

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2301996
Decision Date:	6/2/2023	Hearing Date:	04/06/2023
Hearing Officer:	Thomas Doyle	Record Open to:	4/11/23

Appearance for Appellant:



Appearance for MassHealth:

Yisell Medina, Taunton MEC

Interpreter:



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

## CORRECTED APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Application Date
<b>Decision Date:</b>	6/2/2023	<b>Hearing Date:</b>	04/06/2023
<b>MassHealth's Rep.:</b>	Yisell Medina	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (phone)	<b>Aid Pending:</b>	No

### Correction Preamble

This corrected decision replaces and supersedes the original decision issued on June 2, 2023 which contained an errors in the dates: in the "Jurisdiction" section, the coverage beginning date was June 1, 2022; in the "Summary of Evidence" section, the "retroactive" date discussed in the following paragraph should be July 7, 2022; and in the "Analysis" section, the denial notice was issued on August 30, 2022. No other changes were made.

### Authority

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

### Jurisdiction

Through notice number 64614038, dated January 20, 2023, MassHealth approved the appellant's application for MassHealth Standard benefits to cover long-term-care services in a nursing facility with MassHealth with a coverage date beginning June 1, 2022. (130 CMR 456; Ex. 1). The appellant filed this appeal in a timely manner on March 8, 2023. (130 CMR 610.015(B); Ex. 2). Imposition of a coverage date is a MassHealth action and is valid grounds for appeal (130 CMR 610.032(3)).

### Action Taken by MassHealth

MassHealth limited the coverage start date to June 1, 2022.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 456 and 130 CMR 516, in determining that coverage for the member begins June 1, 2022.

## Summary of Evidence

Appellant was approved for MassHealth Standard benefits for long-term-care services in a nursing facility with the eligibility date beginning on June 1, 2022. (Ex. 6, p. 19). Through her appeal representative she is appealing the eligibility start date of June 1, 2022 and seeks coverage approval to begin on April 1, 2022. (Testimony). Appellant filed an application for long term care with MassHealth on July 7, 2022. (Testimony; Ex. 5, pp. 1-2). MassHealth sent out a Request for Information on July 26, 2022. (Testimony; Ex. 6, pp. 2-6). When MassHealth did not receive any of the requested information, a denial notice was sent out by MassHealth on August 30, 2022. (Testimony; Ex. 6, pp. 7-10). On September 12, 2022, MassHealth received a letter from the appeal representative asking about the status of his July 7, 2022 application for long term care for appellant. (Testimony). This letter contained a different address for the appeal representative than was shown on the July 7, 2022 application for benefits. (Testimony).<sup>1</sup> The appeal representative had moved his office in December 2021. (Testimony). Because this letter came after the denial date of August 30, 2022, MassHealth treated the date of the letter, September 12, 2022, as the reapplication date. (Testimony; Ex. 6, p. 7). Another Request for Information was sent out by MassHealth on October 5, 2022. (Testimony; Ex. 6, pp. 11-15). No information was received by MassHealth in the time allotted so a denial notice was sent on November 8, 2022. (Ex. 6, p. 1).<sup>2</sup>

MassHealth testified there was no record of the August 30, 2022 denial notice being appealed by appellant. (Testimony). The MassHealth denial notice of November 8, 2022 was appealed by appellant with the present appeal representative. (Testimony). After a notice of hearing was filed by appellant but before a hearing commenced, appellant provided all necessary information requested by MassHealth to determine eligibility for long term care. Since all verifications were provided, on January 3, 2023, the appeal representative withdrew the appeal of the November 8, 2022 denial. (Ex. 8). The appeal representative testified that he withdrew the appeal with the understanding that the “retroactive” date would be July 7, 2022. (Testimony). However, the withdrawal form signed by the appeal representative shows “application date of 09/12/20 will be reconsidered”. Further down on the withdrawal form it states, “the re-application dated 9/12/22 will be honored”. (Ex. 8).<sup>3</sup>

On November 18, 2022, ten days after the date on the MassHealth denial notice, the appeal representative emailed the supervisor of the MassHealth worker who appeared at hearing. (Ex. 9, p.

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<sup>1</sup> The appeal representative testified the July 7, 2022 application had his old address on it.

<sup>2</sup> This denial notice was addressed to the appellant but cc'd to the appeal representative.

<sup>3</sup> This date showing the year to be 2020 is obviously a scrivener's error as both parties testified to the date of the authorized representative's letter as September 12, 2022 and the correct date is stated in another place on the withdrawal form.

2-3). He acknowledges receiving the November 8 denial notice and writes this is the first time he has heard from MassHealth after filing the July 2022 application. The MassHealth supervisor answers his email. (Ex. 9, p. 1). She tells the appeal representative “once an appeal is filed, we can proceed without having to file a new application and we will be able to honor the original application date if you file an appeal on the 08/30 denial notice. Let me know if you need a copy of the original notice.” (Id). The appeal representative testified the November email was more than 60 days from the denial of August 30, 2022. (Testimony). At the time of the November email correspondence between the MassHealth supervisor and the appeal representative, the timeframe to appeal a MassHealth denial notice was 120 days.<sup>4</sup> The MassHealth representative testified appellant was still within the 120 days to appeal the 8/30/22 denial notice. (Testimony). The MassHealth representative testified her manager told her there was no follow-up email from the appeal representative requesting the 8/30/22 denial notice and she further testified the August 30, 2022 MassHealth denial notice was never appealed. (Testimony).

## Findings of Fact

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

1. The authorized representative,<sup>5</sup> an attorney, changed his business address to [REDACTED] (new address), in December 2021. He had the post office forward all his mail to his new address. (Testimony).
2. Appellant, through her authorized representative, filed an application for long term care which MassHealth received on July 7, 2022. The document granting authority to the authorized representative shows his address as his old business address. (Testimony; Ex. 5; Ex. 9, p. 2). The authorized representative testified that the July 2022 MassHealth application had his old address on it. (Testimony).
3. MassHealth sent out a Request for Information to the authorized representative on July 26, 2022 to his old address. (Testimony; Ex. 6, p. 2).
4. MassHealth sent out a denial notice to the authorized representative, to his old address, on August 30, 2022. (Testimony; Ex. 6, p. 7).

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<sup>4</sup> In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
  - All appeal hearings will be telephonic; and
  - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

<sup>5</sup> The individual who is representing the appellant in this appeal will be referred to as the authorized representative for all actions taken before he became the appeal representative in the appeal for which this decision is being written.

5. The appeal representative sent a letter to MassHealth requesting a status on the application he filed in July 2022. This letter was received by MassHealth on September 12, 2022. (Testimony; Ex. 10).
5. Because the letter from the authorized representative was received after the denial notice of August 30, 2022, the September 12, 2022 date was considered by MassHealth as the reapplication date. (Testimony),
6. After receiving this letter from the authorized representative, MassHealth sent out another Request for Information on October 5, 2022. This was sent to the authorized representative's old address. (Testimony; Ex. 6, p. 11).
6. On November 8, 2022, MassHealth sent a denial notice to appellant at her address, with a carbon copy to the authorized representative. (Testimony; Ex. 6, p. 16).
7. The authorized representative testified he never received any of these notices. (Testimony).
8. On November 18, 2022, the authorized representative emailed the supervisor at the Taunton MassHealth Enrollment Center (MEC). (Testimony; Ex. 9, pp. 2-3). The authorized representative admitted he received the November 2022 denial notice. (Ex. 9, p. 3).
9. The MEC supervisor responded by email to the authorized representative. She told him all notices were mailed to his old address.<sup>6</sup> (Ex. 9, p. 1).
10. The authorized representative was put on notice that MassHealth would honor the original application date (July 7, 2022) if an appeal on the August 30, 2022 denial notice was filed. An offer was made to the authorized representative to give him a copy of the original August 2022 denial notice. (Ex. 9, p. 1).
11. The August 30, 2022 denial was never appealed. The authorized representative never sent an email requesting a copy of the August 30, 2022 denial notice. (Testimony).
12. The authorized representative appealed the November 8, 2022 denial notice.<sup>7</sup> (Testimony).
13. This appeal was withdrawn by the authorized representative as requested proofs and/or review were submitted. (Ex. 8).
14. The withdrawal form states, "the re-application dated 9/12/22 will be honored". (Ex. 8). The

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<sup>6</sup> In the email, she wrote they were sent to the "address below". That would be the address at Exhibit 9, page 2, showing the old address.

<sup>7</sup> The appeal number was 2208974. (Ex. 8).

authorized representative signed the withdrawal form. (Ex. 8).

15. The authorized representative was on notice the reapplication date was September 12, 2022 and not July 7, 2022.
16. MassHealth sent an eligibility notice to the authorized representative on January 20, 2023 with an eligibility date of "06/01/2022". (Ex. 1).
17. The authorized representative appealed the January 20, 2023 eligibility notice to dispute the start date of eligibility. That appeal is the subject of this decision.
18. Appellant designated her authorized representative her appeal representative for this appeal. (Ex. 3).

## Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007).

### 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. (Emphasis added)

The appeal representative testified this appeared to be a post office problem. The appeal representative admits his old address was on the original July 2022 MassHealth application where MassHealth sent the July 26, 2022 Request for Information and the August 30, 2022 denial notice. The appeal representative also testified when he changed his business address in December 2021,

he put a forwarding request in with the post office.

The appeal representative not receiving the July 2022 Request for Information or the August 2022 denial notice are not controlling. He provided the wrong address on the July 2022 MassHealth application for long term care. MassHealth relied on that address to send out the July 2022 Request for Information and the August denial notice. However, the appeal representative was notified in the November 23, 2022 email from the MEC supervisor that MassHealth would honor the original application date of July 7, 2022 if he filed an appeal on that August 30, 2022 denial notice. There is no evidence the authorized representative appealed the August 30, 2022 denial notice or requested a copy of the original August 30, 2022 denial notice. The appeal representative testified that it was over 60 days since the August 30, 2022 denial notice at the time of the offer from MassHealth in the November 23, 2022 email. He implies it was not possible to appeal the original August denial notice because the time to file had lapsed. However, during the pandemic, the time to file an appeal on a denial notice was extended to 120 days.<sup>8</sup> The time of the MassHealth offer in the November 23, 2022 email was within the 120 days to appeal the August 30, 2022 denial notice.

The appeal representative was offered a chance to appeal the original August 30, 2022 denial notice as it was still in the 120 day appealable timeframe and he did not initiate an appeal on that denial notice. He signed the withdrawal form that withdrew the appeal on the November 8, 2022 denial notice. The withdrawal form clearly stated “the re-application dated 9/12/22 will be honored.” (Ex. 8).

As the appellant was given a chance to appeal the August 30, 2022 denial notice from MassHealth and did not, the appeal is denied.

## **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

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<sup>8</sup> See footnote 4.

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Thomas Doyle  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

[REDACTED]