

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in Part; Approved in Part	<b>Appeal Number:</b>	2206265
<b>Decision Date:</b>	10/20/2022	<b>Hearing Date:</b>	09/22/2022
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Elizabeth Landry for Cassandra Moura



*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 in Part; Approved in Part	<b>Issue:</b>	Start Date
<b>Decision Date:</b>	10/20/2022	<b>Hearing Date:</b>	09/22/2022
<b>MassHealth's Rep.:</b>	Elizabeth Landry for Cassandra Moura	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone		

### 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 April 22, 2022, MassHealth determined the appellant eligible for long-term care as of September 1, 2021 with a patient paid amount of \$875.20. (Exhibit 1). The appellant's guardian filed this appeal in a timely manner on August 19, 2022 as MassHealth implemented new protocols to support public health efforts for both new MassHealth members and existing members that include providing individuals up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns. (130 CMR 610.015; Eligibility Op. Memo 20-09; Exhibit 2; Exhibit 3). An agency determination regarding the scope and amount of assistance is valid grounds for appeal. (130 CMR 610.032(A)(5)).

Additionally, the appellant filed a hardship waiver in January 2022. As of the filing of the appeal on August 19, 2022, MassHealth has not taken action on the hardship waiver. The failure of the MassHealth agency to act upon a request for assistance within the time limits required by MassHealth regulations is also valid

grounds for appeal. (130 CMR 610.032(A)(8))

## **Action Taken by MassHealth**

MassHealth determined that the appellant is eligible for MassHealth benefits beginning September 1, 2022 with a patient paid amount of \$875.20.

## **Issue**

Whether MassHealth was correct in calculating the start date for the appellant's eligibility.

## **Summary of Evidence**

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 5. The notice on appeal addresses the issue of a start date as well as a patient-paid amount. The appellant's representative did not raise an issue related to the patient paid amount. Instead, the appellant's representative did not agree with the eligibility start date.

In February 2022, the Board of Hearings conducted a hearing regarding an eligibility start date. The record was held open several times and the Board of Hearings issued a decision in April 2022. (Exhibit 5). The appeal was approved in part and denied in part. (Exhibit 5). Shortly after the issuance of the April 2022 hearing decision, MassHealth issued the notice on appeal. Neither party disputed the fact that this notice was issued in error as MassHealth did not follow proper procedures for implementation of a hearing decision. The issue on appeal raised by the appellant's representative involves an application for a hardship waiver submitted in January 2022.

The appellant's representative noted that the initial appeal involved a notice issued in December 2021. In January 2022, the appellant filed a timely appeal and a hardship waiver. The MassHealth representative did not dispute the agency's receipt of a hardship waiver in January 2022 and did not present any evidence or testimony regarding the status of the waiver request. The MassHealth representative noted that the delay in issuing a decision on the waiver request could be due to the prior appeal and issuance of a hearing decision. As noted above, this hearing was in February 2022, the decision was issued in April 2022 and as of August 2022, MassHealth had failed to take action on the waiver request.

## **Findings of Fact**

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

1. The appellant applied for MassHealth Long-Term Care.
2. MassHealth issued a notice of ineligibility due to a transfer of assets on December 28, 2021.
3. The appellant appealed that decision.
4. The appellant filed for a hardship waiver in January 2022.
5. The Board of Hearings held a hearing in February 2022 to address the period of ineligibility due to the transfer of assets.
6. The Board of Hearings kept the record open and issued a decision in April 2022.
7. As of the filing of this appeal on August 19, 2022, MassHealth has not taken action to approve or deny a hardship waiver request filed in January 2022.

## **Analysis and Conclusions of Law**

As noted above, the parties acknowledged that the April 2022 notice submitted with the request for hearing involved the same issues as those addressed in the hearing conducted in February 2022. Since the Board of Hearings conducted a hearing and issued a decision on an action arising out of the same facts as the April 2022 notice, this part of the appeal is dismissed. (130 CMR 610.035(A)(6)).

Pursuant to 130 CMR 520.019(L)(4)), if a nursing-facility resident feels the imposition of a period of ineligibility would result in undue hardship, the nursing-facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within 15 days after the date on the notice. (130 CMR 520.019(L)(4)). The parties did not dispute that the filing of the hardship waiver was within 15 days of the date of the notice issued by MassHealth in December 2021.

Under the regulations governing the processing of a hardship waiver, within 30 days after the date of the nursing-facility resident's request, MassHealth will inform

the nursing-facility resident in writing of the undue-hardship decision and the right to a fair hearing. (130 CMR 520.019(L)(4)). MassHealth will extend this 30-day period if MassHealth requests additional documentation or if extenuating circumstances, as determined by MassHealth, require additional time. (130 CMR 520.019(L)(4)). As acknowledged by the MassHealth representative at hearing, the extenuating circumstances in issuing the hardship waiver likely included the original appeal. However, a decision was issued in April 2022 and as of August 2022, MassHealth had not taken action for which the appellant received notice as required under the regulations. (130 CMR 520.019(L)(4)).

Pursuant to 130 CMR 610.015(B)(2), a member can file an appeal 120 days from:

- (a) the date of application when MassHealth fails to act on an application;
- (b) the date of a request for service when MassHealth fails to act on such request;
- (c) the date of a MassHealth agency action when MassHealth fails to send written notice of the action; or
- (d) the date of the alleged coercive or otherwise improper conduct . . .

In this case one could find that the appeal was timely due to MassHealth failing to act on an application for a hardship waiver; or the date of an agency action if MassHealth had taken action on the waiver and the appellant did not receive notice of the decision. It is unclear what, if any, action the agency has taken on this waiver request. Additionally, there was no dispute from the agency that such a waiver was received. While the regulations allow MassHealth to extend the 30 day period for issuing a hardship waiver if extenuating circumstances, as determined by MassHealth, require additional time, MassHealth did not account for extenuating circumstances other than the initial appeal for which a decision was issued in April 2022. (130 CMR 520.019(L)(4)). The filing of an appeal within 120 days of that hearing decision was timely on the issue of the agency failing to take action as it does not appear that there are any issues that would impede the agency from acting on the waiver. Therefore, this part of the appeal is approved to ensure that MassHealth takes action on a waiver filed in January 2022.

This appeal is dismissed in part and approved in part.

## **Order for MassHealth**

Issue a decision on the hardship waiver filed in January 2022.

## 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.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience 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.

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Susan Burgess-Cox  
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

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