

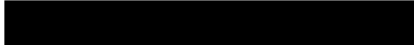
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2308722
Decision Date:	11/21/2023	Hearing Date:	10/27/2023
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

Lauren Silva, Quincy (Over 65 Community unit)



*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	Issue:	Over 65; long-term care v. community applications; appeal timeliness
Decision Date:	11/21/2023	Hearing Date:	10/27/2023
MassHealth's Rep.:	Lauren Silva	Appellant's Rep.:	Guardian
Hearing Location:	Quincy (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

By notice dated July 17, 2023, MassHealth denied Appellant's March 23, 2023 application for long-term care benefits because Appellant had not submitted requested information. Exhibit 4 at 2. By notice dated July 28, 2023, MassHealth terminated Appellant's community benefits effective August 11, 2023 because Appellant failed to submit the annual eligibility renewal. Exhibit 1. Appellant filed this appeal on September 22, 2023. Exhibit 2. Denial of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's long-term care application and terminated Appellant's community benefits effective August 11, 2023.

Issue

The appeal issue is whether Board of Hearings received a timely appeal of the July 17, 2023 notice.

Summary of Evidence

A representative from MassHealth's over 65 community eligibility department appeared by phone and testified as follows. Appellant is over the age of 65 and has had multiple applications submitted on her behalf. There is confusion on MassHealth's part whether Appellant resides in the community or is institutionalized in a long-term care facility. At one point, Appellant was approved for short-term benefits but needed to submit a conversion application to continue her benefits as an institutionalized person. MassHealth had not received timely applications and cannot preserve any application date.

Appellant's guardian appeared by phone and testified as follows. Appellant's guardian confirmed that Appellant has resided in a long-term care facility for years and requires long-term care coverage. Appellant's guardian appealed in order to preserve the March 23, 2023 application date. Appellant did not understand why the fair hearing was scheduled on the July 28, 2023 community notice, when she intended to appeal the July 17, 2023 long-term care denial. The missing verification listed on the July 17, 2023 notice was "verification applied for social security." Exhibit 4 at 2.

Appellant's guardian testified that she did not send the appealed notice as part of her request for hearing because that is not her practice. Appellant was not informed by the Board of Hearings (BOH) that the appeal was on the community denial. Had Appellant's guardian known in September that her appeal was not timely, she could have submitted a new long-term care application in September and preserved an additional month of coverage. Appellant's guardian testified that an employee of BOH contacted her to confirm that the appeal was withdrawn, and she corrected this employee and told him that it was not.

The July 17, 2023 letter notifies Appellant that she can appeal the denial or submit the needed information within 30 days of the date of the notice to secure a reapplication date. *Id.* The request for hearing submitted by Appellant instructs appellants how to appeal as follows:

How to Appeal: You can fill out this hearing request form and send it with a copy of the notice you are appealing to the **Board of Hearings, Office of Medicaid, 100 Hancock Street, 6th floor, Quincy, MA 02171** or you can fax or efax these materials to **(617) 887-8797**. You can also call **(800) 841-2900** to fill out your request for a hearing form by telephone. If you have a question about your hearing, call **(617) 847-1200** or **(800) 655-0338**.

Exhibit 2 (underline added). The appeal form states that BOH must receive the appeal within 30 days from the date you received the notice of MassHealth's action.¹ *Id.* On the fair hearing request form, Appellant's guardian wrote as the reason for appealing "application for SS." *Id.* Appellant's

¹ The form is outdated, as the new regulatory deadline is 60 days, as provided *infra*.

guardian testified that she received the July 17, 2023 notice on July 19, 2023. Exhibit 4 at 2. Appellant submitted the proof of social security application to BOH as part of the appeal packet on October 26, 2023. Exhibit 4.

Findings of Fact

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

1. Appellant is over 65 and currently resides in a long-term care facility.
2. On July 17, 2023, MassHealth denied Appellant's March 23, 2023 application for long-term care benefits because Appellant had not submitted requested information, specifically verification that Appellant had applied for social security. Exhibit 4 at 2.
3. On July 28, 2023, MassHealth terminated Appellant's community benefits effective August 11, 2023 because Appellant failed to submit the annual eligibility renewal. Exhibit 1.
4. Appellant's guardian submitted a request for fair hearing on September 22, 2023. Exhibit 2.
5. Appellant's guardian did not submit a copy of the July 17, 2023 notice with the fair hearing request. *Id.*
6. On the fair hearing request form, Appellant's guardian wrote as the reason for appealing "application for SS." *Id.*
7. Appellant's guardian testified that she received the July 17, 2023 notice on July 19, 2023. Exhibit 4 at 2.
8. Appellant submitted the proof of social security application to the Board of Hearings as part of the appeal packet on October 26, 2023. Exhibit 4.

Analysis and Conclusions of Law

The Board of Hearings must receive a request for a fair hearing within certain time frames per regulation 130 CMR 610.015(B), set forth in pertinent part:

(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;
- (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.

See also 130 CMR 610.034 (“The request for a fair hearing must be received by BOH within the time limits set forth in 130 CMR 610.015.”). If the Board of Hearings does not receive the appeal within the regulatory time limits, it will dismiss the request for hearing. 130 CMR 610.035(A)(1).

Appellant’s guardian requested a fair hearing on September 22, 2023. Appellant’s guardian testified that she intended to appeal the July 17, 2023 notice denying long-term care, which she received on July 19, 2023. The deadline for Appellant to appeal the July 17, 2023 notice received on July 19, 2023 would have been Monday, September 18, 2023.² Appellant’s guardian did not submit a copy of the notice appealed with the fair hearing request and the reason listed for hearing was vague. Had the July 17, 2023 notice been included with the fair hearing request, BOH would have administratively dismissed the appeal in September pursuant to 130 CMR 610.035(A)(1).

As the appeal was not timely to challenge the July 17, 2023 notice, this appeal is dismissed pursuant to 130 CMR 610.035(A)(1).

² The 60 day deadline from July 19, 2023 actually falls on Sunday, September 17, 2023. Without Appellant’s guardian’s testimony that the notice was received July 19, 2023, the presumptive date of receipt of the notice per 130 CMR 610.015(B)(1) would have been July 22, 2023 and the 60 deadline for appealing would have been September 20, 2023. The appeal was not timely to meet either deadline.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171