

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2209493
Decision Date:	2/16/2023	Hearing Date:	01/24/2023
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:



Appearances for MassHealth:

John Thomas, Springfield MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Dismissed	Issue:	Long-term care eligibility start date
Decision Date:	2/16/2023	Hearing Date:	01/24/2023
MassHealth's Rep.:	John Thomas, Springfield MEC	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated September 14, 2022, MassHealth notified the appellant that his patient-paid amount would change from \$936.30 to \$936.20 (Exhibit 1). The appellant filed a timely appeal on December 22, 2022 (Exhibit 2). Calculation of a patient-paid amount is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth changed the appellant's patient-paid amount from \$936.30 to \$936.20, effective September 1, 2022.

Issue

The issue in this appeal is whether there is any error by MassHealth.

Summary of Evidence

A case worker from the Springfield MassHealth Enrollment Center appeared at the hearing telephonically and offered the following background information through testimony and documentary evidence: The appellant is a resident of a long-term care facility. On May 31, 2022, a MassHealth long-term care application was filed on his behalf, seeking coverage as of March 4, 2022. MassHealth sent the appellant a request for verifying information on June 7, 2022, with a due date of July 7, 2022. On July 14, 2022, MassHealth denied the application because some verifications had not been provided, and there was no appeal of this denial. On July 19, 2022, the appellant submitted some of the missing verifications, and MassHealth re-logged the application for this date. MassHealth approved the application on August 17, 2022, with a coverage effective date of April 1, 2022, which is the earliest possible coverage start date with the re-log date of July 19, 2022.

On September 14, 2022, MassHealth notified the appellant of a slight (\$0.10) decrease in the patient-paid amount. The appellant filed an appeal with the Board of Hearings on December 22, 2022.

A representative from the nursing facility's business office appeared at the hearing on the appellant's behalf. She reviewed her records and testified to the dates that she submitted various verifications to MassHealth. However, she stated that she did not receive the verification denial notice dated July 14, 2022, and therefore could not file an appeal that would have preserved the original application date. In response, the MassHealth case worker, pointing to the header of the July 14 notice, testified that MassHealth sent copies of the denial notice to both the appellant and the representative.¹ The appellant's representative reiterated that she had reviewed her records and did not see the denial notice in the file.

Findings of Fact

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

1. The appellant is a resident of a long-term care facility.
2. On May 31, 2022, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage as of March 4, 2022.
3. On June 7, 2022, MassHealth sent a request for verifying information, with a due date of July 7, 2022.
4. The appellant did not provide all of the requested verifications by the July 7 deadline.

¹ The copy of the July 14 notice that is in evidence is addressed to the representative and states "Notice sent to [appellant]." See Exhibit 4 at 8.

5. On July 14, 2022, MassHealth denied the application due to missing verifications. MassHealth sent copies of the denial notice to both the appellant and his representative, who works in the nursing facility's business office.
6. Neither the appellant nor his representative filed an appeal of the July 14 denial.
7. On July 19, 2022, the appellant submitted some of the missing verifications. MassHealth considered this to be the application re-log date.
8. On August 17, 2022, MassHealth approved the long-term care application, with a coverage effective date of April 1, 2022.
9. On September 14, 2022, MassHealth notified the appellant of a ten-cent decrease in his patient-paid amount.
10. On December 22, 2022, the appellant's representative filed an appeal with the Board of Hearings.
11. The December appeal is only timely as to the September PPA notice.

Analysis and Conclusions of Law

This appeal arose from a MassHealth notice of a slight downward adjustment to the appellant's patient-paid amount, issued shortly after he was approved for long-term care coverage. The appellant has raised no objection to this action by MassHealth. Instead, he has used this appeal to contest an earlier MassHealth determination, the start date of his long-term care coverage. Though the requested start date was March 4, 2022, MassHealth approved him for coverage as of April 1, 2022—the earliest possible start date based on the application re-log date in July. See 130 CMR 520.004(C)(2) (“[i]n no event will the first day of eligibility be earlier than the first day of the third month before the date of the application. . .”) MassHealth did not use the original application date from May, which could have allowed for a start date in March, because the agency had denied the application for missing verifications and the appellant did not appeal.²

The appellant's representative contends, however, that she did not receive the verification denial notice of July 14, 2022, and therefore did not have a chance to appeal it—and thereby preserve the original application date and the potential for coverage back to the requested date of March 4, 2022. For a number of reasons, this position is not persuasive. First, the verification denial notice in evidence bears the representative's name and business address (the same information she provided for this appeal), strongly suggesting that MassHealth did in fact send her the notice. The record also indicates that a separate copy of the notice was sent to the appellant's attention,

² The appellant also did not appeal the August approval notice. The only hearing request on file is dated December 22, 2022, which is beyond the 120-day time frame to appeal either of these MassHealth actions. The December appeal is only timely as to the PPA adjustment notice.

also at the nursing facility.

Second, even if the appellant or his representative had not received (or had overlooked) the July verification denial notice, MassHealth's approval notice from August – which reflected the unfavorable coverage start date – should have alerted them that something was amiss and prompted an appeal at that point.³ Had the appellant or his representative filed an appeal upon receiving the August approval notice, it would have been timely as to the July notice as well, again giving them a chance to challenge the verification denial and to protect the original application date.

Finally, even if MassHealth had *actually* failed to send the July 19 denial notice, the appellant missed the window of opportunity to file an appeal on that basis. Under 130 CMR 610.015(B)(2)(c), unless waived by the Director or his or her designee, the Board of Hearings must receive a request for hearing within 120 days from when the MassHealth agency fails to send written notice of an action.⁴ Thus, to allege a failure to send a notice dated July 19, 2022, the appellant's request for hearing would have to be filed no later than November 16, 2022.⁵ As noted earlier, the only appeal on file is dated December 22, 2022, well after the 120-day mark.

As this appeal is not timely as to the claim that MassHealth failed to send the July denial notice, and there is no substantive dispute as to the September PPA notice (the only action for which the appeal *is* timely), the appeal must be dismissed.

Order for MassHealth

None.

³ There is no allegation that the appellant (or his representative) did not receive the August approval notice.

⁴ The appellant has not sought a waiver of the 120-day deadline, nor has one been granted.

⁵ Pursuant to MassHealth Eligibility Operations Memo 22-10, for the duration of the Federal Public Health Emergency, the standard time frame to file an appeal related to member eligibility has been extended to 120 days. Accordingly, the same November 16 deadline would apply whether as an ordinary appeal of the July 19 notice or an allegation that MassHealth had failed to send that notice.

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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Springfield MEC

