

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed

Appeal Number: 2209593

Decision Date: 2/3/2023

Hearing Date: 01/25/2023

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearance for MassHealth:

Jamie Lapa, Springfield 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

Appeal Decision:	Dismissed	Issue:	Long Term Care
Decision Date:	2/3/2023	Hearing Date:	01/25/2023
MassHealth's Rep.:	Jamie Lapa	Appellant's Rep.:	Daughter/POA
Hearing Location:	Springfield MassHealth Enrollment Center (All parties appeared telephonically)		

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 12/12/2022, MassHealth approved the appellant's application for MassHealth Long Term Care (LTC) benefits for a resident of a skilled nursing facility (Exhibit 1). An appeal was received by the Board of Hearings on 12/27/2022, signed by the appellant's daughter/POA (Exhibits 2 and 4). The Board of Hearings scheduled a hearing for 01/25/2023 (Exhibit 3).

The 12/12/2022 MassHealth notice approved the appellant's application for LTC benefits, with a benefit start date of 04/01/2022 and with a calculated monthly patient paid amount of \$5,230.34 (Exhibit 1). At the fair hearing, the daughter/POA explained that she did not contest the issues addressed by the 12/12/2022 approval notice. Instead, she testified that in order to have the appellant approved for benefits, she was advised that the annuities purchased by the appellant in 2001 must have the Commonwealth of Massachusetts listed in the first position as beneficiary. She believes this information to be incorrect. The daughter/POA wishes to have the Commonwealth removed as first position beneficiary and to have the beneficiary changed to family members. The daughter/POA was told that she could appeal the approval notice to address the issue of the annuity beneficiaries. At the fair hearing, the daughter/POA informed the hearing

officer that she would be unable to change the beneficiaries of the annuities without an order from the Board of Hearings.

Pursuant to fair hearing regulations at 130 CMR 610.035(A)(4), the Board of Hearings will dismiss a request for hearing when the "stated reason for the request does not constitute grounds for appeal as set forth in 130 CMR 610.032..."

Regulations at 130 CMR 610.032 address grounds for appeal as follows:

(A) Applicants and members have a right to request a fair hearing for any of the following reasons:

- (1) denial of an application or request for assistance, or the right to apply or reapply for such assistance;
- (2) the failure of the MassHealth agency to give timely notice of action on an application for assistance in accordance with the requirements of M.G.L. c. 118E, § 21;
- (3) any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance;
- (4) MassHealth agency actions to recover payments for benefits to which the member was not entitled at the time the benefit was received;
- (5) individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations);
- (6) coercive or otherwise improper conduct as defined in 130 CMR 610.033 on the part of any MassHealth agency employee directly involved in the applicant's or member's case;
- (7) any condition of eligibility imposed by the MassHealth agency for assistance or receipt of assistance that is not authorized by federal or state law or regulations;
- (8) the failure of the MassHealth agency to act upon a request for assistance within the time limits required by MassHealth regulations;
- (9) the MassHealth agency's determination that the member is subject to the provisions of 130 CMR 508.000: MassHealth: Managed Care Requirements;
- (10) the MassHealth agency's denial of an out-of-area provider under 130 CMR 508.003(A)(2);
- (11) the MassHealth agency's disenrollment of a member from a managed care provider under 130 CMR 508.003: Enrollment with a MassHealth Managed Care Provider;
- (12) the MassHealth agency's denial of a member's request to transfer out of the member's MCO, ACPP, or Primary Care ACO under 130 CMR 508.003: Enrollment with a MassHealth Managed Care Provider;
- (13) the MassHealth agency's determination to enroll a member in the Controlled Substance Management Program under the provisions of 130

CMR 406.442: Controlled Substance Management Program; and
(14) the MassHealth agency's determination of eligibility for low-income
subsidies under Medicare Part D, as set forth in the Medicare Prescription
Drug and Improvement and Modernization Act of 2003 as described in
federal regulations at 42 CFR Part 423, Subpart P...

The appellant does not contest any of the actions taken by MassHealth in the
12/12/2022 approval notice.¹ The daughter/POA seeks to have the Board of Hearings
issue a preemptive decision addressing a potential future action and whether or not that
action will result in a termination of benefits. In essence she is seeking an advisory
opinion.

The fair hearing process allows dissatisfied applicants, members, or nursing facility
residents to have administrative review of certain actions or inactions on the part of
MassHealth (130 CMR 610.001(A)). The appellant's request is not one that constitutes
a ground for appeal pursuant to the above regulation.² Accordingly, the appeal must be
dismissed because the request does not constitute grounds for appeal as set forth in
130 CMR 610.032. This appeal is therefore dismissed.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center,

¹ Appealable issues in an approval notice for LTC benefits can include the start date of the benefits, the
patient paid amount, or the amount of the deductions from the patient paid amount.

² If the appellant had removed the Commonwealth as beneficiary of his annuities, and if MassHealth
suspended, reduced, terminated, or restricted his LTC benefits as a result of the change, then
MassHealth's action may constitute grounds for an appeal.

88 Industry Avenue, Springfield, MA 01104

