

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2301220
<b>Decision Date:</b>	4/25/2023	<b>Hearing Date:</b>	03/23/2023
<b>Hearing Officer:</b>	Casey Groff, Esq.	<b>Record Closed:</b>	04/07/2023

**Appearance for Appellant:**




**Appearance for MassHealth:**  
Patricia Rogers, 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

<b>Appeal Decision:</b>	Dismissed	<b>Issue:</b>	Eligibility; Verifications; Coverage start date
<b>Decision Date:</b>	4/25/2023	<b>Hearing Date:</b>	03/23/2023
<b>MassHealth's Rep.:</b>	Patricia Rogers	<b>Appellants Reps.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)		

## 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 January 17, 2023, MassHealth denied Appellant's application for long-term care benefits because it determined he did not submit necessary verifications by the deadline. See 130 CMR 515.008 and Exhibit (Exh.) 1. On February 9, 2023, a timely request for a fair hearing was submitted to Board of Hearings (BOH) on Appellant's behalf. See Exh. 2 and 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. See 130 CMR 610.032. However, BOH dismissed the appeal on February 15, 2023, because the individual seeking the appeal did not establish proper authorization. See Exh. 3 and 130 CMR 610.034-035. On February 28, 2023, BOH received paperwork demonstrating Appellant's court appointed guardian was seeking the appeal on his behalf. See Exh. 5. On March 2, 2023, BOH vacated the dismissal and scheduled a hearing for March 23, 2023. See Exhs. 6-7. The hearing record remained open until April 7, 2023 for Appellant's representatives to submit additional evidence. See Exh. 6.

## Action Taken by MassHealth

MassHealth denied the Appellant's application for MassHealth benefits for failing to submit requested verifications by the deadline.

## Issue

The appeal issue is whether MassHealth was correct in determining that Appellant failed to submit requested verifications in a timely manner.

## Summary of Evidence

A MassHealth eligibility representative appeared at the hearing and testified as follows: On November 30, 2022, MassHealth received a second long-term-care (LTC) application from Appellant requesting coverage of his skilled nursing facility care. For background, the MassHealth representative explained that Appellant submitted an initial application on August 10, 2022; however, MassHealth denied the application for failure to verify and this decision was upheld by the Board of Hearings (BOH) on appeal.<sup>1</sup> At the time of the November 30, 2022 application, Appellant was residing in a nursing facility and over the age of 65. See Exh. 8, p. 3. The application sought a coverage start date of July 1, 2022, as did the earlier application.<sup>2</sup> On December 12, 2022 MassHealth sent Appellant a Request for Information (RFI) seeking verification of “where [his] social security has been [/ is] being deposited from 8/1/21 through current, providing statements for that account from that date and verifying all transactions \$1400 or more.” Id. at 5. The RFI imposed a verification submission deadline of January 11, 2023. Id. On January 17, 2023, MassHealth denied the November 30<sup>th</sup> application because it had not received the requested account information. Id. at 6.; see also Exh.1.

Following the denial, Appellant provided MassHealth with the name and location of the account in question. However, as of the hearing date, MassHealth had still not received the statements verifying the deposits or account activity shown therein. The account in question had not been reported on either of Appellant’s LTC applications.

At hearing, Appellant was represented by his court appointed guardian<sup>3</sup> and attorney (collectively “Appellant’s representatives”). Pursuant to written submissions and testimony provided at hearing, Appellant’s representatives explained that Appellant’s only income is obtained through social security, part of which is subject to garnishment by the Massachusetts Department of Revenue. Appellant’s representatives indicated they have successfully identified the account in question; however, the financial institution (“FI”) through which the account is maintained has been uncooperative in responding to their repeated requests for account information. During a conversation with a representative of FI, Appellant’s guardian was informed that the FI was “not a bank” and did not furnish monthly statements. Id. at 2. Additionally, an attorney for PGS became

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<sup>1</sup> Pursuant to a decision dated December 15, 2022, BOH upheld the denial after Appellant failed to produce the missing verifications within a designated post-hearing record-open period. Appellant’s representatives noted that this appeal (Appeal No. 2206267) was brought forth through a separate entity that, at the time, was representing Appellant with Medicaid assistance. Appellant’s representatives explained that they became involved after the initial application and hearing, at which point they assisted Appellant in filing the second November 30, 2022 application.

<sup>2</sup> The MassHealth representative noted that because November 30, 2022 is the operative application date, Appellant would not be entitled to a start date earlier than August 1, 2022.

<sup>3</sup> According to court filings included with the fair hearing request, Appellant’s appointed guardian is identified as Public Guardianship Services (PGS). The appeal representative was a member of PGS and as such carried out guardianship responsibilities.

involved and sought to issue a court-issued subpoena but was unsuccessful due to purported jurisdictional issues. Given the FI's failure to comply with requests for documentation, Appellant requested that the hearing officer issue a subpoena pursuant to 130 CMR 610.052(B), or, in the alternative, approve the appeal with a start date of July 1, 2022 absent the verifications.

At the conclusion of the hearing, the hearing officer granted Appellant a two-week record open period to make additional efforts to obtain the bank statements, noting that the appointment of guardianship expressly authorized the guardian to procure bank statements and financial information related to health care benefits. The hearing officer deferred Appellant's request for a BOH-issued subpoena pending the results of the record-open period and subject to a written request detailing the chronology of attempts made to obtain the statements. See Exh. 10, p. 4.

On April 6, 2023, Appellant's guardian reported that it successfully received the outstanding statements from the FI and provided a copy to MassHealth for review. See id. at 2. On April 7, 2023, the MassHealth representative reported that it received all verifications to make an eligibility determination and Appellant would be approved for LTC benefits effective August 1, 2022 pursuant to the November 30, 2022 application. See id. at 1.

Appellant argued that the appeal issue had not been resolved and moved to pursue the matter demanding a coverage start date of July 1, 2022. See id. at 1.

## Findings of Fact

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

1. On November 30, 2022, MassHealth received a second LTC application from Appellant requesting coverage of his skilled nursing facility care effective July 1, 2022.
2. The November 2022 application was submitted following an initial August 10, 2022 application. MassHealth denied the initial application for failure to verify and this determination was upheld by BOH on appeal.
3. At the time of the November 30, 2022 application, Appellant resided in a nursing facility and was over the age of 65.
4. Upon receipt of the November 30, 2022 application, MassHealth sent Appellant a RFI dated December 12, 2022, seeking verification of "where [his] social security has been [/is] being deposited from 8/1/21 through current, providing statements for that account from that date and verifying all transactions \$1400 or more." Id. at 5.
5. The RFI imposed a verification submission deadline of January 11, 2023.
6. On January 17, 2023, MassHealth denied the November 30<sup>th</sup> application because it had not received the requested account information by the deadline.

7. As of the hearing date, MassHealth had still not received the requested statements verifying Appellant's social security income deposits or other account activity shown therein.
8. At the conclusion of the hearing, Appellant was granted a two-week record open period to make additional efforts to obtain the bank statements.
9. On April 6, 2023, Appellant's guardian reported that it successfully received the outstanding statements from the FI and provided a copy to MassHealth for review.
10. On April 7, 2023, MassHealth confirmed it received all verifications and agreed to render an eligibility determination preserving the November 30, 2022 application.

## Analysis and Conclusions of Law

Once an application for MassHealth long-term-care benefits has been submitted, the MassHealth agency requests all corroborative information necessary to determine the applicant's eligibility. See 130 CMR 516.001. This "verification" process is outlined under 130 CMR 516.001(B) as follows:

- (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.

If the requested verifications are received within the designated 30-day timeframe, MassHealth considers the application to be "complete" and the agency will proceed determine eligibility based upon the application date. See 130 CMR 516.001(C). If, however, the requested information "***is not received within 30 days of the date of the request, MassHealth benefits may be denied.***" Id. (emphasis added). After an application has been denied for failure to verify, MassHealth adheres to the following protocol, for purposes of determining a reapplication date:

- (1) If the requested information is received within 30 days of the date of the denial, the date of receipt of one or more of the verifications is considered the date of reapplication.
- (2) The date of reapplication replaces the date of the denied application. The applicant's earliest date of eligibility for MassHealth is based on the date of reapplication.

- (3) If a reapplication is subsequently denied and not appealed, the applicant must submit a new application to pursue eligibility for MassHealth. The earliest date of eligibility for MassHealth is based on the date of the new application.

See 130 CMR 516.001(C).

In the present case, Appellant was granted a post-hearing record open period to produce the outstanding information. Despite the additional time, Appellant did not submit proof of the requested pension information. Therefore, the action taken by MassHealth was within the regulations. See 130 CMR 516.001.

The sole issue on appeal is whether MassHealth correctly denied Appellant's November 30, 2022 application for failure to submit requested verifications in a timely manner.<sup>4</sup> It is undisputed that Appellant did not provide MassHealth with the requested account statements by the deadline of January 11, 2023. As Appellant's application was not "complete[d]" within 30 days of the information request, MassHealth appropriately denied the November 30, 2022 application, via its January 17, 2023 denial notice. See 130 CMR 516.001. However, by timely appealing the denial, Appellant was granted additional time post-hearing to obtain and submit the required information. Appellant successfully produced the outstanding items, and upon receipt, MassHealth agreed to render an eligibility determination preserving the November 30, 2022 application date. This effectively voided the January 17, 2023 denial notice, thereby resolving the issue on appeal.

Appellant argues that the issue on appeal has not "resolved" because MassHealth established an incorrect coverage start date when approving Appellant for benefits. As the coverage start date issue pertains to a subsequent MassHealth action, it is outside the scope of appeal, and cannot be adjudicated in this matter. Should Appellant dispute the imposed coverage start date, or any other subsequent MassHealth action, he may do so through filing a separate fair hearing request with the Board of Hearings.

Because the issue of verifications has been resolved and MassHealth agreed to render an eligibility determination preserving the November 30, 2022 application date, this appeal is DISMISSED.

## **Order for MassHealth**

None.

## **Notification of Your Right to Appeal to Court**

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<sup>4</sup> It is also undisputed that November 30, 2022 is the operative application date in this appeal. Appellant's representatives explained that before November 30<sup>th</sup>, Appellant, with the assistance of a separate entity, submitted an initial application to MassHealth. MassHealth denied this application for failure to verify – a decision which was upheld on December 15, 2022 by BOH (see Appeal No. 2206267). As the agency action pertaining to the initial application has been adjudicated by BOH, it may not be raised again through this appeal.

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.

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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

[REDACTED]