

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2302598
<b>Decision Date:</b>	5/19/2023	<b>Hearing Date:</b>	05/11/2023
<b>Hearing Officer:</b>	Thomas J. Goode		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Lindsey Marek, 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

<b>Appeal Decision:</b>	Dismissed	<b>Issue:</b>	130 CMR 610.015, 610.035
<b>Decision Date:</b>	5/19/2023	<b>Hearing Date:</b>	05/11/2023
<b>MassHealth's Rep.:</b>	Lindsey Marek	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 January 3, 2023, MassHealth informed Appellant that he is eligible for CommonHealth coverage effective January 3, 2023 (Exhibit 1). Appellant submitted a request for an appeal on March 30, 2023 (Exhibit 2, 130 CMR 610.015). Notice of eligibility for a MassHealth benefit is valid grounds for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth issued a notice dated January 3, 2023 informing Appellant that he is eligible for CommonHealth coverage effective January 3, 2023.

### Issue

The appeal issue is whether MassHealth was correct in determining that Appellant is eligible for CommonHealth coverage effective January 3, 2023. A second issue is whether the appeal request submitted to the Board of Hearings on March 30, 2023 is timely to appeal a notice dated September 1, 2022.

## Summary of Evidence

On March 30, 2023, an appeal request was submitted to the Board of Hearings on Appellant's behalf that included part of a notice dated September 1, 2022 (Exhibit 2). On April 3, 2023, the Board of Hearings dismissed the appeal because a partial appeal request form was received at the Board of Hearings (Exhibit 2A). On April 12, 2023, Appellant's representatives resubmitted the request for an appeal stating that "per case worker supervisor to appeal since this denial was never received preserve 7/1/2022 date" (Exhibit 2B). On April 13, 2023, a hearing was scheduled by the Board of Hearings on a notice dated January 3, 2023 (Exhibit 3). At hearing Appellant's representatives testified that an appeal of the January 3, 2023 notice was not filed and the issue is not relevant as Appellant has not been a community resident since he was admitted to the nursing facility on [REDACTED]. Appellant's representatives stated that a conversion application was submitted to MassHealth on July 1, 2022 which was denied for excess assets on September 1, 2022. Appellant's representatives assert that the notice was not received by Appellant or the facility, and he was therefore unable to appeal the September 1, 2022 excess asset determination (Exhibit 4). Appellant's representatives testified that they did not receive the September 1, 2022 notice, and obtained a copy in March 2023 only after contacting the caseworker's supervisor who sent a copy of the notice and informed the representatives that the caseworker was no longer employed by MassHealth. Appellant's representatives also testified that the supervisor told them to file an appeal. On March 30, 2023, Appellant's representatives submitted to the Board of Hearings a request for appeal for the purpose of appealing the September 1, 2022 notice and preserving the July 1, 2022 conversion application.

The MassHealth representative testified that the notice on appeal is dated January 3, 2023, and agreed it is a notice of community eligibility for CommonHealth which is not relevant as Appellant is a nursing facility resident. The MassHealth representative added that the nursing facility submitted a second conversion application to MassHealth on March 30, 2023, which is currently under review and pending a determination. The MassHealth representative testified that MassHealth records show that the September 1, 2022 notice was mailed on September 1, 2022 to 3 different recipients on file including Appellant, and the nursing facility (Exhibits 4, 5). The MassHealth representative testified she could not address a September 1, 2022 denial notice, and that Appellant would be notified of the decision on the conversion application submitted on March 30, 2023.

## Findings of Fact

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

1. On March 30, 2023, an appeal was submitted to the Board of Hearings on Appellant's behalf that included part of a notice dated September 1, 2022.

2. On April 3, 2023, the Board of Hearings dismissed the appeal request because a partial appeal form was received at the Board of Hearings.
3. On April 12, 2023, Appellant's representatives resubmitted a request for an appeal stating that "per case worker supervisor to appeal since this denial was never received preserve 7/1/2022 date."
4. On April 13, 2023, a hearing was scheduled by the Board of Hearings on a notice dated January 3, 2023 informing Appellant he was eligible for CommonHealth effective January 2, 2023.
5. Appellant did not intend to appeal the January 3, 2023 notice because he has not been a community resident since he was admitted to the nursing facility on [REDACTED]
6. A conversion application was submitted to MassHealth on July 1, 2022, which was denied for excess assets on September 1, 2022.
7. The nursing facility submitted a second conversion application to MassHealth on March 30, 2023, which is currently under review and pending a determination.
8. MassHealth records show that the September 1, 2022 notice was mailed on September 1, 2022 to 3 different recipients on file including Appellant and the nursing facility.

## **Analysis and Conclusions of Law**

Regulation 130 CMR 610.015(B) Time Limitation on the Right of Appeal establishes timeframes for filing an appeal at the Board of Hearings. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

- (1) 60 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing;
- (2) unless waived by the BOH Director or his or her designee, 120 days from
  - (a) the date of application when the MassHealth agency fails to act on an application;
  - (b) the date of request for service when the MassHealth agency fails to act on

such request;

(c) the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action; or

(d) the date of the alleged coercive or otherwise improper conduct, but up to one year from the date of the conduct if the appellant files an affidavit with the BOH Director stating the following and can establish the same at a hearing (Failure to substantiate the allegation either before or at the hearing will be grounds for dismissal.):

1. he or she did not know of the right to appeal, and reasonably believed that the problem was being resolved administratively or he or she was justifiably unaware of the conduct in question; and

2. the appeal was made in good faith.

(3) 30 days after a resident receives written notice of an intent to discharge or transfer pursuant to 130 CMR 610.029(A);

(4) 30 days after a nursing facility initiates a transfer or discharge or fails to readmit and fails to give the resident notice;

(5) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 610.029(B);

(6) 14 days after a resident receives written notice of a transfer or discharge that is the result of a nursing facility's failure to readmit the resident following hospitalization or other medical leave of absence;

(7) for appeals of a decision reached by a managed care contractor:

(a) 120 days after the member's receipt of the managed care contractor's final internal appeal decision where the managed care contractor has reached a decision wholly or partially adverse to the member, provided however that if the managed care contractor did not resolve the member's appeal within the time frames described by 130 CMR 508.010(A), 120 days after the date on which the time frame for resolving that appeal has expired;

(b) for timing of request for continuation of benefits pending appeal, see 130 CMR 610.036.

(8) for appeals of PASRR determinations, 30 days after an individual receives written notice of his or her PASRR determination. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing.

(C) Computation of Time.

(1) Computation of any period referred to in 130 CMR 610.000 is on the basis of calendar days except where expressly provided otherwise. Time periods expire on the last day of such periods unless the day falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed, in which event the last day of the time period is deemed to be the next day on which BOH is open.

(2) In the absence of evidence or testimony to the contrary, it will be presumed that a notice was received by an appellant on the fifth day after the date of the notice, regardless of whether the fifth day after the date of the notice falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed. If an appellant dies on or prior to the date of presumed receipt, then for the purposes of determining whether an appeal request is timely, the appealable notice is still presumed to have been received no later than the fifth day after the date of the notice.

In August 2022, due to the federal public health emergency (FPHE), MassHealth, with federal approval, authorized certain flexibilities to expedite access to MassHealth coverage for eligible individuals, part of which included an extension of the time frame to request a fair hearing to 120 days. The provision also established that when the FPHE ends, the standard time to request a fair hearing would be changed from 30 days to 60 days. This change occurred on April 1, 2023.<sup>1</sup> Because Appellant filed the appeal of the September 1, 2022 notice on March 30, 2023, a 120-day time frame applies, and the filing date is outside of that time frame. As noted above, in the absence of evidence or testimony to the contrary it is presumed that a notice is received by an appellant on the fifth day after the date of the notice. Appellant has the burden of proving by a preponderance of the evidence the invalidity of the determination by the MassHealth agency, in this case that the agency timely mailed the September 1, 2022 notice.<sup>2</sup> The evidence submitted by MassHealth shows that the notice was mailed on September 1, 2022 to 3 different recipients on file including Appellant and the nursing facility, all at the nursing facility address. In light of this evidence, I find noncredible the testimony proffered by Appellant's representatives purporting that Appellant and/or his representatives did not receive the September 1, 2022 notice, and conclude that Appellant has not carried the burden of proof (Exhibits 4, 5). The request to appeal the September 1, 2022 notice submitted on March 30, 2023 is not timely, and is therefore DISMISSED.<sup>3</sup> With regard to the notice dated January 3, 2023, Appellant's representatives do not wish to appeal the eligibility determination, and MassHealth agreed that the determination is irrelevant because Appellant is not a community resident.<sup>4</sup> Therefore, the appeal of the January 3, 2023 notice is DISMISSED as the parties have reached resolution resolving all matters related to the January 3, 2023 notice.<sup>5</sup>

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<sup>1</sup> See Eligibility Operations Memos 22-10, August 2022, 23-11, April 2023.

<sup>2</sup> See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002) (burden is on appellant to demonstrate the invalidity of an administrative determination).

<sup>3</sup> See 130 CMR 610.035: Dismissal of a Request for a Hearing (A) BOH will dismiss a request for a hearing when (1) the request is not received within the time frame specified in 130 CMR 610.015.

<sup>4</sup> In response to the April 3, 2023 dismissal issued by the Board of Hearings, Appellant submitted to the Board of Hearings a completed request for a hearing on April 12, 2023, but did not include or reference the notice he intended to appeal (Exhibit 2B, p. 4). The Board scheduled a hearing on the January 3, 2023 notice as the appeal request submitted on March 30, 2023 was timely, i.e. filed within 120 days of the January 3, 2023 notice; however as discussed above, a request for a hearing submitted on March 30, 2023 on a September 1, 2022 notice is not timely, and would have been dismissed by the Board of Hearings.

<sup>5</sup> See 130 CMR 610.035 as it pertains to the January 3, 2023 notice only: (A)(2) the request is withdrawn by the

## 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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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

[REDACTED]

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appellant; (A)(8) BOH learns of an adjustment or action that resolves all of the issues in dispute between the parties.