

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed	<b>Appeal Number:</b>	2307379
<b>Decision Date:</b>	11/6/2023	<b>Hearing Date:</b>	9/27/2023
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	N/A

**Appearance for Appellant:**



**Appearance for MassHealth:**

Jennifer Carroll

**Interpreter:**

N/A



*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>	Timeliness of Appeal, Coverage Date - Retroactive
<b>Decision Date:</b>	11/6/2023	<b>Hearing Date:</b>	9/27/2023
<b>MassHealth's Rep.:</b>	Jennifer Carroll	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Remote (Tel)	<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 June 15, 2023, MassHealth approved the Appellant's application for MassHealth Standard benefits to cover Long-Term-Care Services in a Nursing Facility with a coverage date beginning November 1, 2022 (see 130 CMR 456 and Exhibit 1). The Appellant did not file this Appeal in a timely manner, having filed the Appeal on August 23, 2023<sup>1</sup>. (see 130 CMR 610.015(B) and Exhibit 2). Imposition of a coverage date is a MassHealth action and is valid grounds for appeal (see 130 CMR 610.032(3)).

### Action Taken by MassHealth

MassHealth approved the Appellant for MassHealth Standard benefits to cover Long-Term-Care Services in a Nursing Facility, with coverage beginning on November 1, 2022.

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<sup>1</sup> There are 64 days between the June 15, 2023 notice and the Request for Fair Hearing, dated August 18, 2023. (See Exhibit 1, Exhibit 2, pg. 1) Additionally, there are 69 days between the June 15, 2023 Notice and the fax coversheet for the Request for Fair Hearing dated August 23, 2023. (See Exhibit 1, Exhibit 2, pg. 2) Therefore, the request for hearing is untimely pursuant to 130 CMR 610.015. However, because the efficacy date of MassHealth coverage is a regularly recurring, appealable action by MassHealth, this decision will address the merits of the appeal as well to ensure a complete resolution of the issues.

## Issue

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

## Summary of Evidence

The Appellant, through the Appeal Representative, sought review of the MassHealth approval of MassHealth Standard benefits for Long-Term-Care Services in a Nursing Facility beginning on November 1, 2022. (Testimony, Exhibit 5, pg.2) MassHealth testified that in September of 2022, MassHealth sent the Appellant a Long-Term-Care Conversion Information Request. (Testimony, Exhibit 5, pg. 4). However, the Long-Term-Care Services Application was not received by MassHealth until February 28, 2023. (Testimony, Exhibit 4, pg. 1) Once approved, MassHealth began coverage 3 months prior to the date the Application was received based upon the MassHealth Regulations. (Testimony, Exhibit 4, pg. 1)

The Appeal Representative testified that the facility did not receive the Long-Term-Care Conversion Information Request sent by MassHealth in September. (Testimony). The Appeal Representative testified that the facility contacted MassHealth in February of 2023 when they realized the facility was not receiving payment on behalf of the Appellant. (Testimony). In response to a question, the Appeal Representative testified that the facility had not received a payment since prior to October of 2022. (Testimony). The Appeal Representative testified that they believed the issue might have been related to awaiting the receipt of a level of care screen. (Testimony) The Appeal Representative testified that the facility received the level of care screen in September. (Testimony) When asked for clarification regarding the date of the receipt of the level of care screen, the Appeal Representative verified that the level of care screen was in fact received in December of 2022. (Testimony) When asked why MassHealth wasn't contacted prior to February of 2023, the Appeal Representative testified that she was unavailable during January and part of February 2023 due to a medical leave. (Testimony) No further evidence was presented explaining the delay from inquiring about the lack of payment from October of 2022 through February of 2023.

On June 15, 2023, MassHealth approved the Appellant for MassHealth Standard benefits to cover Long-Term-Care Services in a Nursing Facility with an eligibility date of November 1, 2022. (Testimony, Exhibit 1). On August 23, 2023, the Appellant filed this Appeal<sup>2</sup>. (Exhibit 2). The Appellant is seeking to appeal the eligibility date of November 1, 2022 and seeks coverage approval to begin on October 1, 2022. (Testimony, Exhibit 5, pg. 2)

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<sup>2</sup> See Footnote 1.

## Findings of Fact

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

1. In September of 2022, MassHealth sent the Appellant a Long-Term-Care Conversion Information Request. (Testimony, Exhibit 4, pg. 1, Exhibit 5, pg. 4).
3. The Long-Term-Care Services Application was received by MassHealth on February 28, 2023. (Testimony, Exhibit 4, pg. 1)
4. On June 15, 2023, MassHealth approved the Appellant for MassHealth Standard benefits to cover Long-Term-Care Services in a Nursing Facility. (Testimony, Exhibit 1).
5. MassHealth determined that the Appellant's eligibility date is November 1, 2022. (Testimony, Exhibit 1, Exhibit 4)
6. The Appellant seeks coverage to begin October 1, 2022. (Testimony, Exhibit 5, pg. 2)
7. The Appellant's Request for Fair Hearing is dated August 18, 2023, in excess of 60 days from the date of the Approval Notice, dated June 15, 2023. (Exhibit 1, Exhibit 2, pg. 1)
8. The fax coversheet for the Request for Fair Hearing is dated August 23, 2023, in excess of 60 days from the date of the Approval Notice, dated June 15, 2023. (See Exhibit 1, Exhibit 2, pg. 2)

## Analysis and Conclusions of Law

As stated supra, this Appeal is not timely. The time standards for an Appeal may be found at 610.015(B)(1):

### 610.015: Time Limits

(B) Time Limitation on the Right of Appeal. 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;

Although the Request for Fair Hearing is dated August 18, 2023, the fax coversheet dated

August 23, 2023 indicates that the Fair Hearing Request Form was sent to the Board of Hearing on August 23, 2023, which is beyond the time allowed to file an Appeal pursuant to 130 CMR 610.015(B)(1). When an Appeal is not timely, the Appeal will be dismissed pursuant to 130 CMR 610.035 (A)(1):

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;

Therefore, this appeal is DISMISSED pursuant to 130 CMR 610.015(B)(1) and 130 CMR 610.035(A)(1).

With regards to the merits of the issue the Appellant sought to appeal (effective date of coverage), when a member applies for long-term-care services in a nursing facility, the member must first be assessed for eligibility:

519.006: Long-term-care Residents

(A) Eligibility Requirements. Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements. They must

- (1) be younger than 21 years old or 65 years of age or older, or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing-facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets when One Spouse is Institutionalized; and
- (5) not have transferred resources for less than fair market value as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

In the instant appeal, the Appellant was approved for MassHealth Standard benefits to cover Long-Term-Care Services in a nursing facility. (Testimony, Exhibit 1)

456.407: Clinical Authorization of Nursing-facility Services

(D) If the Mass Health agency determines that a member is eligible for nursing-facility services, the MassHealth agency will issue a notice that contains the effective date of coverage and the patient-paid amount. This notice is confirmation to the facility that the MassHealth agency has authorized payment of nursing-facility services for the member.

Here, the effective date of coverage was determined to begin on November 1, 2022. (Testimony, Exhibit 1). This is based upon a February 28, 2023 Application for Long-Term Conversion date, which preserved an eligibility date three months prior, to begin on the first day of the month of November. (Testimony, Exhibit 4, pg.1) The MassHealth Eligibility section, found at 130 CMR 516, expressly states when an eligibility determination may begin:

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)

In the instant appeal, the Appellant's eligibility has been approved, retroactive, to the first date of the third calendar month (November 1, 2022) before the month of application (February, 2023). The Appellant seeks a retroactive application of MassHealth Standard beyond the third calendar month before the month of application. However, the Financial Eligibility section of the Regulations, 130 CMR 520, explains the requirements and limitation of eligibility:

520.001: Introduction to General Financial Requirements

(A) 130 CMR 520.000 describes the rules governing financial eligibility for MassHealth. 130 CMR 520.000 is based on financial responsibility, countable income, and countable assets.

(B) The methods for the calculation of the countable-income amount, the deductible, and the income standards used in the determination of eligibility are

also explained in 130 CMR 520.000.

Moreover, the Asset Reduction section of the Financial Eligibility section, explicitly limits the retroactive application of an eligibility date:

520.004: Asset Reduction

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

- 1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.
- 2) ***In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application,*** if permitted by the coverage type. (Emphasis added)

Although MassHealth Standard benefits for Long-Term-Care Services in a Nursing Facility may be retroactive to the first day of the third calendar month before the month of application, as they were here, “in no event will the first day of eligibility be earlier than the first date of the third month before the date of application.” Therefore, had the merits of this Appeal been reached, this Appeal would have been denied. However, this appeal is not timely, and therefore, this appeal is DISMISSED pursuant to 130 CMR 610.015(B)(1) and 130 CMR 610.035(A)(1).

## 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.

## 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.

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Patrick Grogan  
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