

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DISMISSED	Appeal Number:	2207927
Decision Date:	2/16/2023	Hearing Date:	11/21/2022
Hearing Officer:	Christopher Taffe	Record Open to:	02/06/2023

Appearance for Appellant:



Appearance for MassHealth:

Evelyn Daniel, BERS, of the Springfield
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:	DISMISSED	Issue:	Eligibility – Long Term Care – Standing
Decision Date:	2/16/2023	Hearing Date:	11/21/2022
MassHealth’s Rep.:	E. Daniel	Appellant’s Rep.:	██████████
Hearing Location:	Springfield 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 3, 2022, MassHealth denied Appellant’s application for Standard Long-Term Care (LTC) benefits because “*You did not give MassHealth the information it needs to decide your eligibility.*” See Exhibit 1; 130 CMR 515.008. Via a completed MassHealth agency Authorized Representative Designation) form, Ms. Thompson of the Appellant’s skilled nursing facility became both the Authorized Representative Designee (ARD) and Appeal Representative for Appellant, and she filed a timely request for a hearing on behalf of Appellant with the Board of Hearings on October 24, 2022. See Exhibit 1; 130 CMR 610.015(B); 130 CMR 610.004; 130 CMR 515.001. Challenging a MassHealth denial of MassHealth assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

As described in the Summary below, the record was extended multiple times prior to closing. See 130 CMR 610.081 and Exhibits 4 and 5.

Action Taken by MassHealth

MassHealth denied Appellant’s application for LTC benefits.

Issues

The appeal issues are (1) whether MassHealth was correct in denying the Appellant's application, (2) have there been any corrective actions taken to cure this denial and (3) is there a jurisdictional limitation that cannot allow this appeal to continue due to lack of standing.

Summary of Evidence

As of the November 21, 2022 hearing date, Appellant was a single individual, residing in a skilled nursing facility, who had been a resident at that nursing facility since [REDACTED]. On August 12, 2022, an application for MassHealth LTC benefits was filed on her behalf, seeking such MassHealth LTC benefits with a retroactive start date of June 9, 2022.

In response to the August 12, 2022 application, MassHealth sent out a verification request on August 18, 2022 seeking information needed to determine eligibility. See Exhibit 3. The material was due back to MassHealth on September 17, 2022. Completed submissions were not received by MassHealth from Appellant by that deadline date and, on October 3, 2022, MassHealth issued the denial notice and appealable action at issue in this matter.

As of the November 21, 2022 hearing date, many of the outstanding items, including most notably bank account statements and documentation on life insurance assets had still not been provided. The Appeal Representative at hearing, who had filed an Authorized Representative Designation form and who is a worker at the nursing facility, indicating that the Appellant's family member had recently stopped being cooperative with the verification process. Due to Appellant's health, the Appeal Representative indicated that the nursing facility wanted to pursue a conservatorship to assist with legally obtaining the remaining verifications, and the record was left open at Appellant's request until January 6, 2023 to allow Appellant time to submit additional documentation and/or proof of a pending conservatorship petition in an appropriate Probate Court. See Exhibit 4.

During the Record Open period, on January 5, 2023, the Appeal Representative reported to the Hearing Officer that the Appellant had passed away on [REDACTED] and that the representative was "*...in the process of getting a personal representative [of the Estate] appointed...*". See Exhibit 5.

In light of the potential new Probate Action that was needed, and the fact that there was no one with current authority in light of Appellant's passing, the Hearing Officer extended the Record Open period until February 3, 2023 to allow Appellant's side one additional time to save the LTC application at issue and provide proof of possible standing to continue this appeal via an active and more appropriate Probate Court action for a deceased individual. See Exhibit 5.

No material indicating a Probate Court filing was submitted by the February 3, 2023 deadline, and in response to a February 6, 2023 inquiry of the Hearing Officer, the Appeal Representative thanked the appeals office for its extensions and consideration but indicated that neither the application nor Probate Court matter would be further pursued, and that the Board of Hearings "*may dismiss this*

appeal.” See Exhibits 5 and 6.¹

Findings of Fact

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

1. Appellant was a single individual who had been institutionalized in a skilled nursing facility since [REDACTED] (Testimony)
2. An application was filed on Appellant’s behalf on August 12, 2022 seeking retroactive LTC benefits with a start date of June 9, 2022. (Testimony and Exhibit 3)
3. In response to the application, MassHealth sent an Information Request on August 18, 2022 seeking certain verifications but such verifications were not returned by September 17, 2022. (Testimony and Exhibit 3)
4. MassHealth denied the application on October 3, 2022 for failure to produce verifications and a timely appeal was filed on Appellant’s behalf on October 24, 2022. (Testimony and Exhibit 1)
 - a. Such verifications have still not been produced as of either the hearing date of November 21, 2022, or of the record close date of February 6, 2023. (Testimony and Exhibits 3, 4 and 5)
5. During the Record Open period, Appellant passed away on [REDACTED] and the Board of Hearings was notified on January 5, 2023. (Exhibit 4)
6. Appellant’s Appeal Representative was given more than 30 days from the date of Appellant’s death to provide proof of a pending Probate Court matter that may result in the establishment of an Estate which could continue with this appeal. (Exhibit 4)
7. No Probate Action for the Estate of Appellant was initiated as of the record close date of February 6, 2023, and the Appeal Representative indicated that no such Probate Court action would be initiated in the near future. (Exhibits 4 and 5)

¹ The Appeal Representative subsequently indicated that a formal written decision would be needed and appreciated considering the circumstances and non-cooperativeness of the late Appellant’s family. See Exhibit 6.

Analysis and Conclusions of Law

Fair Hearings are offered under 130 CMR 610.000 to MassHealth members and applicants who receive an adverse action, such as a negative eligibility determinations. See 130 CMR 610.001 to 130 CMR 610.003. To have standing to appeal, an Appeal Representative must have written authorization from the Appellant or other sufficient legal authority.² The Board of Hearings has several regulations that apply for cases where the Appellant is deceased; because the MassHealth program allows for retroactive benefits and assistance, there are many appeals where there are interested parties in seeing a deceased individual be awarded benefits.

Some of the Fair Hearing regulations most relevant to this situation are below:

610.035: Dismissal of a Request for a Hearing

(A) BOH will dismiss a request for a hearing when

...

(2) the request is withdrawn by the appellant ;

...

(7) the party requesting the hearing is not an applicant, member, or resident as defined in 130 CMR 610.004;

...

*(9) **BOH learns that the applicant or member has passed away before or after the date of filing and there is no full compliance with 130 CMR 610.016(B) within ten days of a BOH request;***

(10) BOH learns that the applicant or member has passed away prior to the date of filing and scheduling of the hearing and is not informed until the date of the hearing and there is no full compliance with 130 CMR 610.016(B); ...

610.016: Appeal Representative

(A) An appellant has the right to be represented at his or her own expense by an appeal representative as defined in 130 CMR 610.004. If the person filing the appeal is not the appellant, all documentation required to demonstrate that the person requesting the appeal is an appeal representative in accordance with 130 CMR 610.004 must be submitted either at the time the hearing is requested or before the hearing is scheduled. ...

(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

² MassHealth regulations regarding Authorized Representatives allow use of the Authorized Representative Designation form to be used for living Appellants, in that such Authorized Representative may take all the actions of an applicant and member. See 130 CMR 515.001; 130 CMR 501.001.

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.

(**Bolded** emphasis added.)

In this matter, we had an Appellant pass away after filing an appeal. 130 CMR 610.035(A)(9) allows BOH to dismiss such an appeal if there is not timely compliance with the principles of 130 CMR 610.016. 130 CMR 610.016 requires that proof of a Personal Representative of the Estate (or in the alternative, proof of a Probate Court filing that could lead to such a Personal Representative) be furnished in a timely fashion. In this case, Appellant's side was given more than a month and ample opportunity since the death to demonstrate such compliance, and the only Appeal Representative during the pendency of this appeal confirmed that a Probate Action had not been timely initiated and would not be. See Exhibit 5.

For these reasons, this appeal will be DISMISSED per 130 CMR 610.036(A) for lack of standing. See also 130 CMR 610.049 (allowing dismissal or closure of a Fair Hearing when the record indicates a failure to timely file, comply with orders, or indicate a desire to not further pursue the matter).

[Even if those interested in Appellant's application had provided proof of standing to continue with this appeal, the current verifications are still outstanding and MassHealth's denial for failure to produce verifications needed to determine eligibility would have justified a denial of this appeal, at least based on the current record.³]

Order for MassHealth

None other than to let the denial notice of October 3, 2022 stand and close the application for the late Appellant.

³ Had an estate been timely created for Appellant, it is possible, but not guaranteed, that more time would have been allowed to finish the verification process on behalf of the late Appellant.

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 Taffe
Hearing Officer
Board of Hearings

cc: Appeals Coordinator @ Springfield MEC

