

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2307078
<b>Decision Date:</b>	3/7/2024	<b>Hearing Date:</b>	09/29/2023
<b>Hearing Officer:</b>	Radha Tilva	<b>Record Open to:</b>	01/17/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Andrea Pelczar (Tewksbury MEC Rep. o.b.o.  
Kim McAvinchey)



*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>	Denied	<b>Issue:</b>	Eligibility – LTC - verifications
<b>Decision Date:</b>	3/7/2024	<b>Hearing Date:</b>	09/29/2023
<b>MassHealth's Rep.:</b>	Kim McAvinchey	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center	<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 July 28, 2023, MassHealth denied the appellant's application for MassHealth long-term care benefits for failure to provide MassHealth the information it needs to decide eligibility within the required time frame (Exhibit 1). The appellant filed this appeal in a timely manner on August 15, 2023 (see 130 CMR 610.015(B) and Exhibit 1). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

A hearing was initially scheduled for September 20, 2023 (Exhibit 2). Appellant's counsel requested that the matter be rescheduled (Exhibit 3). The reschedule request was granted and a hearing occurred on September 29, 2023. At hearing the record was left open for appellant to submit the missing verifications. The record open was extended and finally closed on January 17, 2024.

### Action Taken by MassHealth

MassHealth denied appellant's application for long-term care benefits for failure to verify.

## Issue

The appeal issue is whether MassHealth was correct in determining that appellant is ineligible for MassHealth long-term care benefits for failure to verify.

## Summary of Evidence

MassHealth was represented by a case worker who appeared by telephone. The MassHealth case worker testified to the following: MassHealth received an application for long-term care services on October 14, 2022. The appellant was admitted on [REDACTED] and the nursing facility requested a start date of November 19, 2022. On October 28, 2022, MassHealth sent a request for information to the appellant which was denied on December 16, 2022. The applicant clarified that it was requesting a Home and Community Based Waiver, not long-term care benefits. The case was then restamped in January 2023. On March 13, 2023, the applicant again requested long-term care coverage. A second request for information was sent by MassHealth on March 15, 2023 seeking a November 19, 2022 start date. MassHealth issued a final denial on July 28, 2023, which is the notice under appeal. The MassHealth representative stated that the denial is based on an October 14, 2022 application date (Exhibit 5).

In MassHealth's appeal worksheet, MassHealth outlined a total of 13 outstanding verifications which she mentioned were emailed to the appellant's representative on August 4, 2023 (see Exhibit 5). The MassHealth representative further testified that the appellant was asked via the same email to explain and clarify a number of transactions for account [REDACTED], as outlined in the appeal worksheet (*Id.*).

The appellant was represented by an attorney who testified that he had the majority of the information and that he was in contact with the applicant's daughter who was taking time to find the information. The attorney requested a record open period which was granted until October 23, 2023. MassHealth was given a month to review the submissions, until November 30, 2023, as the originally assigned MassHealth case worker was not scheduled to come back to work until then. The appellant requested an extension of time in his submission to MassHealth which was granted by the hearing officer and the extension was provided until January 2, 2024. MassHealth would then have until January 16, 2024 to review.

On November 24, 2023, the appellant's counsel submitted some verifications to the MassHealth representative and the Board of Hearings (Exhibit 6). The attorney asked for an extension of time for some of the verifications, specifically for account [REDACTED], as appellant's spouse was extremely ill and her daughter was consumed with the care of her mother (Exhibit 6, p. 4). The MassHealth representative reviewed the verifications submitted and stated on December 1, 2023 that, if the record were to remain open, there were additional verifications that needed to be accounted for

including full statements from September 1, 2021 through present for account [REDACTED], proof of ownership, policy number, face and cash surrender value, amount received and how funds disbursed for [REDACTED] and [REDACTED] insurance policies, explanation and proof of all source of deposits and withdrawals for accounts [REDACTED] and [REDACTED] (see Exhibit 7 for specific deposits listed), copy of irrevocable pre-need burial contract for each spouse along with statement of goods and services, proof for all financial and closed accounts including verification of all outside funds deposited into accounts for account [REDACTED], proof of closing date, amount of closing withdrawal and how funds were disbursed for [REDACTED] account, verification of \$3,350 deposit explained as tax return, and verification needed of corresponding withdrawals to corroborate deposits explained as appellant and spouse's social security checks (Exhibit 7).

The hearing record was left open until January 2, 2024 for the appellant to submit the remaining verifications and until January 16, 2024 for the MassHealth representative to review. On January 2, 2024, the appellant's counsel submitted verifications in response to MassHealth's December 1, 2023 correspondence which listed the missing verifications (Exhibit 8).<sup>1</sup> The MassHealth representative reviewed those submissions and requested that the hearing officer move to decision as the appellant had not provided all verifications and had provided conflicting/changing explanations for required verifications, has submitted documents not relevant to requested verifications, has stated some verifications cannot be provided, and has disclosed unknown assets throughout the process (Exhibit 9, p. 3). In addition, the MassHealth representative stated, specifically, that the following verifications remained outstanding: for account [REDACTED] various deposits not verified properly. For example, for the deposit on April 10, 2020 in the amount of \$3,350.00 appellant previously stated it was a tax refund, but is now stating it is a cash deposit, but no copy of the check was provided to verify the source of the deposit. For the deposit of \$1,900 on March 30, 2020, the appellant explains it is a Social Security income deposit and provides a Social Security benefit letter form September 2022, but the MassHealth representative finds that a letter from 2022 does not verify a 2020 deposit. The Social Security letter provided by appellant from September 2022 also indicates that the community spouse's Social Security benefit is not \$1,900, but rather \$1,474.30 (Exhibit 8, p. 54). The MassHealth representative iterates in her response that banks can provide copies of checks deposited. For the account ending in [REDACTED], the MassHealth representative explained that appellant wrote that a \$84,006.04 deposit on July 26, 2019 was partly a transfer from an [REDACTED] account and the other part was a deposit from the community spouse's 401K which rolled over into her IRA. These, however, are unknown and undisclosed accounts with no verifications provided. For, the account ending in [REDACTED] MassHealth requested proof of all source of all deposits which were not provided (Exhibit 9, p. 3).

On February 7, 2024, the hearing officer asked the appellant if they had submitted a response to MassHealth's review of their submission (Exhibit 9). The attorney stated that he believed that they had not submitted a response (Exhibit 9). On March 1, 2024, the appellant's attorney stated that he would check with his office and submit anything they had within 24 hours (Exhibit 10).

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<sup>1</sup> Appellant's submission was not page numbered.

## Findings of Fact

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

1. The appellant was admitted to the nursing facility on [REDACTED] and MassHealth received an application for long-term care benefits on October 14, 2022.
2. The requested start date for coverage was November 19, 2022.
3. On October 28, 2022, MassHealth sent a request for information to the appellant which was denied on December 16, 2022.
4. On March 13, 2023, the applicant again requested long-term care coverage.
5. A second request for information was sent by MassHealth on March 15, 2023 seeking a November 19, 2022 start date.
6. MassHealth issued a final denial on July 28, 2023, which is the notice under appeal.
7. MassHealth honored the October 14, 2022 application date for the denial under appeal.
8. As of the hearing date MassHealth outlined a total of 13 outstanding verifications.
9. The appellant was represented by an attorney who requested that the record remain open as though he had most of the information the applicant's daughter was assisting with getting the rest and it was taking time to get the information.
10. The record remained open until October 23, 2023 for appellant to submit the verifications and until November 30, 2023 for MassHealth to review.
11. The appellant submitted some documents on November 23, 2023 and asked for an extension of more time to obtain the remaining as the appellant's spouse was extremely ill.
12. The MassHealth representative reviewed the documents on December 1, 2023 and requested additional verifications including full statements from September 1, 2021 through present for account [REDACTED], proof of ownership, policy number, face and cash surrender value of the life insurance policies, explanation and proof of all source of deposits and withdrawals for accounts [REDACTED] and [REDACTED] (see Exhibit 7 for specific deposits listed), copy of irrevocable pre-need burial contract for each spouse along with statement of goods and services, proof for all financial and closed accounts including verification of all outside funds deposited into

accounts for account [REDACTED], proof of closing date, amount of closing withdrawal and how funds were disbursed for [REDACTED] account, verification of \$3,350 deposit explained as tax return, and verification needed of corresponding withdrawals to corroborate deposits explained as appellant and spouse's social security checks.

13. The record was extended again until January 2, 2024 for the appellant to submit the aforementioned verifications and until January 16, 2024 for MassHealth to review.
14. The appellant's counsel submitted some of the verifications on January 2, 2024 which were reviewed by MassHealth.
15. MassHealth determined that there were still verifications missing including, but not limited to, various deposits not properly verified for account [REDACTED], for account [REDACTED] all source of deposits, for account [REDACTED] full verification of \$84,006.04 deposit including all information from the undisclosed [REDACTED] account.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by G.L. c. 118E, and certain Medicare beneficiaries (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case (130 CMR 515.002).

Pursuant to 130 CMR 515.008, applicants or members must cooperate with MassHealth in providing information to establish and maintain eligibility and must comply with all of the rules and regulations governing MassHealth, including recovery. MassHealth may request additional information and documentation, if necessary, to determine eligibility (130 CMR 516.001).

To obtain the necessary information and documentation, MassHealth sends the applicant written notification requesting verifications to corroborate information necessary to determine eligibility, generally within five days of the receipt of the application (130 CMR 516.001(B)). The notice advises the applicant that the requested verifications must be received within 30 days of the date of the request, and of the consequences of failure to provide the information (130 CMR 516.001(B)). Under the regulations, if the requested information, with the exceptions of verification of immigration status, is not provided within 30 days of the date of the request, MassHealth benefits may be denied (130 CMR 516.001(C)). In March 2023, to align timelines for Modified Adjusted Gross Income (MAGI) and non-MAGI populations, MassHealth extended the number of days for non-MAGI members and applicants to send MassHealth verifications

and information necessary for an eligibility determination from 30 days to 90 days (Eligibility Operations Memo 23-09).

In this case, the appellant was provided with the appropriate 90 days to provide the information necessary for eligibility determination. As of the date of the notice on appeal, the appellant had not provided that information. The appellant's representative did not dispute the fact that the appellant received proper notices requesting information (130 CMR 516.001).

The record was held open at hearing to give the appellant the opportunity to provide information necessary to determine eligibility. The appellant submitted documentation on November 24, 2023 and asked for an extension to obtain some more of the missing information. On December 1, 2023, the MassHealth representative reviewed the documentation and provided an update list of remaining verifications. The record open extension was granted by the hearing officer until January 2, 2024 for appellant to submit the remaining verifications and until January 16, 2024 for MassHealth to review. Appellant submitted documentation on January 2, 2024 which was reviewed by the MassHealth representative. The MassHealth representative's correspondence on January 17, 2024 represented a thorough review of the documents the appellant had submitted and MassHealth ultimately determined that it still did not receive all the information necessary to determine eligibility as there were many unexplained deposits and accounts.

Upon review of the appellant's correspondence and submissions, MassHealth acted within its discretion to deny the appellant's application for long-term care coverage (130 CMR 516.001(C)). The appellant's counsel has failed to demonstrate by a preponderance of the evidence that it has satisfied MassHealth's inquiries. The decision made by MassHealth was correct and this 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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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]