

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2309186
Decision Date:	1/4/2024	Hearing Date:	11/02/2023
Hearing Officer:	Susan Burgess-Cox	Record Open to:	11/17/2023

Appearance for Appellant:



Appearance for MassHealth:

Kelly Souza



*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:	Approved	Issue:	Eligibility
Decision Date:	1/4/2024	Hearing Date:	11/02/2023
MassHealth's Rep.:	Kelly Souza	Appellant's Rep.:	[REDACTED]
Hearing Location:	All Parties Appeared by Telephone	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 August 8, 2023, MassHealth denied the appellant's application for long-term care benefits for failure to provide information necessary to determine eligibility within the required time frame. (130 CMR 516.008; Exhibit 1). The appellant filed an appeal in a timely manner on October 3, 2023. (130 CMR 610.015(B); Exhibit 2). A hearing was held on November 2, 2023. At the request of the parties, the record was held open until November 17, 2023. (Exhibit 3; Exhibit 5).

Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits for failure to provide information necessary to determine eligibility within the required time frame.

Issue

Whether MassHealth was correct in denying the appellant's application for failure to provide information necessary to determine eligibility within the required time frame.

Summary of Evidence

All parties appeared by telephone. MassHealth received an application for long-term care and sent out requests for additional information on March 13, 2023 and April 1, 2023. (Testimony; Exhibit 6; Exhibit 11). The request sent in April 2023 asked for information on or before July 11, 2023. (Testimony; Exhibit 6). As the appellant provided information about a pooled trust and the agency did not have a disability determination on file, MassHealth sent the appellant a disability supplement to complete and submit to the agency's Disability Evaluation Services Unit (DES). (Testimony; Exhibit 6). The notice on appeal states that the agency could not make an eligibility decision as they still required verification of unearned income, a copy of a pooled trust and a disability supplement. The MassHealth representative at hearing acknowledged that the agency received everything, including the disability supplement. However, the MassHealth representative testified that she could not make an eligibility determination without a disability determination by DES.

Prior to the hearing, the MassHealth representative submitted MassHealth Disability Determination Tracking Forms from August 2023 and October 2023. Both forms indicate that the DES has not received all of the information necessary to make a determination.¹ (Exhibit 4). The MassHealth representative at hearing did not have any records of requests for information sent by DES identifying the missing information. The request for information sent by the agency in April 2023 simply notes that a supplement is being sent to the appellant asking the appellant to complete the form and mail it to DES.

Counsel for the appellant acknowledged the fact that a disability determination has not been made by DES. Counsel for the appellant argued that the decision is pending with the agency and the appellant has complied with all requests for information sent by the MassHealth Enrollment Center which is the subject of the notice on appeal. The appellant has not received a notice from DES indicating that the supplement was incomplete. Counsel noted that his office has been told that the supplement is being processed. Counsel for the appellant stated that he could provide evidence of all of the correspondence and compliance with requests for information sent by DES through telephone calls and electronic mail messages. Counsel stated that the appellant did not receive any notices from DES regarding failure to provide specific information to determine her disability status.

The record was held open to provide the parties with the opportunity to submit additional evidence regarding the matter at issue as both parties provided testimony regarding the actions of each but no documentation other than tracking forms from DES. (Exhibit 5).

Counsel for the appellant provided records that were sent to the MassHealth Enrollment Center in July 2023 including: a cover letter listing attachments; a disability supplement; authorization to

¹ This appears to be an internal agency form with sections to be completed by the MassHealth worker and DES. (Exhibit 4). The form also has a section to include information about an eligibility representative and that part of the form is blank. (Exhibit 4).

release protected information; a check in the amount of \$105,848; a joinder agreement; an intake application for the organization that will serve as the managing trustee; a copy of a pooled trust; and a trust statement showing a balance of \$276,847.59. (Exhibit 6). The July 7, 2023 cover letter states that counsel sent a disability supplement and authorization to release protected health information to DES prior to the date of the letter. (Exhibit 6). On September 22, 2023, counsel for the appellant sent DES a copy of the disability supplement, authorization to release information and an agency permission to share form. (Exhibit 7). On October 24, 2023, counsel for the appellant sent DES a disability supplement form, authorization to release information and an agency permission to share form. (Exhibit 8). On November 1, 2023, counsel for the appellant send DES authorization to release protected health information with the names of specific providers for the appellant. (Exhibit 9). In each submission, the appellant authorizes the agency to speak to the same providers. (Exhibits 6-9). Neither the MassHealth representative at hearing nor the counsel for the appellant had a copy of any notice from DES requesting further information. Counsel for the appellant provided the MassHealth representative at hearing the name of the individual who they had been in contact with at DES.

During the record open period, the MassHealth representative provided copies of the requests for information discussed above. As noted above, each notice included a statement about sending the appellant a disability supplement. None of the notices indicate that the supplement was incomplete or specifically state that a supplement was not received by the agency. The MassHealth representative stated that DES is “a unit of the University of Massachusetts Medical School, of which we do not have direct access to documentation or records in their possession”. The MassHealth representative stated that it “is the onus of the member to prove disability”. (Exhibit 11). The MassHealth representative cited regulations noting the criteria a trust must meet to be considered a pooled trust. The MassHealth representative stated that since their office has not received notice from DES nor any other entity that the appellant has been deemed disabled, the agency would want the trust to be considered countable and the appellant remain over assets.

In response to a review of the records presented by both parties, counsel for the appellant presented a statement and timeline. (Exhibit 12). The argument presented by counsel for the appellant states that the appeal should be approved as the appellant submitted all the verifications requested by the agency. Counsel notes that it is not within the power of the appellant to make a disability determination. Instead, parties are required to submit documents requested and then it is the obligation of the agency to make a determination within the required time frames. Counsel cites regulations that require the agency to make a determination of eligibility within 90 days from the date of receipt of the completed application, including a disability supplement for applicants who apply on the basis of a disability.²

² The citation and regulatory language included in the message from counsel for the appellant was not completely accurate. This summary provides more accurate, updated language consistent with that included in the current regulations.

Findings of Fact

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

1. MassHealth received an application for long-term care and sent out requests for additional information on March 13, 2023 and April 1, 2023.
2. The request sent in April 2023 asked for information on or before July 11, 2023.
3. The requests for information issued in March 2023 and April 2023 indicate that the agency was sending the appellant a disability supplement for the appellant to complete and submit to the agency's Disability Evaluation Services unit (DES).
4. The appellant filed and submitted a disability supplement with the names of at least three providers, authorization to release protected health information and a permission to share form to the MassHealth Disability Evaluation Services: before July 7, 2023, on September 22, 2023, on October 24, 2023 and on November 1, 2023.
5. On August 8, 2023, MassHealth issued a notice determining the appellant ineligible for coverage as MassHealth did not have the information necessary to determine eligibility.
6. The August 8, 2023 notice states that the appellant did not provide verification of unearned income and a pooled trust.
7. The August 8, 2023 notice states that a disability supplement is being mailed to the appellant to complete and mail to DES.
8. At hearing, MassHealth acknowledged receipt of all information necessary to determine eligibility except for a disability determination from DES.
9. As of November 2, 2023, the agency had not made a disability determination.

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 M.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 requires verification of eligibility factors including income, assets, residency, citizenship, immigration status, and identity as described in 130 CMR 517.000: MassHealth: Universal Eligibility Requirements, 130 CMR 518.000: MassHealth: Citizenship and Immigration, and 130 CMR 520.000: MassHealth: Financial Eligibility. (130 CMR 516.003).

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). This change became effective as of April 1, 2023. (Eligibility Operations Memo 23-09).

In this case, the appellant was provided with the appropriate 90 days to provide the information necessary for an eligibility determination. As of the date of the notice on appeal, the appellant had not provided that information. However, during the appeal process, the appellant provided the information requested by the agency. The regulations governing the fair hearing process state that the effective date of any adjustments to a member's eligibility is the date on which all eligibility conditions are met, regardless of when the supporting evidence was submitted. (130 CMR 610.071(A)(2)). As the appellant presented supporting evidence regarding the submission of documents necessary to determine eligibility during the course of the appeal, MassHealth shall continue to process the application as if the information was received within the time period listed on the original request and continue to process the application honoring the original date. (130 CMR 516.001).

While the MassHealth representative referred to DES as a unit of the University of Massachusetts Medical School of which she does not have direct access to documentation or records in their possession, the unit is part of MassHealth. The regulations specifically define a Disability Determination Unit as one that consists of physicians and disability evaluators who determine permanent and total disability using criteria established by the Social Security Administration under Title XVI, and criteria established under state law. (130 CMR 515.001). This unit may be a part of a state agency or under contract with a state agency. (130 CMR 515.001).

Regardless of whether the unit is part of the agency or under contract with the agency, it's determination is part of the agency's eligibility process. The appellant has demonstrated that they submitted all of the documents listed in the request for information and notice on appeal, including a disability supplement. Therefore, this appeal is approved.

Any other eligibility decisions are beyond the scope of this appeal.

Order for MassHealth

Rescind the notice issued on August 8, 2023 and continue to process the application for long-term care honoring the original application date.

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.

Susan Burgess-Cox
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

Appellant Representative: [REDACTED]