

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2309572
<b>Decision Date:</b>	03/05/2024	<b>Hearing Date:</b>	11/07/2023
<b>Deputy Director:</b>	Paul C. Moore	<b>Record Closed:</b>	02/29/2024

**Appellant Representative:**



**MassHealth Representative:**

Victoria Ragbir, Charlestown MEC (by telephone)



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Missing verifications; Subpoena for records
<b>Decision Date:</b>	03/05/2024	<b>Hearing Date:</b>	11/7/2023
<b>MassHealth Rep.:</b>	Victoria Ragbir	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (remote)		

### 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 October 2, 2023, MassHealth notified the appellant that his MassHealth application had been denied because he failed to give MassHealth the information needed to decide his eligibility within the required time frame (Exhibit 1). On October 11, 2023, the appellant filed a request for fair hearing with the Board of Hearings (BOH) (Exhibit 2; 130 CMR 610.015(B)(1)). Denial of assistance is a valid ground for appeal to the BOH (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care coverage due to missing verifications.

### Issue

Was MassHealth was correct in denying the appellant's MassHealth application?

## Summary of Evidence

A MassHealth representative from the Charlestown MassHealth Enrollment Center (MEC) testified by telephone that appellant, who is over age 65, applied for MassHealth long-term care coverage on June 8, 2023. He has been a resident of a nursing facility since [REDACTED]. After receiving the application, MassHealth requested verification of the appellant's income and assets, but not all responsive documentation was timely received. Therefore, on October 2, 2023, MassHealth issued a denial notice to the appellant (Exh. 1). The appellant timely appealed (Exh. 2).

On the denial notice, MassHealth listed the missing documentation as follows:

Please send 1/2022 to 8/2023 bank statements [for [REDACTED] account], show where any withdrawal of \$1,000.00 or more went, verify source of deposits. Show where your Social Security is deposited.

(Exh. 1)

The appellant was represented at hearing by a regional Medicaid specialist, who testified by telephone. She stated that the appellant has cognitive deficits, but a sister has been assisting with his application. Neither the appeal representative nor the appellant's sister have a bank account number. The sister lives far away. The appeal representative stated that she contacted a boarding house where the appellant used to live, and learned that individuals there recently shredded all of the appellant's mail. No bank account was listed on the appellant's MassHealth application, and the appellant has no attorney-in-fact (Testimony).

The appeal representative testified that she sent a letter to [REDACTED] on or about November 1, 2023, asking for the appellant's bank statements. She acknowledged that the letter to the bank did not contain a bank account number, because she does not have it (Testimony).

The deputy director left the record of the appeal open, at the request of the appeal representative, for four weeks, until December 5, 2023, to produce the requested bank account statements (Exh. 5). Further, the deputy director left the record open until December 19, 2023 for MassHealth to review the bank statements and report back whether it has all needed verifications to proceed to an eligibility decision (*Id.*).

On December 1, 2023, the deputy director received the following e-mail correspondence from the appeal representative:

As of today, I have not received the bank statements that I requested for [the appellant]. [REDACTED] has not responded to my request. I respectfully request additional time so I can get in contact with [REDACTED].

(Exh. 6)

In response to this request, the deputy director extended the record-open period for the appellant to produce the missing documentation until December 19, 2023, and until January 3, 2024 for MassHealth to respond (Exh. 7).

On December 11, 2023, the deputy director received the following e-mail correspondence from the appeal representative:

I called [REDACTED] this morning and they will not send the bank statements without a court summons or a POA. [The appellant] does not have a POA. Is the Board of Hearings able to assist in requesting the bank statements?

(Exh. 8)

On the same date, the deputy director responded to the appeal representative by e-mail, asking her to clarify whether she is requesting the deputy director to issue a subpoena, and if so, to do so via written request to the deputy director pursuant to the Fair Hearing Rules (Exh. 9).

On December 13, 2023, the deputy director received the following e-mail correspondence from the appeal representative:

I did not think we were going to need to request a subpoena due to having some of his family helping and his mental status had not declined as quickly as it recently has.

(Exh. 10)

On December 13, 2023, the deputy director received a second e-mail communication from the appeal representative, stating as follows:

Unfortunately, I will have to respectfully request a subpoena and will also request an extension to hold his case open. I have exhausted all avenues (forms and letters to the bank, his family members and the appellant) and have no other recourse. [REDACTED] is notoriously difficult and this is my first case in over 20 years that I have had to do this, so forgive my ignorance regarding the procedure for this situation.

(Exh. 11)

On December 14, 2023, the deputy director received from the appeal representative a letter requesting that a subpoena for bank account statements be issued to [REDACTED] by the deputy director (Exh. 12). However, the subpoena request did not contain a corporate mailing address for the bank. The deputy director requested that the appeal representative supply such an address to assist him in preparing the subpoena, and the appeal representative did so.

On December 18, 2023, the deputy director issued the requested *subpoena duces tecum* to the appeal representative to be served on [REDACTED], commanding production of the relevant bank statements to himself and to the appeal representative by no later than 9 am on January 29, 2024 (Exh. 13).<sup>1</sup> A hard copy of the subpoena was sent to the appeal representative via first class mail, with instructions that the appeal representative must arrange for service of the subpoena, and advising that a return of service should be mailed to the deputy director at the address of the BOH (Exh. 13A).

On January 24, 2024, the deputy director received correspondence from [REDACTED] dated January 22, 2024, stating in relevant part:

We're unable to respond to the subpoena we received dated December 18, 2024 (*sic*). Requests for bank records need to be properly issued and served by subpoena, or a similar legal process, in a manner that complies with applicable state law.

(Exh. 14)

On January 24, 2024, the deputy director advised the appeal representative by e-mail that, as set forth in the subpoena itself, she would need to go to court to have the subpoena enforced (Exh. 15).<sup>2</sup>

On January 25, 2024, the deputy director received the following e-mail from the appeal representative:

I would like to ask if you would ask the BOH to keep [the appellant's] record open so that we can pursue conservatorship. I realize you stated you would not give me another extension. I am trying to do the right thing for the [appellant]. This case, unfortunately, did not go as planned due to his rapid health decline and his bank's unwillingness to provide us with his documentation.

(Exh. 17)

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<sup>1</sup> Under the Fair Hearing Rules, 130 CMR 610.052(B), a hearing officer has three business days to issue a subpoena in response to a written request from a party.

<sup>2</sup> The deputy director did not receive an executed copy of the return of service; however, the appeal representative sent a copy of a document to the hearing officer by email, *to wit*, a copy of an affidavit of service from an individual in [REDACTED] stating that she served the subpoena on an individual in the employ of [REDACTED] on January 12, 2024 at 12:21 pm (Exh. 16).

The deputy director responded by e-mail to the appeal representative, and to the MassHealth representative, on January 25, 2024, as follows:

I heard this appeal in early November, 2023. The appellant entered the nursing facility in April, 2023, and filed a MassHealth application in June, 2023.

Conservatorship or guardianship could have (should have) been pursued prior to the eve of when the record in this case is about to close.

However, I will grant the appellant until February 29, 2024 to get the [REDACTED] bank statements to me and MassHealth. You will need to get the court to enforce the subpoena I issued well before that time, as I will not extend the deadline to receive the documents beyond February 29.

If I receive the documents by February 29, MassHealth may then have until March 14, 2024 to let me and the appellant know that it has or does not have all necessary verifications.

(Exh. 18)

The deputy director received no documentation from the appeal representative by February 29, 2024.

## Findings of Fact

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

1. The appellant, who is over age 65, filed an application for MassHealth long-term care benefits on June 8, 2023 (Testimony).
2. The appellant has been a resident of a nursing facility since [REDACTED] (Testimony).
3. After receiving the appellant's application, MassHealth requested verifications of the appellant's income and assets, but not all responsive documentation was timely received (Testimony).
4. On October 2, 2023, MassHealth issued a denial notice to the appellant due to missing verifications (Exh. 1).
5. The appellant, through a consultant, filed a timely appeal with the BOH (Exh. 2).
6. Due to cognitive deficits, the appellant is unable to assist in obtaining verifications (Testimony).

7. As of the appeal hearing date, monthly statements of the appellant's [REDACTED] account for the period 1/2022 to 8/2023 had not been produced, nor was there documentary proof of where the appellant's Social Security benefits were deposited.
8. At the close of the appeal hearing, the deputy director left the record open until December 5, 2023 for the appellant to produce the missing verifications (Exh. 5).
9. Pursuant to a request from the appeal representative, the deputy director extended the record-open period for the appeal representative to produce the missing documentation until December 19, 2023 (Exh. 7).
10. On December 13, 2023, the appeal representative requested that the deputy director issue a *subpoena duces tecum* to [REDACTED] for the requested bank statements (Exh. 11).
11. On December 18, 2023, the deputy director prepared the requested *subpoena duces tecum*, and mailed it to the appeal representative via first-class mail, with instructions that the appeal representative must arrange to serve the subpoena on the bank (Exh. 12).
12. The appellant did not serve the *subpoena duces tecum* until January 12, 2024 (Exh. 16).
13. On January 24, 2024, the deputy director received correspondence from [REDACTED] dated January 22, 2024, stating in relevant part: "We're unable to respond to the subpoena we received dated December 18, 2024 (*sic*). Requests for bank records need to be properly issued and served by subpoena, or a similar legal process, in a manner that complies with applicable state law" (Exh. 14).
14. The deputy director advised the appeal representative she would need to go to court to enforce the subpoena (Exh. 15).
15. On January 25, 2024, the appeal representative requested an extension of the record-open period to pursue conservatorship for the appellant (Exh. 17).
16. The deputy director responded that the record-open period would be extended until February 29, 2024 for the appellant to have the previously-issued subpoena enforced, and to produce the requested bank statements (Exh. 18).
17. No bank statements were received on or before February 29, 2024.

## Analysis and Conclusions of Law

A MassHealth applicant or member must cooperate with MassHealth in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of the MassHealth program including recovery (130 CMR 515.008(A)). Once an application for benefits is received, MassHealth requests all corroborative information necessary to determine eligibility, advises the applicant that the requested information 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)). If the requested information is not received, MassHealth benefits may be denied (130 CMR 516.001(C)).

In particular, MassHealth regulation 130 CMR 516.001(A), "Filing an Application," states:

**(1) Application. To apply for MassHealth**

**(a)** for an individual living in the community, an individual or his or her authorized representative must file a Senior Application online at [www.MAHealthConnector.org](http://www.MAHealthConnector.org), complete a paper application, complete a telephone application, or apply in person at a MassHealth Enrollment Center (MEC).

**(b)** for an individual in need of long-term-care services in a nursing facility, a person or his or her authorized representative must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center (MEC).

(Emphasis added)

Here, the denial notice at issue concerns failure to verify assets and income. The appellant is unable to assist in the application process due to cognitive impairment, and he has no attorney-in-fact. The appeal representative made repeated attempts to obtain bank statements, to no avail.

On December 18, 2023, pursuant to a request from the appeal representative, the deputy director issued a *subpoena duces tecum* to the bank commanding the production of the bank statements by on or before January 29, 2024, with instructions to the appeal representative regarding how to effectuate service of the subpoena. For reasons that are unclear, the subpoena was not served on the bank until January 12, 2024. The bank subsequently responded in writing to the deputy director that they would not honor the subpoena.

The appeal representative was advised to go to court to obtain enforcement of the subpoena. Instead, at the eleventh hour, the appeal representative requested additional time to pursue conservatorship for the appellant.

The deputy director extended the record-open period one final time, until February 29, 2024, to allow the appeal representative time to go to court to enforce the subpoena, and to produce the



missing documents. Nothing was produced.

The appellant has thus failed to cooperate in providing all requested corroborative information to determine his eligibility pursuant to 130 CMR 516.001(B), despite a lengthy record-open period.

For these reasons, the 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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Paul C. Moore  
Deputy Director  
Board of Hearings

cc: Nga Tran, Appeals Coordinator, Charlestown MEC