


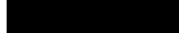
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2206132
Decision Date:	10/7/2022	Hearing Date:	09/19/2022
Hearing Officer:	Rebecca Brochstein	Record Open Date:	09/30/2022

Appearance for Appellant:


, Personal Representative


Appearances for MassHealth:

Kristin McMahon, Tewksbury MEC



*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	Issue:	Long-term care eligibility
Decision Date:	10/7/2022	Hearing Date:	09/19/2022
MassHealth's Rep.:	Kristin McMahon, Tewksbury MEC	Appellant's Reps.:	
Hearing Location:	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 July 20, 2022, MassHealth denied the appellant's application for long-term care benefits for failure to provide requested verifications (Exhibit 1). This appeal was filed in a timely manner on August 17, 2022 (130 CMR 610.015(B); Exhibit 2). Denial of benefits is a valid basis for appeal (130 CMR 610.032). After hearing on September 19, 2022, the record was held open for additional evidence (Exhibits 5-7).

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care benefits for failure to provide requested verifications.

Issue

The appeal issue is whether MassHealth was correct in denying the appellant's long-term care application.

Summary of Evidence

A case worker from the Tewksbury MassHealth Enrollment Center appeared at the hearing by telephone and testified as follows: The appellant was a resident of a nursing facility, with a spouse living in the community, prior to his death on June 10, 2021. A MassHealth long-term care application was filed on behalf of the appellant's estate on October 22, 2021. The MassHealth representative testified that an earlier application had been submitted on August 13, 2021, but that the form was "mostly blank." Though MassHealth allowed fourteen days for the estate representatives to file a completed application and secure the August 13 application date, they did not do so. She indicated that the earliest active application is the one filed on October 22, 2021.

The MassHealth representative testified that on January 27, 2022, MassHealth issued a request for information. The appellant's representatives did not provide the information requested in the designated time period, and on April 12, 2022, MassHealth denied the application. She stated that the denial was timely appealed, preserving the October 22 application date. On May 18, 2022, MassHealth issued a new request for information; MassHealth denied the application, once again due to missing verifications, on July 20, 2022. This appeal followed.

The MassHealth representative offered a list of the document requests that remained unfulfilled as of the hearing date:

1. Provide copies of last two years' federal 1040 tax returns with all attachments.
2. Private pension for [appellant]: Provide a current statement or letter from the pension company verifying the GROSS monthly pension income and deductions, if any for all pensions. For veteran's pension with aid and attendance, provide breakdown of all benefits.
3. [Credit Union]: All financial accounts/resources both open and closed send monthly statements 2/1/19 to present, all activity and daily balances. Explain and send proof of all transactions \$1,000 and over, including the source of deposits.
4. Life Insurance: For all life insurance policies, send proof if policy is term or whole life. For all whole life policies, send proof [of] CURRENT cash surrender value (dated in last 45 days.) Proofs must also verify policy number and face value. If any loans were taken on policy in last 60 months, provide proof of loan taken and where disbursed.
5. Spousal expenses: You completed the living expenses for [spouse] on the Long-Term Care Supplement, but on the application, you stated she is in a nursing home. Please clarify: is [spouse] applying for Long-Term Care coverage as well or is she living at home?
6. [Bank A]: All financial accounts/resources both open and closed send monthly statements 2/1/19 to present, all activity and daily balances. Explain and send proof of all transactions \$1,000 and over, including the source of deposits.
7. Proof of citizenship and identity for [appellant].
8. Proof of citizenship and identify for [spouse].

The case worker testified that the Social Security “tape match system” could not locate either the appellant or the spouse by their Social Security numbers, so MassHealth could not use that method to verify their Social Security income or their identity and citizenship. She added that the appellant’s representatives reported the spouse has not been cooperating in the verification process, but she argued that the personal representative of the appellant’s estate has the authority and obligation to provide MassHealth with the necessary verifications to determine his eligibility. She referenced a Board of Hearings decision from March 2020 in which the claim of spousal non-cooperation was rejected by the hearing officer.

An attorney and a court-appointed personal representative for the estate appeared on behalf of the appellant. The attorney stated that some of the documents MassHealth seeks are in the custody of the community spouse, who has not been responsive to their outreach attempts. She stated that she and the personal representative have sent letters and made phone calls to the spouse, but that she has not responded to them. In addition, the spouse did not respond to any of the court filings related to the appellant’s estate, and did not appear at that hearing. The personal representative¹ testified that she tried to call the spouse several times, and that each call went to voice mail.

The attorney stated that she has some of the information on MassHealth’s list of requested documents, noting that she had thought the attorney who previously handled the case had already submitted them to MassHealth. These include the credit union statements and information about life insurance policies, as well as the appellant’s assignment of spousal support rights to MassHealth. The MassHealth representative responded that she had not received this information from the prior attorney.

The record was held open for the appellant’s representatives to submit additional information and for MassHealth to respond. On September 23, 2022, the appellant’s attorney submitted a packet of information, along with explanations of why certain other documentation was not included. The cover letter inventories the information as follows:

- [Credit Union]: Please find attached as Exhibit A Statements for [the] Credit Union. Please note that explanations for withdrawals are unobtainable due to the spouse’s refusal to cooperate.
- Pension: We have [been] unable to ascertain the source of any income for [appellant] during his life. The spouse refuses to cooperate and has [provided] no information regarding the source of [appellant’s] income during his life.
- Life Insurance: Please find attached as Exhibit B, documents regarding [appellant’s] life insurance policies.
- [Bank A]: We are unable to provide information regarding the [Bank A] account as the Personal Representative does not have the authority to access the spouse’s accounts and the spouse refuses to participate.
- Taxes: The taxes remain in the custody of [the spouse] and cannot be accessed.

¹ The personal representative is a professional fiduciary, and not a family member.

- Statement of Personal Representative: Attached as Exhibit C is the statement of the Personal Representative Karen Lavoie.
- MassHealth documents: Please see attached as Exhibit D documents showing the August 2021 application date was preserved.² (Exhibit 6 at 1)

The appellant's post-hearing submission also included a memorandum from the previous attorney. Her memo sets forth the following factual background, which supplements and clarifies the information provided at hearing:

[Appellant] was admitted to [the facility] on February 10, 2021, with Lewy Body Dementia, and a plethora on [sic] other health issues. [He] succumbed to his illnesses on June 10, 2021. [Appellant's] wife, [spouse], alleged to the facility that she submitted a MassHealth Application in May 2021. On or about July 14, 2021 the facility submitted [an] SC-1 to MassHealth and received a request for a SACA Application. [The spouse] was not responsive when [sic] the request for a SACA and [the facility's] efforts to compel cooperation on the pending MassHealth Application for [appellant]. On or about August 13, 2021, [the facility] submitted a SACA application on behalf of [appellant] after [the spouse] failed to respond to their efforts to obtain cooperation on the application.

On or about September 21, 2022 the facility referred the pending MassHealth Application for [appellant] to LTC Matters [(law firm)]. We were able to make initial contact with [the spouse] on or about September 23, 2021. On or about October 7, 2021 [she] sent our firm a copy of the application she completed with [appellant] in May 2021, before his passing. This application was duly submitted to MassHealth on November 11, 2021 in response to the October 15, 2022 request for Information.

Upon confirmation that the family would not be pursuing the Estate of [appellant], the facility filed a *Petition for Formal Adjudication of the Estate of [Appellant] and the Appointment of a Personal Representative* to serve as the Authorized Representative on [his] pending MassHealth Application. After filing to open the Estate of [Appellant], we mailed notice to [the spouse's] last known address, as well as the last known addresses for [appellant's] six children. None of the surviving family members objected to the appointment.

On or about March 4, 2022 the Personal Representative of the Estate of [Appellant] was appointed and the Letters of Authority issued, which were received on or about March

² These documents include a copy of the July 20, 2022, denial notice (the subject of this appeal); a Confirmation of Closed Appeal dated June 2, 2022, from the Board of Hearings, showing the appeal filed on May 12, 2022, had been withdrawn; a copy of MassHealth's request for information dated May 18, 2022; and a Fair Hearing Adjustment/Withdrawal Form, indicating that MassHealth received a new application after the denial issued, and stating that "MassHealth will honor the original application date [noted elsewhere on the form to be August 13, 2021] on the next determination." See Exhibit 6 at 166.

14, 2022. At that point, with [sic] Personal Representative was able to commence the verification process for the documents accessible to [appellant] individually. On or about May 10, 2022 [appellant's] Birth Certificate, bank statements for the [credit union] account . . . , and verification of the [life insurance] policy . . . were produced to MassHealth. Efforts remain underway to obtain verification of [appellant's] pension policy with [Company A], which without the cooperation of [appellant's] family, we were unable to identify until the bank statements were obtained. The remaining outstanding verification is all in the possession and control of [appellant's] spouse . . . , who has since the forwarding of the May 2021 Application has [sic] refused to participate the [sic] in the MassHealth process and has been completely unresponsive since November 1, 2021 despite ardent efforts to compel her cooperation. See Exhibit "C," attached hereto documenting our efforts to compel the cooperation of [the spouse]. (Exhibit 6 at 109-114)

Included with the previous attorney's memo is that attorney's own affidavit, which states as follows:

1. I am submitting this Declaration in support of The Estate of [Appellant's] application and appeal for long term care MassHealth benefits to document the efforts made to compel the cooperation of his spouse . . . on the pending MassHealth Application.
2. On or about September 23, 2021 I left my first message for [the spouse] at the phone number provided by [the facility]. I also left messages for the additional contacts, his daughters [A and S].
3. On or about September 23, 2021, I had a teleconference with [the spouse] regarding the referral from [the facility] and the need to pursue the pending MassHealth Application to avoid liability for the private balance, and the expected verification required.
4. I placed an additional phone call to [the spouse] on or around October 6, 2021 to follow up on the outstanding application and verification.
5. On or about October 7, 2021, [the spouse] faxed a copy of the application she completed with her husband in May 2021, prior to his passing.
6. On or about October 12, 2021, I called [the spouse] regarding the application received and followed up on the expected verification, which she said she would provide.
7. On or about October 18, 2021, I left another message for [the spouse] regarding the outstanding expected verification.

8. On or about November 1, 2021, I had a teleconference with [the spouse] regarding the outstanding verification expected to be requested by MassHealth. This is the last time [the spouse] answered a call from LTC Matters.
9. Additional messages were left for [the spouse] on the following dates:
 - November 9, 2021
 - November 18, 2021
 - December 7, 2021
 - December 29, 2021
 - January 17, 2022
 - February 10, 2022
 - February 17, 2022
 - February 23, 2022
 - March 17, 2022
 - March 23, 2022
 - April 8, 2022
 - April 22, 2022
 - May 4, 2022; and
 - May 27, 2022
10. The Personal Representative of the Estate of [Appellant] also left messages for [the spouse] on May 11, 2022, May 18, 2022, and May 25, 2022.
11. In addition to the numerous phone calls to [the spouse] to compel cooperation on the Medicaid Application letters were sent to [her] home address on or about February 23, 2022 and April 21, 2022, following the receipt of the January 27, 2022 Request for Information received from MassHealth with a complete list of the verifications requested. . . .³ (Exhibit 6 at 125-126)

The affidavit of the appellant's personal representative states as follows:

1. I am the Personal Representative of the Estate of [Appellant].
2. I was appointed Personal Representative for the Estate of [Appellant] and received my Letters of Authority on or around March 4, 2022.
3. I make this *Declaration* in support of the MassHealth application and appeal submitted on [appellant's] behalf on or about May 12, 2022.
4. It is my understanding that [appellant's] application for long term care MassHealth benefits was denied in part due to the alleged failure of [the spouse] to provide requested verification items pertaining to her assets and income.

³ Copies of both letters, along with enclosures, were attached to the affidavit.

5. [Appellant] and [the spouse] do not share the [Bank A account] where [the spouse's] income is deposited.
6. Upon my own knowledge and belief, [the spouse] has her own income sources that are separate from [appellant].
7. As Personal Representative for the Estate of [Appellant], I am not entitled to access any financial records of [the spouse] or provide verification of any accounts, assets, or income.
8. Numerous attempts have been made to compel the cooperation of [the spouse] on the MassHealth Application process and she has been non-responsive.
9. I hereby assign to the Commonwealth of Massachusetts any and all right, claim, title and interest which the Estate of [Appellant] has to any support obligation owed, due and owing from [appellant's spouse].
10. I hereby assign to the Commonwealth of Massachusetts the right to maintain or prosecute any and all legal causes of action to establish, determine or enforce judicial orders for [appellant's] support. (Exhibit 6 at 152-153)

After reviewing the appellant's post-hearing submission, the MassHealth representative responded as follows:

In response to the record open documents submitted, MassHealth is still missing the following:

1. Provide copies of last two years federal 1040 tax returns with all attachments.
2. Private pension for [appellant]: Provide a current statement or letter from the pension company verifying the GROSS monthly pension income and deductions, if any for all pensions. For veteran's pension with aid and attendance, provide breakdown of all benefits. There were regular monthly deposits received to the [credit union] account from "[Company A] Insurance" for \$158.80. [Appellant's] death certificate listed him as an insurance agent/broker, therefore it is unclear if this was a pension source through [Company A] that he was receiving. Payments ceased as of 11/2021. He passed away 6/10/21.
3. [Credit union] account: Provide verification of source of deposit 6/30/21 for \$1400 and 8/31/21 for \$1,900, 9/30/21 for \$1,700, 10/30/21 for \$1,900, 11/30/21 for \$1920, 12/31/21 for \$1,930, 1/31/22 \$1930.

4. Status of spouse: [Spouse] applying for Long-Term Care coverage as well or is she living at home?
5. [Bank A]: All financial accounts/resources both open and closed send monthly statements 2/1/19 to present, all activity and daily balances. Explain and send proof of all transactions \$1,000 and over, including the source of deposits.
6. Proof of citizenship and identity for [the spouse]. (need correct social security number).

MassHealth was able to obtain the correct social security number for the applicant from the death certificate provided, however the applicant's spouse's correct Social Security Number has still not been obtained, therefore it is unknown what her income is in order to establish the correct spousal maintenance needs allowance. MassHealth is unsure of [appellant] and [the spouse's] income sources, current assets (aside from the [credit union] account) or whether the applicant's spouse is in a nursing facility herself or living at home. Therefore, we do not have enough information to determine the applicant's financial eligibility for MassHealth Long-Term Care while he was living at the facility. (Exhibit 7)

The attorney for the appellant's estate responded with the following:

As was stated at the Fair Hearing, the missing information is in the custody of . . . the spouse of the [appellant]. It is our understanding that she lives in and resides in the community. She has not responded to any of our telephone calls or letters. She did not participate in the Estate or the MassHealth application at all. An affidavit from the PR regarding this was included in the submission and I'd like it to be included in the record.

As stated before, the spouse has refused to participate through her repeated refusal to respond and refusal to turn over information. In reviewing the documents we could obtain, there is no evidence of [appellant] having a pension. The PR has no access to the taxes or any information regarding the spouse.

I believe this matter should be treated as a spousal refusal. (Exhibit 8)

Findings of Fact

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

1. The appellant was admitted to a nursing facility in early 2021.
2. The appellant died on June 10, 2021.
3. On August 13, 2021, the facility filed a MassHealth long-term care application on behalf of

the appellant's estate. The appellant's spouse did not assist the facility with the application, which was submitted mostly blank.

4. The SC-1 and clinical screening (completed before the August application was submitted) reflect a MassHealth requested coverage date of March 7, 2022.
5. On September 21, 2021, the facility referred the pending application to a law firm for assistance.
6. On September 23, 2021, the first attorney assigned to the case made contact with the spouse. She reached the spouse for a follow-up conversation on or around October 6, 2021.
7. On October 7, 2021, the spouse sent the firm a copy of an earlier long-term care application she had completed with the appellant in May 2021, prior to his death.
8. On October 12, 2021, the attorney called the spouse to discuss the application as well as MassHealth's request for information. The spouse agreed to provide the necessary information.
9. On October 15, 2021:
 - a. MassHealth denied the appellant's long-term care application because it did not have sufficient information to make an eligibility determination.
 - b. MassHealth issued a request for information.
10. On October 18, 2021, the attorney left a message for the spouse to follow up on MassHealth's verification request.
11. On October 22, 2021:
 - a. The facility filed a court petition to have a personal representative appointed for the appellant's estate. Notice of the filing was sent to the spouse as well as to the appellant's six children, none of whom objected to the appointment.
 - b. A new MassHealth long-term care application was filed on the appellant's behalf.
12. On November 1, 2021, the attorney had a teleconference with the spouse regarding MassHealth's verification request. This was the last time the spouse answered a call from the attorney's office.
13. On November 10, 2021, the appellant's representatives filed an appeal of the October 15 MassHealth denial.

14. On November 11, 2021, the appellant's representatives submitted some information to MassHealth, including a copy of the application the spouse completed with the appellant prior to his death.
15. On January 27, 2022, MassHealth issued another request for information.
16. On or about March 4, 2022, the court appointed a personal representative for the appellant's estate.
17. On April 12, 2022, MassHealth denied the August 13, 2021, application for missing verifications.
18. On April 13, 2022, MassHealth and the appellant executed a Fair Hearing Adjustment/Withdrawal form for the November 10 appeal, indicating that MassHealth received a new application after the denial issued, and that MassHealth would "honor the original application date" of August 13, 2021.
19. On May 12, 2022, the appellant's representatives filed an appeal of the April 12 verification denial.
20. On May 18, 2022, MassHealth issued a new request for information.
21. On or about June 2, 2022, the appellant's representatives withdrew the appeal of May 12, 2022.
22. On July 20, 2022, MassHealth denied the application dated August 13, 2021, due to missing verifications.
23. On August 17, 2022, the appellant's representatives filed an appeal of the July 20 denial notice.
24. As of hearing on September 19, 2022, numerous verifications remained outstanding.
25. The record was held open after hearing for the new attorney to submit documents to MassHealth and for MassHealth's review.
26. After reviewing the post-hearing submission, the MassHealth representative reported that the following information had not been provided:
 - a. Copies of the last two years' federal tax returns with attachments;
 - b. Verification of the appellant's pension;
 - c. Verification of the sources of several deposits into a [credit union] account held

- jointly by the appellant and the spouse;
- d. Verification if the spouse was also applying for long-term care coverage or is living in the community;
 - e. [Bank A] account statements with proof of transactions of \$1,000 or more; and
 - f. Proof of the spouse's citizenship and identity.
27. The appellant's estate is unable to verify the remaining information without participation of the spouse.
28. The attorney's office left fourteen messages for the appellant's spouse between November 2021 and May 2022. None was returned.
29. The appellant's personal representative left three messages for the spouse in May 2022. None was returned.
30. The attorney's office sent two letters to the spouse, in February and April 2022, urgently asking for her cooperation in responding to MassHealth's verification requests. The spouse did not respond.
31. The appellant's personal representative assigned to the Commonwealth of Massachusetts all rights to any support obligation from the spouse, as well as the right to maintain or prosecute any action to establish, determine, or enforce judicial orders for such support.

Analysis and Conclusions of Law

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).

At issue in this appeal is MassHealth's denial of the appellant's long-term care application for failure to provide all requested verifications within the prescribed time frame. There is no dispute that the appellant (or his estate) 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 a number of requested items remain outstanding after the record-open period that followed the hearing.

The appellant's representatives contend, however, that they have complied with all aspects of the verification request that pertain to his own information and that the only outstanding verifications are those under the exclusive control of his spouse, who is either unwilling or unable to cooperate in the application process. He argues that under these circumstances, MassHealth may not deem him ineligible for benefits pursuant to 130 CMR 517.011. That regulation provides that an institutionalized spouse, whose community spouse refuses to cooperate or whose whereabouts is unknown, will not be ineligible due to:

(A) assets determined to be available for the cost of care in accordance with 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; or

(B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met:

- (1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse;
- (2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or
- (3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.⁴

The evidence indicates that the appellant's representatives have provided the necessary verifications pertaining to assets in his own name. For the most part, the still-missing documentation relates to accounts and other personal information held by the spouse, to which the appellant and his representatives have no independent access (such as her bank statements, proof of her citizenship and identity, and her institutionalization status), or to other information that they have not been able to access without the spouse's cooperation (such as the couple's tax returns and verification of certain deposits into their joint account—which, notably, were all made after the appellant's death). As to the request for verification of a pension, the appellant's representatives reported that they cannot find any evidence that he ever had a pension, and there is nothing clear in the record that suggests he did.

The appellant's attorney and personal representative documented substantial but ultimately unsuccessful efforts to obtain the other missing information from the appellant's spouse. While the spouse provided a small amount of the documentation requested for the appellant's long-term application early in the process, the appellant's representatives have not been able to establish any contact with her in nearly a year. She has not responded to numerous phone calls or to urgent letters sent to her last known address. It is unknown whether the spouse's non-responsiveness is purposeful or due to some sort of incapacity. Either way, the appellant's representatives have argued persuasively that the community spouse is refusing to cooperate, that her whereabouts are

⁴ Federal law contains similar provisions at 42 USC §1396r-5-(c)(3).

unknown, or both. Further, the personal representative, acting on behalf of the appellant's estate, has assigned any rights to support from the spouse to the Commonwealth. Under these circumstances, the failure to produce information concerning assets owned or controlled solely by the spouse cannot be a basis for ineligibility pursuant to 130 CMR 517.011(B).

The other issue to be resolved is the application date MassHealth will use in its forthcoming eligibility determination. The MassHealth representative testified that the active application date is October 22, 2021, as the appellant never fully completed the application that was submitted on August 13, 2021. The procedural history of this case is long and complicated, and the written record does not follow every twist and turn. However, it is clear that as part of the appeal resolution executed by the parties on April 13, 2022 (which related to the first denial of the August application), MassHealth agreed to honor the "original" application date of August 13, 2021, in determining the appellant's eligibility. Further, both of the verification denial notices in evidence, from April 12 and July 20, 2022 (the notice at issue in this appeal), reference August 13 as the date of application. See Exhibit 1 and 4. This evidence amply supports the appellant's contention that the appellant has indeed preserved the application date of August 13, 2021.

For the foregoing reasons, this appeal is approved.

Order for MassHealth

Deem the appellant to have sufficiently complied with the request for information pursuant to 130 CMR 515.008. Proceed to determine his eligibility using the verifications provided, honoring the application date of August 13, 2021.

Implementation of this Decision

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. 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 at the address on the first page of this decision.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Tewksbury MEC

