, is received within 30 days of the date of the request, the application is considered complete. The MassHealth agency will determine the coverage type providing the most comprehensive medical benefits for which the applicant is eligible. If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied.

In the present case, on March 11, 2022, the Appellant received notice that failure to send the requested verifications by April 10, 2022, could result in the denial of benefits. The Appellant did not submit the outstanding verifications by April 10, 2022. Subsequently, MassHealth did not have the information necessary to determine the Appellant's eligibility for benefits. On April 20, 2022, the Appellant's application was denied for failure to submit documentation as required by 130 CMR 515.008.

On July 1, 2022, the Appellant filed a new application for long-term care benefits. Similarly, that application was denied for failure to provide verifying and corroborating information related to the Appellant's eligibility for MassHealth benefits. On August 24, 2022, the Appellant's representative filed an appeal in that matter and the Appellant's representative asked to consolidate the appeals. As the underlying issues were the same, the appeals were allowed to be consolidated.

A hearing was held on August 22, 2022. The Appellant's representative was granted a generous Record Open period to provide additional evidence to verify or corroborate the Appellant's eligibility. Additionally, the Appellant's representative was informed that he could request an extension of the Record Open period and to do so in writing on or before September 21, 2022. The Appellant's representative did not do so.

The Appellant's representative has repeatedly failed to meet timelines established by the Hearing Officer and submitted documentation after the Record Open period should have been closed. Despite this fact, this Hearing Officer allowed MassHealth time to review the untimely submissions made by the Appellant's representative. Upon review of that documentation by MassHealth, MassHealth determined that there was still missing documentation and insufficient corroborative evidence to process the Appellant's applications, thus MassHealth could not determine eligibility.

The Appellant, through his representative, has been granted considerable time and leeway to allow for submission of verifying documents to corroborate his eligibility for MassHealth benefits. In the latest untimely submission, on October 14, 2022, the Appellant's representative declares that he still has not submitted all the documentation that is required to determine eligibility.

Under 130 CMR 515.008(A), an applicant or member must cooperate with MassHealth in providing information necessary to establish and maintain eligibility. After receiving an application, MassHealth requests all corroborative information necessary to determine eligibility. The notice advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information. If the requested information is received within 30 days of the date of the request, the application is considered complete. If it is not received within that time frame, MassHealth benefits may be denied (130 CMR 516.001(C) and (D)). The evidence is clear that the Appellant has not only failed to submit the corroborating evidence within a timely manner, even after several months the Appellant is still not able to produce the necessary documentation to determine MassHealth eligibility.

At issue in this appeal is MassHealth's denial of the Appellant's long-term care applications due to his failure to provide all requested verifications within the prescribed time frame. There is no dispute that the Appellant did not in fact provide the verifications by the regulatory deadline, that the information had not been provided by the time of the hearing, and that several requested items remain outstanding.



The Appellant has the burden of proof "to demonstrate the invalidity of the administrative determination." *See, Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." *Craven v. State Ethics Comm'n*, 390 Mass. 191, 200 (1983).

Here the Appellant has failed to meet its burden that MassHealth's denial of both the March 2022 application and the July 2022 application were improper. Therefore, the action taken by MassHealth was within the regulations. *See* 130 CMR 515.008 and 130 CMR 516.001.

Accordingly, the 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.

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Alexis Demirjian  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

[REDACTED]