Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	APPROVED	**Appeal Number:**	2207745
Decision Date:	1/5/2023	**Hearing Date:**	12/21/2022
Hearing Officer:	Christopher Taffe		

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Ieasha Pittman, BERS, of the Taunton MEC (by phone)

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:	APPROVED	**Issue:**	Long-Term Care Conversion Request – Application Date, Notice and Due Process
Decision Date:	1/5/2023	**Hearing Date:**	12/21/2022
MassHealth's Rep.:	I. Pittman	**Appellant's Rep.:**	[redacted]
Hearing Location:	Taunton MassHealth Enrollment Center (heard remotely)	**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 October 12, 2022, MassHealth denied Appellant's application for MassHealth benefits due to a failure to produce benefits. See Exhibit 1; 130 CMR 515.008. An appeal was filed in a timely manner on Appellant's behalf on October 18, 2022. See 130 CMR 610.015(B) and Exhibit 1.

One day prior to receipt of the appeal filing, MassHealth issued an approval notice in this matter on October 17, 2022, which announced an approval for MassHealth Standard Long-Term Care (LTC) benefits with a start date of May 1, 2022 and a Patient Paid Amount (PPA) of $1,615.60/month. See Exhibit 8.[1] This approval of MassHealth Standard Long-Term Care benefits represented an upgrade over the MassHealth Standard benefits Appellant had been receiving from the agency prior to May 1, 2022.

Challenging a denial of a request for assistance, or a determination of the scope of assistance, is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.
The Board of Hearings originally scheduled this appeal to take place on November 22, 2022, but the

[1] MassHealth did not include a copy of the approval notice in its pre-hearing submission in Exhibit 3, but all parties agreed that there is no issue with the Patient Paid Amount (PPA) and there is only a dispute of the start date in that approval notice. By agreement of the parties, the Hearing Officer will take jurisdiction over the 10/17/22 notice.

appeal did not occur on that date; the Board of Hearings subsequently agreed to reschedule this appeal due to good cause regarding the Appeal Representative's unavailability on that first hearing date. See Exhibits 2, 4 and 6. The appeal was heard on December 21, 2022. See Exhibit 6.[2]

Action Taken by MassHealth

MassHealth initially denied Appellant MassHealth LTC benefits, but subsequently awarded Appellant LTC benefits with a retroactive start date of May 1, 2022. In determining that retroactive start date, the MassHealth agency used an application date of August 31, 2022.

Issue

Is Appellant entitled to an earlier start date and/or application date that can be used to award a more favorable retroactive benefit?

Summary of Evidence

Appellant is a single MassHealth member in his late 70s, who, in early 2022, previously received and was eligible for MassHealth Standard benefits as a community resident who met the traditional rules for MassHealth benefits. Prior to [redacted] Appellant was residing in a rest home in the Central Massachusetts area. On [redacted], due to changes and decline in his physical and mental health and well-being, Appellant could no longer function safely in a community setting, and he was institutionalized in a nursing facility in that same region.

On May 17, 2022, MassHealth received two documents on behalf of the MassHealth member.[3] One of them was the SC-1 or status change form that is used when a MassHealth member is admitted to or discharged from a Nursing Facility (or a Chronic Disease and Rehabilitation Inpatient Hospital). The SC-1 indicated that Appellant had been admitted on [redacted] to his current nursing facility. Also on May 17, 2022, MassHealth received a clinical screening for MassHealth Long-Terr Care benefits, showing that Appellant was clinically eligible for payment of nursing facility services. See Exhibit 7.

In response to the May 17, 2022 submission, MassHealth sent Appellant a writing on May 18, 2022 titled "*Long-Term Conversion Information Request*". The notice has check boxes and looked like the following:

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[2] On December 1, 2022, the Board of Hearings inadvertently sent out a dismissal notice for this appeal; this dismissal notice was effectively rescinded by the rescheduling letter laying out the December 21, 2022 hearing date. See Exhibits 4, 5, and 6.

[3] At the end of the hearing, the Hearing Officer asked the MassHealth Representative to supply some additional information post-hearing which hadn't been provided by the agency prior to hearing. This included a copy of the SC-1, the nursing facility screening notice, and the October 17, 2022 approval notice. Such documents were received shortly after the hearing. See Exhibits 7 and 8.

" ☑ The Short-Term stay period of eligibility for this individual has been exhausted and the payment segment to the facility has been closed effective: ___(blank)____.
In order for MassHealth to determine eligibility for payment of long-term care services for this individual please complete and return these enclosed forms:

☑ Long-Term Care Supplement (LTC-Supp)
☑ Application for Health Coverage for Senior and People Needing Long-Term Care Services (SACA-2)
….

If you do not send back the completed forms WITHIN 30 DAYS OF THE DATE OF THIS NOTICE, MassHealth will be unable to determine eligibility for payment of long-term care services."

See Exhibit 4 (CAPITALIZED emphasis in original).

MassHealth testified that there was no mention of Short-Term Stay (and the first sentence on this request finished with a "*_(blank line)")* because Appellant had never been admitted for a short-term stay, as the SC-1 indicated Appellant's stay was already expected to be long-term, with no preceding short-term stay.[4]

There is no appeal right on this May 18, 2022 correspondence request. See Exhibit 4. There was also no subsequent denial notice issued after May 18, 2022 when Appellant did not comply with the 30-day deadline mentioned in this letter.

MassHealth indicated that an application was not received until August 30, 2022. See Exhibit 4. As a result, MassHealth treated this request for LTC benefits as having an effective application date of August 30, 2022, which in turn limited the retroactive benefit to be no earlier than May 1, 2022 per 130 CMR 516.006(A)(2).[5] That is why on October 18, 2022, after the verification issue had been quickly resolved after the denial notice, MassHealth approved Appellant for the May 1, 2022 start date.

MassHealth testified that there was no denial notice issued after the expiration of the 30-day period cited in the May 18, 2022 request. MassHealth explained that there was no notice during the early summer of 2022 because there was no denial, in that Appellant remained and retained his previous benefits, the same MassHealth Standard (community) benefits he had earlier in the year, albeit without the Long-Term component needed to cover his nursing facility stay.

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[4] Although it is more typical for those MassHealth members who are in need of and admitted to a skilled nursing facility to first be approved on a short-term basis and then have to switch to a long-term basis within 6 months and/or if their medical condition changes, it is possible, such as in the example of a debilitating stroke, for someone to skip a short-term need and go right to a long-term need. The medicals of this Appellant appear to put him in that latter scenario. This is why the date was left blank on the Conversion Information Request
Had this MassHealth member been clinically determined to be short-term, his initial stay would have been covered by his MassHealth benefits until he became long-term.

[5] Per that regulation, one generally can't have retroactive benefits start any earlier than three months prior to the month of application.

The Appeal Representative indicated that there was some administrative confusion due to changes in the nursing facility personnel and the person handling this simply didn't realize it was a coding issue preventing benefit, and no one quickly realized that an SACA was needed for a member who was already on MassHealth Standard benefits and who just needed an upgrade (or better code) for his benefits. The Appeal Representative testified that she and her colleague thought the conversion was in process and it wasn't until some point in August 2022, when she made a call to check on the status of conversion, that she realized an application was needed. She quickly filed the application on August 30, 2022 to get some application date on record, and which eventually led to the May 1, 2022 start date.

In response to question as to whether there were regulatory requirements on a conversion request for a MassHealth Standard member who needs to get upgraded to MassHealth Standard LTC benefits, the MassHealth Representative stated that she believed it was in 130 CMR 515.000 through 130 CMR 517.000. The Hearing Officer agreed that these regulations were the most relevant eligibility regulations and would be somewhat helpful with eligibility determinations but believed there was little in those regulations describing the conversion process. The MassHealth Representative pointed out that Appellant had already been determined to be eligible for MassHealth benefits so some of the regulations which discuss new applicants may not be relevant.

Findings of Fact

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

1. Appellant is a single individual in his 70s who, prior to [redacted], had been determined eligible for MassHealth Standard Community benefits under 130 CMR 519.005. (Testimony)

2. On [redacted], Appellant became medically institutionalized in a skilled nursing facility on long-term basis. (Testimony and Exhibits 3 and 7)

3. On May 17, 2022, MassHealth received a SC-1 and a clinical screening showing Appellant had been institutionalized in a nursing facility since [redacted] and such institutionalization was expected to be on a long term basis. (Testimony and Exhibits 4 and 8)

    a. The SC-1 indicates Appellant was seeking MassHealth LTC benefits with a benefit request date of [redacted] (Testimony and Exhibit 8)

4. In response to the May 17, 2022 submission, on May 18, 2022, MassHealth sent Appellant correspondence titled *"Long-Term Conversion Information Request*". (Testimony and Exhibit 4)
    a. The notice stated in relevant part:

" ☑ The Short-Term stay period of eligibility for this individual has been exhausted and the payment segment to the facility has been closed effective: (blank) .

In order for MassHealth to determine eligibility for payment of long-term care services for this individual please complete and return these enclosed forms:

☑ Long-Term Care Supplement (LTC-Supp)

☑ Application for Health Coverage for Senior and People Needing Long-Term Care Services (SACA-2)

….

If you do not send back the completed forms WITHIN 30 DAYS OF THE DATE OF THIS NOTICE, MassHealth will be unable to determine eligibility for payment of long-term care services."

(Testimony and Exhibit 4)

b. There is no appeal right on this May 18, 2022 notice so it is not an appealable action but it is a verification request. (Testimony and Exhibit 4)

c. There was no receipt of forms received within 30 days of the May 18, 2022 notice. (Testimony)

d. MassHealth sent no denial notice or termination notice after the expiration of the 30-day period during June, July, August, or September of 2022. (Testimony)

5. On August 30, 2022, application paperwork was submitted on Appellant's behalf. (Testimony and Exhibit 4)

a. MassHealth used this August 30, 2022 submission as an application date for the forthcoming eligibility determination. (Testimony and Exhibit 4)

6. On October 12, 2022, MassHealth denied this application for failure to produce verifications. (Testimony and Exhibit 1)

a. Appellant filed an appeal in response to the October 12, 2022 denial on October 17, 2022. (Testimony and Exhibit 1)

b. While this appeal was pending, MassHealth issued an approval notice on October 18, 2022, which approved and upgraded Appellant to MassHealth Standard Long-Term Care benefits, with a retroactive start date of May 1, 2022, and a PPA of $1,615.60. (Testimony and Exhibit 8)

Analysis and Conclusions of Law

The issue in this Fair Hearing is not as easily resolvable as many other eligibility disputes, as there are no MassHealth agency regulations that appear to be very much on point or clear with the guidelines and timeframes regarding how MassHealth should handle conversions, or request for an

upgrade, when a person who is already a MassHealth Standard member is in need of a greater benefit (specifically MassHealth Standard LTC) when they become medically institutionalized in a long-term care setting. The different type of MassHealth Standard benefits at issue are discussed in 130 CMR 519.000, with the key portions of some of the more relevant regulations reprinted below.

519.002: MassHealth Standard
(A) Overview.

(1) 130 CMR 519.002 through 519.007 contain the categorical requirements and asset and income standards for MassHealth Standard, which provides coverage for individuals aged 65 and older, institutionalized individuals, and those who would be institutionalized without community-based services.

(2) Individuals eligible for MassHealth Standard are eligible for medical benefits on a fee-for-service basis as defined in 130 CMR 515.001: Definition of Terms. The medical benefits are described in 130 CMR 450.105(A): MassHealth Standard.

(3) The begin date of medical coverage for MassHealth Standard is established in accordance with 130 CMR 516.005: Coverage Date

519.005: Community Residents 65 Years of Age or Older
(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), ***noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard*** *coverage provided they meet the following requirements:*

(1) the countable income amount, as defined in 130 CMR 520.009: Countable-income Amount, of the individual or couple is less than or equal to 100% of the federal poverty level; and

(2) the countable assets of an individual are $2,000 or less, and those of a married couple living together are $3,000 or less.

519.006: Long-term-care Residents
(A) Eligibility Requirements. ***Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements****. They must*

(1) be younger than 21 years old or ***65 years of age or older****, or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;*

(2) ***be determined medically eligible for nursing-facility services by the MassHealth agency or its agent as a condition for payment,*** *in accordance with 130 CMR 456.000: Long Term Care Services;*

(3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;

(4) have countable assets of $2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets when One Spouse is Institutionalized; and

(5) not have transferred resources for less than fair market value as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(**Bolded** emphasis added.)

In this case, Appellant is trying to effectively upgrade his benefits from those he previously had in 130 CMR 519.005 to those in 130 CMR 519.006 that cover LTC benefits. The benefits have since been upgraded, but there is a dispute about the start date. MassHealth awarded a start date of May 1 2022 based on 130 CMR 516.007 and a finding that there was an application by Appellant of August 30, 2022. If the agency was correct to use an application date from the month of August 2022, then it would be proper to limit the retroactive date to May 1, 2022. See 130 CMR 519.002(A)(3)[6] and 130 CMR 516.006(A)(2).

516.006: Coverage Date
(A) Start Date of Coverage.

> *(1) For individuals applying for coverage, the date of coverage for MassHealth is determined by the coverage type for which the applicant may be eligible. 130 CMR 519.000: MassHealth: Coverage Types describes the rules for establishing this date.*
> *(2)* ***The begin date of MassHealth Standard, Family Assistance, or Limited coverage may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided****. If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved. Retroactive eligibility does not apply to services rendered under a home- and community-based services waiver provided under section 1915(c) of the Social Security Act.*

(B) End Date of Coverage. MassHealth benefits terminate or downgrade no sooner than 14 days from the date of the termination or downgrade notice unless the MassHealth member timely files an appeal and requests continued MassHealth benefits pending such appeal.

(**Bolded** emphasis added.)

The regulations are clear that the application date for a new applicant controls retroactive benefit. But the situation is less clear when an individual is already a MassHealth member and reports a change in circumstances or a need for an eligibility upgrade. Beyond 130 CMR 516.006, the eligibility and application process is detailed elsewhere in 130 CMR 516.000 and, while that regulatory chapter has specifics and timeframes for both new applicants or for those MassHealth reviews initiated periodically (commonly referred to as "Eligibility Reviews") and when an appealable action notice will be generated, there is little corresponding guidance for this situation. Some additional and more relevant sections of 130 CMR 516.000 are reprinted here, not just to show the vagueness, but also to illustrate the due process and opportunities given to applicants for a new application as well as that given to members during an eligibility review process.

516.001: Application for Benefits
(A) Filing an Application.

[6] 130 CMR 519.002(A)(3) continues to have an outdated and incorrect reference to the wrong part of 130 CMR 516 for the "Coverage Date" regulatory rule. The current rule is at 130 CMR 516.006, but it used to be in 130 CMR 516.005 for many years prior; the agency has not yet properly updated the cross-reference to 516 in its 519 regulations.

(1) Application. To apply for MassHealth

(a) for an individual living in the community, an individual or his or her authorized representative must file a complete paper Senior Application and all required Supplements or apply in person at a MassHealth Enrollment Center (MEC); or

(b) for an individual in need of long-term-care services in a nursing facility, a person or his or her authorized representative must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center (MEC).

(2) Date of Application.

(a) The date of application is the date the application is received by the MassHealth agency.

(b) An application is considered complete as provided in 130 CMR 516.001(C).

(c) If an applicant described in 130 CMR 519.002(A)(1) has been denied SSI in the 30-day period before the date of application for MassHealth, the date of application for MassHealth is the date the person applied for SSI.

(3) Paper Applications or In-person Applications at the MassHealth Enrollment Center (MEC) - Missing or Inconsistent Information.

(a) If an application is received at a MassHealth Enrollment Center or MassHealth outreach site and the applicant did not answer all required questions on the Senior Application or if the Senior Application is unsigned, the MassHealth agency is unable to determine the applicant's eligibility for MassHealth.

(b) The MassHealth agency requests responses to all of the unanswered questions necessary to determine eligibility. The MassHealth agency must receive such information within 15 days of the date of the request for the information.

(c) If responses to all unanswered questions necessary to determine eligibility are received within 15 days of the date of the notice, referenced in 130 CMR 516.001(A)(3)(b), the MassHealth agency will request any corroborative information necessary to determine eligibility, as provided in 130 CMR 516.001(B) and (C).

(d) ***If responses to all unanswered questions necessary for determining eligibility are not received within the 15-day period referenced in 130 CMR 516.001(A)(4)(b), the MassHealth agency notifies the applicant that it is unable to determine eligibility.*** *The date that the incomplete application was received will not be used in any subsequent eligibility determinations. If the required response is received after the 15-day period, the eligibility process commences and the application is considered submitted on the date the response is received, provided that if the required response is submitted more than one year after the initial incomplete application, a new application must be completed.*

(e) Inconsistent answers are treated as unanswered.

(B) Corroborative Information. The MassHealth agency requests all corroborative information necessary to determine eligibility.

(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.

(C) Receipt of Corroborative Information. 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.***

516.003: Verification of Eligibility Factors

The MassHealth agency requires verification of eligibility factors including income, assets, residency, citizenship, immigration status, and identity as described in 130 CMR 517.000: MassHealth: Universal Eligibility Requirements, 130 CMR 518.000: MassHealth: Citizenship and Immigration, and 130 CMR 520.000: MassHealth: Financial Eligibility.

...

(C) Request for Information Notice. If additional documentation is required, including corroborative information as described at 130 CMR 516.001(B), ***a Request for Information Notice will be sent to the applicant listing all requested verifications and the deadline for submission of the requested verifications.***

(D) Time Standards. The following time standards apply to the verification of eligibility factors.

(1) The applicant or member has 30 days from the receipt of the Request for Information Notice to provide all requested verifications.

(2) ***If the applicant or member fails to provide verification of information within 30 days of receipt of the MassHealth agency's request, MassHealth coverage is denied or terminated****.*

(3) A new application is required if a reapplication is not received within 30 days of the date of denial.

516.007: Continuing Eligibility

(A) Annual Renewals. The MassHealth agency reviews eligibility once every 12 months. ***Eligibility may also be reviewed as a result of a member's changes in circumstances*** *or a change in MassHealth eligibility rules, or as a result of a member's failure to provide verification within requested time frames. The MassHealth agency updates eligibility based on information received as the result of such review.* ***The MassHealth agency reviews eligibility***

(1) by information matching with other agencies, health insurance carriers, and information sources;

(2) ***through a written update of the member's circumstances on a prescribed form****;*

(3) through an update of the member's circumstances, in person; or

(4) based on information in the member's case file.

(B) Eligibility Determinations. The MassHealth agency determines, as a result of this review, if

(1) the member continues to be eligible for the current coverage type;

*(2****) the member's current circumstances require a change in coverage type****; or*

(3) the member is no longer eligible for MassHealth.

(C) ***Eligibility Reviews. MassHealth reviews eligibility in the following ways****.*

(1) Automatic Renewal. Households, whose continued eligibility can be determined based on electronic data matches with federal and state agencies, will have their eligibility

automatically renewed.

(a) The MassHealth agency will notify the member if eligibility has been reviewed using the automatic renewal process.

(b) If the member's coverage type changes to a more comprehensive benefit, the start date for the new coverage is determined as described at 130 CMR 516.006.

(2) MassHealth Eligibility Renewal Application. If the individual is residing in the community and his or her continued eligibility cannot be determined based on reliable information contained in his or her account or electronic data match with federal and state agencies, a MassHealth eligibility review form must be completed.

(a) The MassHealth agency will notify the member of the need to complete the MassHealth eligibility review form.

(b) The member will be given 45 days from the date of the request to return the paper MassHealth eligibility review form.

1. If the review is completed within 45 days, eligibility will be determined using the information provided by the individual with verification confirmed through electronic data matches if available.

2. ***If the review is not completed within 45 days, eligibility will be terminated within 14 days from the date of the termination notice****.*

3. If the requested review form is submitted within 30 days from the date of the termination, a second eligibility determination is made within 15 days. Eligibility may be established retroactive to the date of termination, if otherwise eligible.

(c) If the member's coverage type changes, the start date for the new coverage type is effective as of the date of the written notice.

(3) Review Form for Individuals in Need of Long-term-care Services in a Nursing Facility. ***If the individual is in need of long-term-care services in a nursing facility and his or her continued eligibility cannot be determined based on reliable information contained in his or her account or electronic data match with federal and state agencies, a written update of the member's circumstances on a prescribed form must be completed****.*

(a) ***The MassHealth agency will notify the member of the need to complete the prescribed review form.***

(b) ***The member will be given 45 days to return the review form to the MassHealth agency.***

1. If the review is completed within 45 days, eligibility will be determined using the information provided by the individual with verification confirmed through electronic data matches if available.

2. ***If the review is not completed within 45 days, eligibility will be terminated within 14 days from the date of the termination notice****.*

3. If the requested review form is submitted within 30 days from the date of the termination, a second eligibility determination is made within 15 days. Eligibility may be established retroactive to the date of termination, if otherwise eligible.

(c) If the member's coverage type changes, the start date for the new coverage type is effective as of the date of the written notice.

516.008: Notice

(A) ***The MassHealth agency provides all applicants and members a written notice of the***

eligibility determination for MassHealth. The notice contains an eligibility decision for each member who has requested MassHealth, and either provides information so the applicant or member can determine the reason for any adverse decision or directs the applicant or member to such information.
(B) The MassHealth agency also provides to members notice of any changes in coverage type or patient-paid amount, or loss of coverage.
…
(D) ***All notices provide information about the right of the applicant or member to a fair hearing****, with the exception of asset assessments described at 130 CMR 520.016: Long-term Care: Treatment of Assets and notices about federal or state law requiring an automatic change adversely affecting some or all members as described in 42 CFR 431.220(b). Information about the appeal process is found at 130 CMR 610.000: MassHealth: Fair Hearing Rules.*

(**Bolded** emphasis added.)

Although the Appellant was a MassHealth member and not a new "applicant" as defined by 130 CMR 610.004, it is noted that if the Appellant was a new applicant to MassHealth and applied, he would have been entitled to receive an appealable denial notice for an incomplete application. See 130 CMR 516.001(A)(3)(d); 130 CMR 516.003; and 130 CMR 516.008(D). Similarly, if Appellant was being terminated or downgraded, regardless of whether it was because of an eligibility determination or because he failed to comply with some review by not timely returning a form, he also would have received an appealable notice and an action notice per the regulations. See 130 CMR 516.007(C) and 130 CMR 516.008(D). As the MassHealth agency and the Board of Hearings know, the MassHealth agency habitually gives numerous notices and substantial due process rights with appeal opportunities to nursing facility residents in order to preserve their retroactive benefit requests; this includes notices to applicants or members which indicate his or her case file or application will be closed or denied due to the failure to produce verifications or complete the application process. See 130 CMR 515.008; see also e.g., BOH Appeal Decisions # 2201672 and 2153672.

In this case, Appellant was a MassHealth member who was sent the equivalent of a verification request, but he then never received notice that, because he did not timely comply with that request, that his effective "application" from the date of May 17, 2022 seeking the greater assistance he needs would be lost. Even though the phrase "application date" was not used anywhere in the Conversion Information Request, it is clear, by the language giving Appellant 30 days to comply, that MassHealth was assigning some potential significance to the May 17, 2022 receipt of documents in the SC-1 form and the clinical screening,[7] which can be plausibly interpreted as a

[7] The SC-1 notice and Screening approval received the prior date of May 17th, triggered the Information Request on May 18th, just like an "application" triggers a verification request in 130 CMR 516.001(A)(3), or how a proper update of the member's circumstances can trigger a verification request under 130 CMR 516.007(C). Specifically, the delivery of the SC-1 form and the screening effectively notified MassHealth that this member wanted to pursue an upgrade to LTC benefits on that May 17, 2022 date, consistent with 130 CMR 516.007(A)(2). Further, although not stated at hearing, if Appellant had hypothetically complied with the May 18, 2022 notice by returning the form on June 6th, the testimony and paperwork and MassHealth practices in other hearings appear to suggest that MassHealth would have honored the application from the month of May (when the SC-1 notice was received and

request for greater assistance or a greater form of benefits.

In this case, the reason why the Appellant did not receive a computer-generated denial notice is likely computer-related, because he suffered no downgrade in benefits. He was on MassHealth Standard community benefits prior to the May 17, 2022 notice and he remained on those same benefits under 130 CMR 519.005 even after the 30-day period. The problem is that the agency accepted the May 17, 2022 submission as a request for more assistance, or Standard LTC benefits under 130 CMR 519.006. The agency then did the proper thing and sent out a verification request on May 18, 2022, but it never did the follow-up saying it would deny his request for "upgraded" or LTC Standard benefits.[8]

It seems unfair and inconsistent with the due process principles codified in 130 CMR 516.000 to not give this Appellant written notice, and an appeal right, that his request for greater benefits was being denied. Unintentionally, this Appellant is being "punished" by the lack of appealable notice because he was already a MassHealth member. That is not supported by the eligibility review regulations in 130 CMR 516.007, which strongly imply that if there is non-cooperation there would be some sort of denial notice, or termination notice, **with appeal rights,** notifying Appellant that the request for upgraded medical assistance was not going to be granted due to a failure to respond.

Had Appellant received a termination or denial notice in early June, and had Appellant not timely exercised his appeal rights on that June notice, and only applied months thereafter, than the MassHealth decision in this case would make much more sense, and the agency would have been within its rights to treat the eventually filed application as the new and controlling application date. See e.g., BOH decision # 1312693. But the facts here are different, as there was no such precedent actual notice informing Appellant the LTC benefits he was seeking per conversion would be denied. I thus find that MassHealth failed to send appealable action in a timely manner in June 2022, and I find Appellant's appeal request of October 2022 to be a timely challenge of such inaction. See 130 CMR 610.015(B)(2)(c).

Using those Fair Hearing rules and the due process values contained within those rules, I find that Appellant is entitled in this matter to an eligibility determination using the May 17, 2022 as the effective application date as that was the date when his circumstances were reported indicating he would need an upgrade, and when such additional benefits were effectively requested and then were never subsequently denied without . As Appellant has since completed the application and been found to be eligible as of May 1, 2022, I find that under 130 CMR 516.006, he should be instead entitled to the retroactive [redacted] benefit start date as the agency should effectively be using

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the Information Request sent), as opposed to assigning an application date from the month of June when the form was returned.

[8] In another unfortunate factual twist, had the Appellant just suffered a slightly less severe decrease in his medical capabilities, his community MassHealth Standard benefits would have covered his initial stay on a short-term basis and this appeal may never have needed to happen. See fn. 3, *supra*. However, because his medical decline was so quickly, he went right to long-term stay and this contributed to the factual scenario leading to this appeal. It seems counterintuitive and a bit inequitable that those with greater medical issues would effectively be treated more harshly by the Medicaid eligibility process system than those with less severe medical problems, especially when Medicaid is supposed to aid and assist the most vulnerable and medically needy population.

the earlier application date from the month of May 2022.[9]

Based on the facts and totality of the regulations at issue in this decision and analysis above, I conclude that this appeal for an earlier benefit start date should be APPROVED.

Order for MassHealth

Rescind the October 12, 2022 denial notice and the October 18, 2022 approval notice, and instead approve Appellant for MassHealth Standard Long-Term Care benefits under 130 CMR 519.006 with a start date of [redacted].

Within 30 days of the date of this decision, MassHealth must send Appellant and the Appeal Representative in this matter (Ms. Booz) a written Notice of Implementation confirming the new start date.

[9] There is no issue with clinical eligibility as of [redacted] as confirmed by the effective screening date in Exhibit 7, and there were also no issues with Appellant's assets, or any transfer of resources as indicated by the quick approval notice issued, after verifications were received, on October 17, 2022. Thus, the result in this case makes intuitive and equitable sense, in that the only substantive difference in eligibility requirements between community Standard eligibility benefits and LTC benefits is that, for the latter, one must: (1) have a proper screening of a long-term care need, (2) pass the financial test regarding assets and transfers of resources, and (3) agree to pay a PPA to the nursing facility as a condition of eligibility. Compare 130 CMR 519.005(A) with 130 CMR 519.006(A).

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact the Appeals Coordinator at the MassHealth Enrollment Center identified below. 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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Justine Ferreira, Appeals Coordinator @ Taunton MEC