

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|------------------|------------------------|------------|
| Appeal Decision: | Dismissed | Appeal Number: | 2207514 |
| Decision Date: | 09/21/2023 | Hearing Date: | 07/10/2023 |
| Hearing Officer: | Alexis Demirjian | Record Open to: | 9/15/2023 |

Appearance for Appellant:



Appearance for MassHealth:

Jennifer Carroll, Taunton MEC



*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

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|---------------------------|-------------|--------------------------|--|
| Appeal Decision: | Dismissed | Issue: | Over 65; Long-Term Care; Missing Verifications |
| Decision Date: | 09/21/2023 | Hearing Date: | 07/10/2023 |
| MassHealth's Rep.: | Ms. Carroll | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Telephonic | 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 6, 2022, MassHealth denied the appellant's application for MassHealth benefits because MassHealth did not receive information it needed to determine the applicant's eligibility. (see 130 CMR 515.008 and Exhibit 2). The appellant filed this appeal in a timely manner on September 10, 2022, identifying Brunelle Medicaid Associates (hereinafter referred to as Brunelle) as their appeal representative. (see 130 CMR 610.015(B) and Exhibit 3). On [REDACTED], the appellant passed away. On November 7, 2022, Brunelle Medicaid Associates notified the Board of Hearings that facility would be filing an estate petition and filed periodic updates informing BOH as to the pendency of the estate. (See Exhibit 3A) On June 6, 2023, a personal representative of the appellant's estate was appointed pursuant to G.L. c. 190B, § 3-203. (See Exhibit 3A).¹

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care benefits.

¹ After appointment by the probate court, the personal representative of the estate failed to submit an updated request for Fair Hearing with the Board of Hearings or file any written statement that they wished to proceed with the appeal.

Issue

The issue on appeal is whether MassHealth was correct, pursuant to 130 CMR 515.008, in determining that the appellant failed to provide necessary documentation for MassHealth to determine eligibility.

Summary of Evidence

On September 6, 2022, MassHealth denied the appellant's application for long-term care coverage for failure to provide documentation necessary to determine the appellant's eligibility. (See Exhibit 2.)

On September 10, 2022, the appellant filed a request for Fair Hearing naming Brunelle as his appeal representative. (See Exhibit 3)

On October 13, 2022, the Board of Hearings scheduled a hearing on the matter scheduled for November 7, 2022. (See Exhibit 1, p. 3).

On November 7, 2023, Brunelle notified the Board of Hearings that the appellant had died on [REDACTED] (See Exhibit 4). Brunelle informed the Board of Hearings that the "facility was moving forward with an estate petition." (See Exhibit 5). The Board of Hearings placed a hold on the matter pending the appointment of an administrator of the appellant's estate. (Id.) Brunelle periodically updated the Board of Hearings regarding the status of appointment of a personal representative to the appellant's estate. (See Exhibit 6)

On July 10, 2023, a hearing was held on the issue of whether the appellant had submitted the necessary verifications for MassHealth to determine the appellant's eligibility. A representative from Brunelle appeared on behalf of the appellant's estate and requested a record open period since the representative of the estate had been newly appointed and was trying to obtain the outstanding documentation.

Based on these representations, the hearing officer granted the request and gave the appellant's estate until August 14, 2023, to provide MassHealth with the missing verifications.

On August 10, 2023, the representative submitted the outstanding bank statements but indicated they were still working on obtaining the outstanding documentation related to a trust. The representative requested an additional 30-day extension of the record open period to obtain the outstanding documentation.

A final extension of the record open period was granted, and the outstanding documentation was

due to MassHealth by September 15, 2023.

On September 14, 2023, the representative reported that they still had not received the outstanding documentation. Additionally, they requested an additional 30-day period for the record open period, citing that the family of the appellant was not cooperating with their office.

On September 19, 2023, the September 14th request was denied. The representatives did not provide the outstanding documentation and requested that the hearing officer issue a decision.

In preparing the record for review, the hearing officer determined that a new request for hearing signed by the Personal Representative of the Estate was not in the hearing file. The hearing officer reached out to the appeal representative, and it was confirmed that a new fair hearing request signed by the personal representative had never been submitted to the Board of Hearings.

Findings of Fact

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

1. On September 6, 2022, MassHealth denied the appellant's application for long-term care coverage for failure to provide documentation necessary to determine the appellant's eligibility. (See Exhibit 2.)
2. On September 10, 2022, the appellant filed a request for Fair Hearing naming Brunelle Medicaid Consultants as his appeal representative. (See Exhibit 3)
3. On October 13, 2022, the Board of Hearings scheduled a hearing on the matter scheduled for November 7, 2022. (See Exhibit 1, p. 3).
4. On November 7, 2023, Brunelle Medicaid Consultants notified the Board of Hearings that the appellant had died on [REDACTED]. (See Exhibit 4).
5. Brunelle Medicaid Consultants periodically updated the Board of Hearings regarding the status of appointment of a personal representative to the appellant's estate. (See Exhibit 6)
6. On June 6, 2023, a personal representative was appointed by the probate court. (See Exhibit 6).
7. After the personal representative was appointed, they failed to notify the Board of Hearings that they wished to pursue this appeal on behalf of the estate.
8. Neither the appellant nor his estate provided the outstanding documentation necessary to

determine the appellant's eligibility for long-term care.

Analysis and Conclusions of Law

Before we can address the issue on appeal, the hearing officer must review whether the appellant's estate has standing to be heard. On June 6, 2023, a personal representative was appointed pursuant to M.G.L. c. 190B, § 3-203.

Pursuant to 130 CMR 610.016,

(B) If a timely request for a hearing is filed but the applicant or member has died prior to the filing, BOH must be informed of the death of the applicant or member at the time of a request for a hearing by the person filing the appeal. In addition, the filing of the appeal on behalf of such a deceased individual must be accompanied by one of the following:

- (1) (a) written proof that the person filing the appeal is a personal representative of the applicant's or member's estate with a current and valid appointment from a court of proper jurisdiction; or
- (b) if there is no such personal representative, then written proof of a currently pending petition, docketed in a court of proper jurisdiction, which seeks the appointment of such a personal representative.

In addition, the person filing the appeal must notify BOH in writing of the status of the pending petition every 30 days and, once a personal representative with a current and valid appointment has been established, the personal representative must submit written proof of such authority and a desire to pursue the appeal to **BOH, within ten days of the appointment.**

(2) Failure to comply with all of the requirements in 130 CMR 610.016(B) may constitute grounds for dismissal.

(Bold emphasis added.)

In preparing to issue a decision on the merits, it was discovered that the personal representative of the estate failed to submit an updated fair hearing request or any other written statement that they wished to pursue this appeal on behalf of the appellant's estate within ten days of appointment or any time thereafter.

It is unfortunate that this was not discovered prior to the scheduling of the hearing, however the responsibility to update the Board of Hearings remains solely with the personal representative of the estate. The fact that the hearing was scheduled and heard does obviate standing. The regulations clearly state that failure to comply with all of the requirements in 130 CMR 610.016 (B) may constitute grounds for dismissal.

At the time of this writing, the personal representative of the estate has been appointed for approximately three months and has never submitted any written statement to the Board of Hearings indicating that she wishes to proceed with the appeal on behalf of the appellant's estate.

For those reasons, this appeal must be dismissed.

If the hearing officer had found that the appeal was properly filed by someone with the legal authority to do so, the appeal would have been denied as there is still outstanding documentation a full year after the denial letter issued and it has been represented that the appellant's family will not furnish the outstanding documentation necessary to determine the appellant's eligibility.

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.

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]

[REDACTED]

[REDACTED]