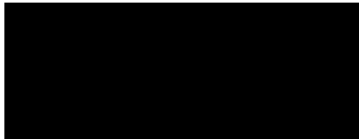


# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed / Denied	<b>Appeal Number:</b>	2311803
<b>Decision Date:</b>	01/26/2024	<b>Hearing Date:</b>	12/22/2023
<b>Hearing Officer:</b>	Christopher Jones		

**Appearance for Appellant:**  
Pro se

**Appearance for MassHealth:**  
Jennifer Moreno – Springfield Ongoing



*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 / Denied	<b>Issue:</b>	Appeal Timeliness; Over-65; Income; PCA Supplement
<b>Decision Date:</b>	01/26/2024	<b>Hearing Date:</b>	12/22/2023
<b>MassHealth's Rep.:</b>	Jennifer Moreno	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Telephonic	<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 August 14, 2023, MassHealth approved the appellant for the Senior Buy-in benefit, implicitly denying her eligibility for MassHealth Standard. (Exhibit 1; 130 CMR 520.002.) The appellant did not file an appeal until November 20, 2023; therefore, it must be DISMISSED. (Exhibits 2; 3; 130 CMR 130 CMR 610.015(B).) Limitations on assistance are valid grounds for appeal if appeals are timely filed. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth processed the appellant's renewal application and downgraded her coverage from MassHealth Standard to the Senior Buy in coverage.

### Issue

Procedurally, the issue is whether the appellant filed a timely request for a hearing. Substantively, the appeal issue is whether MassHealth approved the correct coverage type based upon the appellant's circumstances, pursuant to 130 CMR 519.000 and 520.000.

## Summary of Evidence

The appellant is over the age of 65 and has a household of one. The appellant filed a renewal application on June 28, 2023, and MassHealth requested more information on June 29, 2023. The appellant timely responded with the verifications MassHealth needed on August 9, and MassHealth issued its August 14 notice approving the appellant for the Senior Buy in benefit. The appellant's MassHealth Standard benefits were ended on August 28, 2023. The appellant receives gross Social Security income of \$1,245 per month. The federal poverty level is \$1,215 per month, and MassHealth only provides Standard coverage to individuals over the age of 65 with income at or below the poverty level.

The appellant explained that she never got the notice cancelling her MassHealth coverage, and she did not know it was lost until her personal care attendant ("PCA") stopped being paid. She testified that she attempted to file an appeal as soon as she got the notice, and she filed three appeals as soon as she found out her MassHealth was cancelled. Two of her appeals were received by the Board of Hearings, the first was faxed on November 20, 2023; the second was a telephonic appeal filing on November 27, 2023. The appellant's faxed appeal notes that she has "poor concentration, lack of understanding." The appellant did not know when she filed the third appeal filing, but she testified that she filed her appeal immediately after she received the notice from MassHealth.

MassHealth's representative confirmed that all of MassHealth's communications have been sent to the same address, and the appellant has not changed addresses. MassHealth's representative further explained that the appellant would be eligible for Standard coverage if she reported that she required PCA services. The appellant did not complete the PCA Supplement when she returned her application this summer. MassHealth's representative agreed to mail the appellant a copy of the supplement (which she referred to as the PCA "Waiver") and suggested that the appellant also go into her local MassHealth Enrollment Center and complete one there. The appellant had other questions about what services MassHealth covers and where she should ask questions about the quality of service her doctor provided. She was referred to MassHealth's customer service phone number.

## Findings of Fact

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

- 1) The appellant is over the age of 65 and has a household of one. (Testimony by MassHealth's representative.)
- 2) In the summer of 2023, the appellant filed a renewal application. MassHealth requested verifications and the appellant timely responded to the request on August 9, 2023. (Testimony by MassHealth's representative.)

- 3) On August 14, 2023, MassHealth sent a notice approving the appellant for the Senior Buy in benefit. (Exhibit 1.)
- 4) The appellant alleges that she did not receive this notice until November 20, 2023, when she faxed a hearing request to the Board of Hearings, noting that she had “poor concentration” and a “lack of understanding.” (Testimony by the appellant; Exhibit 2.)
- 5) As of the hearing date, the appellant had not filed a PCA supplement with MassHealth. (Testimony by MassHealth’s representative.)

## Analysis and Conclusions of Law

As noted at the beginning of this decision, pursuant to 130 CMR 610.015, this appeal is untimely. This matter should not have been scheduled for a hearing, but rather dismissed when received pursuant to 130 CMR 610.035. MassHealth’s notice was sent out on or around August 14, 2023. The appellant filed an appeal on November 20, 2023. This is a span of 98 days.

(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;**

(130 CMR 610.015(B).)

There is an extended 120-day timeframe for appeals where MassHealth “fails to act on an application; ... fails to act on [a request for services]; ... fails to send written notice of the action; or the date on which it is alleged that a MassHealth employee has coerced or otherwise improperly deterred the member from filing an appeal” (130 CMR 610.015(B)(2).) Appeals must be dismissed where “the request is not received within the time frame specified in 130 CMR 610.015.” (130 CMR 610.035(A)(1).) By the appellant’s own admission, she does not always understand the notices MassHealth sends out; therefore I find she has not rebutted the presumption of receipt.<sup>1</sup> In the absence of evidence to rebut the presumption, the appellant did not file an appeal for 93 days from the date she was presumed to receive the notice of an appealable action. This appeal is DISMISSED.

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<sup>1</sup> This lack of understanding may be compounded by the notice MassHealth sent. It does not reference the appellant’s ineligibility for MassHealth Standard until the second paragraph on the second page.

Even if the appellant's testimony were sufficient to establish that she did not receive the notice until November 20, 2023, this appeal must be denied. The appellant had not filed a PCA Supplement by the time of the hearing, therefore she would still not have been entitled to the PCA deduction under 130 CMR 520.013(B)(1)(b). Once she files the PCA Supplement, she should be entitled to coverage reaching back three months from the date of filing. (130 CMR 516.006(A).) However, because this supplement was not available as of the hearing date, it could not be included in the hearing record. Therefore, this appeal is DENIED to the extent that it would not be dismissed as untimely.

## **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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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Rep: Springfield MEC