

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed; Remanded	Appeal Number:	2306635
Decision Date:	9/19/2023	Hearing Date:	09/15/2023
Hearing Officer:	Thomas J. Goode	Record Open to:	09/15/2023

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Lindsey Carney, Tewksbury 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; Remanded	Issue:	Eligibility; Over 65
Decision Date:	9/19/2023	Hearing Date:	09/15/2023
MassHealth's Rep.:	Lindsey Carney	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	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 July 21, 2023, MassHealth denied Appellant's MassHealth application because it determined Appellant is not disabled and does not meet MassHealth eligibility criteria (130 CMR 519.000 et seq. and Exhibit 1). Appellant filed this appeal in a timely manner on August 4, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Issue

The appeal issue is whether MassHealth correctly denied Appellant's MassHealth application pursuant to 130 CMR 519.000 because it determined he is not disabled.

Summary of Evidence

The MassHealth representative testified that Appellant is over 65 years of age and lives in the community. Appellant submitted a renewal application in May 2023. The application was denied because MassHealth determined that Appellant is not disabled and does not meet MassHealth eligibility criteria. During a record-open period, MassHealth researched Appellant's prior eligibility and determined that he was found disabled by Social Security with a disability onset date of May

11, 2018. Prior to the renewal application, Appellant was receiving Standard coverage because he was disabled and had income below 133% of the federal poverty level. Appellant remained on MassHealth Standard coverage during the Public Health Emergency. In April 2023, MassHealth mailed Appellant a Senior Renewal Application which allowed him 90 days to return it to MassHealth. The renewal was returned on May 31, 2023. On July 19, 2023, MassHealth closed Appellant's case and terminated coverage effective August 2, 2023. MassHealth did not issue a termination notice because a Senior Application was pending a decision. On July 21, 2023, MassHealth issued a determination of eligibility which informed Appellant he was not eligible for MassHealth because he is not disabled (Exhibit 1). MassHealth testified that Appellant is a household of 1 person, with income totaling \$1,776 consisting of \$1,638 Social Security income and \$138.09 other income. Because income exceeds 100% of the federal poverty level, \$1,215, Appellant is not eligible for Standard coverage, and must show that he is employed 40 hours per month to establish eligibility for CommonHealth. MassHealth also determined that Appellant is eligible for MassHealth Senior Buy-In and issued a new notice on September 15, 2023 with appeal rights. MassHealth reopened Appellant's MassHealth Standard coverage effective August 2, 2023 to allow him time to consider eligibility options for CommonHealth.¹

Appellant testified that he was not informed that his MassHealth coverage would terminate on August 2, 2023 and was told his coverage would continue pending the appeal. Appellant stated that he has been disabled by Social Security since 2018, and MassHealth should recognize that he remains disabled. When he turned 65, he stopped receiving disability income and began receiving retirement income. However, he remains disabled. Appellant testified that he no longer receives \$138.09 income per month in addition to the \$1,638 Social Security income. Appellant testified that he is not able to be employed for CommonHealth purposes.

Findings of Fact

1. Appellant is over 65 years of age and lives in the community.
2. Appellant submitted a renewal application in May 2023. The application was denied because MassHealth determined that Appellant is not disabled and does not meet MassHealth eligibility criteria.
3. Appellant was found disabled by Social Security with a disability onset date of May 11, 2018.
4. Prior to turning 65 years of age, Appellant was receiving Standard coverage because he was disabled and had income below 133% of the federal poverty level.
5. Appellant remained on MassHealth Standard coverage during the Public Health Emergency.
6. In April 2023, MassHealth mailed Appellant a Senior Renewal Application which was

¹ See Exhibit 4.

returned on May 31, 2023.

7. On July 19, 2023, MassHealth terminated coverage effective August 2, 2023. MassHealth did not issue a termination notice.
8. On July 21, 2023, MassHealth issued a determination of eligibility which informed Appellant he is not eligible for MassHealth because he is not disabled.

Analysis and Conclusions of Law

Pursuant to 130 CMR 610.051(B) the MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. If the adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. By notice dated July 21, 2023, MassHealth informed Appellant that he is not eligible for MassHealth because he is not disabled (Exhibit 1). During a hearing record-open period, MassHealth researched Appellant's MassHealth history and recognized that he was found disabled by Social Security with an onset date of May 11, 2018. As such, the parties have reached resolution in Appellant's favor as to all matters relating to the July 21, 2023 notice. Therefore, pursuant to 130 CMR 610.051, 610.035(A)(8), the appeal is DISMISSED.

However, MassHealth terminated coverage on July 19, 2023 (effective August 2, 2023) without issuing written notice to Appellant. Before an intended appealable action such as the termination of benefits² the MassHealth agency must send a written timely notice to the member at least ten days before the action, and must include a statement of the right of appeal and the time limit for appealing except as described at 130 CMR 610.027 (130 CMR 610.015).³ The failure to send written notice prevented Appellant from timely appealing the termination of benefits preceding the July 19, 2023 denial and the possibility of receiving aid pending the outcome of an appeal (130 CMR 610.036). As MassHealth recognizes that Appellant is disabled, MassHealth must issue a timely appealable notice informing him of his MassHealth eligibility as a disabled community resident over 65 years of age (130 CMR 610.015). Because MassHealth has not yet made that determination by written notice, issues relating to Appellant's household size, income and employment status for CommonHealth eligibility purposes are not addressed here; and the matter is REMANDED to MassHealth in accordance with the order below.

² See 130 CMR 610.032(A)(3): Applicants and members have a right to request a fair hearing for any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance.

³ Timely notice exceptions described at 130 CMR 610.027 do not apply to the facts at hand; and even if circumstances described in 130 CMR 610.027 did apply, MassHealth would be required to send adequate notice as described at 130 CMR 610.026.

Order for MassHealth

Rescind the July 21, 2023 notice. Reopen MassHealth Standard coverage effective August 2, 2023. Determine Appellant's MassHealth eligibility as a disabled community resident over 65 years of age. Issue a timely appealable notice of eligibility. If MassHealth coverage is to be terminated, issue a timely appealable notice at least ten days prior to the coverage termination date.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957