

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2207069
Decision Date:	12/5/2022	Hearing Date:	11/02/2022
Hearing Officer:	Christopher Jones	Record Open to:	11/21/2022

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Elizabeth Nickoson – Taunton HCR
Katie Mullen – Premium Assistance



*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

Appeal Decision:	Dismissed	Issue:	Premium Assistance-Retroactive Coverage
Decision Date:	12/5/2022	Hearing Date:	11/02/2022
MassHealth's Rep.:	Elizabeth Nickoson; Katie Mullen	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	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 September 7, 2022, MassHealth stopped the appellant's Premium Assistance Payments. (Exhibit 4; 130 CMR 506.012.) On or around in a September 20, 2022, the appellant filed this appeal.¹ (Exhibit 2; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Ultimately, this appeal must be DISMISSED for lack of jurisdiction because the appellant was never a MassHealth "applicant, member, or nursing facility resident," and therefore cannot be an "appellant." (130 CMR 610.004.)

Action Taken by MassHealth

MassHealth denied the appellant's request for Premium Assistance benefits because the eligible MassHealth member passed away before benefits could be started.

¹ The Board of Hearings dismissed this appeal because the appellant did not attach a copy of the MassHealth notice. (Exhibit 3.) The appellant submitted a copy of the notice on October 7, 2022, and this matter was scheduled for hearing.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 506.012, in determining that the appellant was not eligible for Premium Assistance benefits.

Summary of Evidence

The appellant's husband passed away on [REDACTED]. Prior to his death, he had been covered by MassHealth Standard benefits without a gap in coverage since 2016. The appellant is employed in a job that offers employer-sponsored health insurance ("ESI"). This ESI was the decedent's primary insurance, and prior to June 2019, Premium Assistance payments were made to cover the cost of the appellant's ESI plan. At the hearing, MassHealth's representatives were unable to explain why this termination notice had been sent, as they had reviewed the more recent history leading up to the September 7, 2022 notice.

Regarding that notice, the appellant's husband applied for Premium Assistance benefits in the same month that he died. The Premium Assistance representative explained that benefits may only be approved for the month following a request for Premium Assistance benefits. In August, MassHealth issued an approval notice for Premium Assistance payments, but Premium Assistance learned of the eligible member's death prior to issuing the first payment. Because the MassHealth member died before the first eligible month of coverage, no check was ever sent and the September 7, 2022 termination notice was issued instead.

The appellant testified that she does not recall receiving a termination notice from Premium Assistance in the summer of 2019. In January 2020, she was informed that her husband needed to reapply for MassHealth benefits, and she faxed a renewal application to a specific caseworker (Micheline) in the Chelsea MassHealth Enrollment Center ("MEC"). She submitted fax coversheets from March and May 2020 reflecting her repeated efforts to reach out to Micheline at the Chelsea MEC. She also testified that she would call MassHealth and be told that her husband's MassHealth eligibility was all set and he was covered. She did not have any recollection of specifically reaching out to the Premium Assistance department through the Customer Service phoneline. As she understood it, if her husband was covered by MassHealth Standard, he should be receiving Premium Assistance benefits. Furthermore, she testified that her son is disabled, on her ESI and also covered by MassHealth. Therefore, she felt that even if her husband's eligibility was in dispute, the Premium Assistance should have been paid based on her son's eligibility.

The appellant is seeking Premium Assistance reimbursement for all ESI premiums paid between termination in 2019 and her husband's death. The appellant confirmed she did not file any appeals with the Board of Hearings prior to September 2022 regarding Premium Assistance. She did not recall any specific attempts to reach out to MassHealth other than to Micheline at the Chelsea MEC. In late 2021, her husband was hospitalized, and an application for long-term-care benefits was filed on his behalf in early 2022. The appellant submitted an email exchange with a long-term-care worker confirming that her husband had been covered by community-based MassHealth Standard

since 2016. The long-term-care worker did not specifically reference Premium Assistance benefits, however.

The appellant testified that her husband had primarily been in charge of managing his MassHealth insurance, as well as the Premium Assistance benefits. She has been struggling to organize his files since his death, and she has sent all of the relevant documents in as she has found them. In the appellant's original submission, she included a Premium Assistance ESI verification form that crossed off information regarding a Harvard Vanguard policy and had handwritten in "BCBS." The policy year was from July 1, 2018 to June 30, 2019. With her pre-hearing submission in October, she submitted a similar form that included Harvard Vanguard as the policy, the premium amount was the same, and the policy year was the same. Neither of these forms were dated.

The record was left open for Premium Assistance department to explain why benefits were terminated originally in 2019, and whether they had any record of the appellant's attempting to communicate with them prior to the June 2022 application for Premium Assistance benefits. The Premium Assistance benefits prior to 2019 were paid based upon the appellant's son's eligibility, not her husbands. No appeal was filed regarding this termination. Furthermore, no communication could be found in MassHealth's computer system after March 2020, until the appellant's husband applied for long-term-care benefits in early 2022. This documentation further confirmed that the Premium Assistance department had no communication with he appellant or her husband until the month of his death, when they received a completed Premium Assistance Application.

The appellant's son is now an adult, and the appellant is not an Authorized Designated Representative ("ARD") on her son's behalf, so MassHealth was unable to discuss his eligibility for benefits, including Premium Assistance.

The appellant reiterated their belief that, because their husband was eligible for MassHealth between 2020 and his death, and enrolled in qualifying ESI, therefore she should receive retroactive Premium Assistance benefits for that time.

Findings of Fact

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

1. The appellant's deceased spouse was covered by MassHealth Standard from 2016 until his death on [REDACTED]. (Testimony by the appellant; Exhibit 4.)
2. The appellant's deceased spouse applied for long-term-care benefits in early 2022, and he applied for Premium Assistance benefits the month of his death. (Exhibits 4; 6A.)
3. MassHealth initially approved the request for Premium Assistance benefits but terminated those benefits before the first payment was sent out because the benefits were premised upon the appellant's husband's eligibility for MassHealth. (Exhibit 6A.)

4. The appellant has not been covered by MassHealth at any time since the Premium Assistance benefits ended in 2019. (Testimony by MassHealth's representatives; Exhibit 7.)
5. The appellant made repeated attempts to reach out to MassHealth regarding her husband's eligibility throughout 2020 and 2021. The appellant did not file an appeal regarding Premium Assistance benefits prior to September 7, 2022. (Testimony by the appellant; Exhibit 7.)

Analysis and Conclusions of Law

As noted above, this matter must be DISMISSED for lack of jurisdiction. There is no appellant, as defined by the Fair Hearing regulations:

Appellant – an **applicant, member, or nursing facility resident** requesting a fair hearing, including individuals who are appealing a PASRR determination. An appellant **may also include a community spouse** of an institutionalized applicant **when the community spouse is exercising a fair hearing appeal right that he or she has under 130 CMR 520.016: Long-term Care: Treatment of Assets or 520.017: Right to Appeal the Asset Allowance or Minimum-monthly-maintenance-needs Allowance.**

(130 CMR 610.004 (emphasis added).)

The appellant's deceased husband was the MassHealth member, and the right to Premium Assistance payments was his. A spouse only as an independent appeal right to review determinations regarding a spousal-maintenance-needs allowance or the community-spouse-resource allowance. There is no similar independent right to a fair hearing for a spouse who carries ESI in which a member is required to enroll, even though they are the recipient of the Premium Assistance checks (see 130 CMR 506.012(F)). Even if the appellant were the Personal Representative of her husband's estate, her desired remedy could not be allowed because the appeal is untimely.

The appellant's desired remedy is to go back and correct MassHealth's decision to end Premium Assistance benefits in 2019.

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. **BOH 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 of 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 fifth day after mailing;

(2) unless waived by the BOH Director or his or her designee, **120 days**

from

- (a) the date of application when the MassHealth agency fails to act on an application;
- (b) the date of request for service when the MassHealth agency fails to act on such request;
- (c) the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action; or
- (d) the date of the alleged coercive or otherwise improper conduct, but up to one year from the date of the conduct if the appellant files an affidavit with the BOH Director stating the following, and can establish the same at a hearing (Failure to substantiate the allegation either before or at the hearing will be grounds for dismissal.):

1. he or she did not know of the right to appeal, **and** reasonably believed that the problem was being resolved administratively or he or she was justifiably unaware of the conduct in question; and

2. the appeal was made in good faith.

(130 CMR 610.015(B) (emphasis added).)²

Accepting all of the appellant's factual assertions as true—she repeatedly reached out to MassHealth in 2020 and 2021 regarding her husband's eligibility—the first appeal filed with the Board of Hearings was on September 7, 2022. This appeal can only redress MassHealth actions, or inactions, that arose on or after May 10, 2022. The appellant does not allege any errors in MassHealth's actions within this timeframe.³ Premium Assistance benefits are paid "for health insurance coverage in the following month" starting in the month a member is determined eligible for Premium Assistance. (130 CMR 506.012(F)(1).) She and her husband applied for Premium Assistance benefits the month he died. The appellant's situation is extremely sympathetic, but her request for remedy is untimely.

Order for MassHealth

None.

² The time limit for filing an appeal has been generally extended to 120 days during the Federal Public Health Emergency. (See EOM 22-10 (Aug. 2022).)

³ The appellant alleged that she should be receiving Premium Assistance payments premised upon her son's eligibility. The appellant does not have authority on file with MassHealth to discuss her son's eligibility for benefits, or file an appeal regarding them.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21
Spring St., Ste. 4, Taunton, MA 02780
MassHealth Representative: Premium Assistance