

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|-----------------|-----------------------|------------|
| Appeal Decision: | Dismissed | Appeal Number: | 2303526 |
| Decision Date: | 5/31/2023 | Hearing Date: | 05/30/2023 |
| Hearing Officer: | Patricia Mullen | | |

Appearance for Appellant:



Appearance for MassHealth:

Gessica Brunot, Chelsea 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

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|---------------------------|---|--------------------------|---------------|
| Appeal Decision: | Dismissed | Issue: | Verifications |
| Decision Date: | 5/31/2023 | Hearing Date: | 05/30/2023 |
| MassHealth's Rep.: | Gessica Brunot, Chelsea MEC | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Chelsea MassHealth Enrollment Center | | |

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 March 22, 2023, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant failed to submit verifications within the regulatory time frame. (see 130 CMR 515.008; 516.001 and Exhibit 1). The appellant's Power of Attorney (POA) filed this appeal in a timely manner on May 1, 2023, and authorized an attorney to represent the appellant at the hearing. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth Standard for long term care residents.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001, in determining that the appellant failed to submit verifications within the regulatory time frame; also

at issue is whether there is a valid appeal representative pursuant to 130 CMR 610.004, and 130 CMR 610.016(B).

Summary of Evidence

MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Chelsea. The appellant was represented telephonically by an attorney authorized by the appellant's POA. On May 1, 2023, the Board of Hearings (BOH) received an appeal on behalf of the appellant from the appellant's POA. (Exhibit 2). The appellant's POA also submitted an Authorized Representative Designation Form (ARD). (Exhibit 2, p. 2). The ARD states in part, "An authorized representative can also be someone who has been appointed by law to act on your behalf, or on behalf of the estate of an applicant or member who has died." (Exhibit 2, p. 2). The ARD states further that "[t]his person must fill out Section III and either you or this person must submit to us, together with this form, a copy of the applicable legal document stating that this person has authority to represent you, or the estate of a deceased applicant or member." (Exhibit 2, p. 2). The ARD states this person is sometimes referred to as a "Section III authorized representative" and, for a deceased person, this is the personal representative of the estate. (Exhibit 2, p. 2). The appellant's POA signed the ARD and authorized the attorney to be an authorized representative. (Exhibit 2, p. 3). The appellant's POA did not completed Section III on the ARD and did not indicate that the appellant was deceased. (Exhibit 2, p. 5). A copy of the POA document was submitted with the appeal. (Exhibit 3).

The MassHealth representative stated that MassHealth learned that the appellant passed away on [REDACTED] 2023. The appellant's attorney confirmed that the appellant has passed away and did not dispute that the date of death was [REDACTED] 2023. The appellant's attorney stated that no petition for Voluntary Administrator of the estate or Personal Representative of the estate has been filed yet.

The Hearing Officer noted that no one had authority to file the appeal on May 1, 2023. The Hearing Officer stated that she would check the relevant regulations to see if this appeal could be put on hold pending the appointment of a Voluntary Administrator or Personal Representative of the estate.

Findings of Fact

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

1. On May 1, 2023, the BOH received an appeal on behalf of the appellant from the appellant's POA.
2. With the appeal request, the appellant's POA submitted an ARD and a copy of the POA

document.

3. The ARD states in part, “An authorized representative can also be someone who has been appointed by law to act on your behalf, or on behalf of the estate of an applicant or member who has died.”; “[t]his person must fill out Section III and either you or this person must submit to us, together with this form, a copy of the applicable legal document stating that this person has authority to represent you, or the estate of a deceased applicant or member.”
4. The ARD states this person is sometimes referred to as a “Section III authorized representative” and, for a deceased person, this is the personal representative of the estate.
5. The appellant’s POA signed the ARD and authorized the attorney to be an authorized representative.
6. The appellant’s POA did not completed Section III on the ARD and did not indicate that the appellant was deceased.
7. Prior to the hearing, MassHealth learned that the appellant passed away on [REDACTED] 2023.
8. As of the date of the hearing, no petition for Voluntary Administrator of the estate or Personal Representative of the estate had been filed.

Analysis and Conclusions of Law

Appeal Representative –

(1) a person or an organization who agrees to comply with applicable rules regarding confidentiality and conflicts of interest in the course of representing an applicant or member, provided such person or organization

(a) has provided the BOH with written authorization from the applicant or member to act responsibly on his or her behalf during the appeal process; or

(b) has, under applicable law, authority to act on behalf of an applicant or member at an appeal or otherwise in making decisions related to health care or payment for health care including, but not limited to, a guardian, conservator, personal representative of the estate of an applicant or member, holder of power of attorney, or an invoked health care proxy; or

(2) a person or organization who has been designated an authorized representative, as defined in 130 CMR 610.004: Authorized Representative, pursuant to a valid Authorized Representative Designation Form.

(130 CMR 610.004).

Appeal Representative

(A) An appellant has the right to be represented at his or her own expense by an appeal representative as defined in 130 CMR 610.004. If the person filing the appeal is not the appellant, all documentation required to demonstrate that the person requesting the appeal is an appeal representative in accordance with 130 CMR 610.004 must be submitted either at the time the hearing is requested or before the hearing is scheduled. The MassHealth agency must provide copies of all documents related to the fair hearing process to the appellant and to the appeal representative, if any. An appeal representative may exercise on the appellant's behalf any of the appellant's rights under 130 CMR 610.000.

(B) If a timely request for a hearing is filed but the applicant or member has died prior to the filing, BOH must be informed of the death of the applicant or member at the time of a request for a hearing by the person filing the appeal. In addition, the filing of the appeal on behalf of such a deceased individual must be accompanied by one of the following:

(1)

(a) written proof that the person filing the appeal is a personal representative of the applicant's or member's estate with a current and valid appointment from a court of proper jurisdiction; or

(b) if there is no such personal representative, then written proof of a currently pending petition, docketed in a court of proper jurisdiction, which seeks the appointment of such a personal representative. In addition, the person filing the appeal must notify BOH in writing of the status of the pending petition every 30 days and, once a personal representative with a current and valid appointment has been established, the personal representative must submit written proof of such authority and a desire to pursue the appeal to BOH, within ten days of the appointment.

(2) Failure to comply with all of the requirements in 130 CMR 610.016(B) may constitute grounds for dismissal.

(130 CMR 610.016(A), (B)).

610.035: Dismissal of a Request for a Hearing

(A) BOH will dismiss a request for a hearing when...

(10) BOH learns that the applicant or member has passed away prior to the date of filing and scheduling of the hearing and is not informed until the date of the hearing and there is no full compliance with 130 CMR 610.016(B)...

(130 CMR 610.035(A)(10)).

The appellant passed away on [REDACTED] 2023, prior to the filing of the appeal request. As of [REDACTED] 2023, the appellant's POA no longer had authority to file an appeal on behalf of the

appellant. Further, the appellant's POA was on notice as to what was required for an authorized representative of a deceased individual, as such was clearly set forth in the ARD form. The appellant's POA did not complete Section III of the ARD, as is required if an applicant is deceased. If an applicant dies prior to the filing of an appeal, such as in this case, BOH must be informed of the death at the time of the request for a hearing and, in addition, the appeal document must be accompanied by written proof that the person filing the appeal is a personal representative of the applicant's or member's estate with a current and valid appointment from a court of proper jurisdiction; or, if there is no such personal representative, then written proof of a currently pending petition, docketed in a court of proper jurisdiction, which seeks the appointment of such a personal representative. (see 130 CMR 610.016(B)).

BOH was not informed of the appellant's death until the day of hearing, and even then, was informed by the MassHealth representative, not by the appellant's POA or attorney. The regulation is clear that BOH will dismiss an appeal if BOH learns that the applicant or member has passed away prior to the date of filing and scheduling of the hearing and is not informed until the date of the hearing and there is no full compliance with 130 CMR 610.016(B). Because there was no full compliance with 130 CMR 610.016(B), the appeal is dismissed, without prejudice.¹

Order for MassHealth

None.

¹ Pursuant to Eligibility Operations Memo 22-10, August, 2022, until the end of the Federal Public Health Emergency (FPHE), individuals will have up to 120 days to request a fair hearing for concerns related to member eligibility. Pursuant to Eligibility Operations Memo 23-11, April 2023, the following policies are no longer available as of April 1, 2023...[e]xtended Timeframe to Request Fair Hearings, Members will have 60 days to request a fair hearing for concerns related to member eligibility. The appellant's notice is dated March 22, 2023, and thus the appellant's estate has 120 days from the date of notice, or until July 20, 2023, to submit an appeal with appropriate authority.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Shelly-Ann Lewis, Chelsea MassHealth Enrollment Center
[REDACTED]