# Office of Medicaid
# BOARD OF HEARINGS

**Appellant Name and Address:**

[redacted]

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| **Appeal Decision:** | Denied in part; Approved in part | **Appeal Number:** | 2312414 |
| **Decision Date:** | 1/10/2024 | **Hearing Date:** | 01/05/2024 |
| **Hearing Officer:** | Christine Therrien | **Record Open to:** | 01/10/2024 |

**Appearance for Appellant:**
Pro se

**Appearance for MassHealth:**
Janine Monico, Tewksbury

*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

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| **Appeal Decision:** | Denied in part; Approved in part | **Issue:** | Eligibility – Over 65 |
| **Decision Date:** | 1/10/2024 | **Hearing Date:** | 01/05/2024 |
| **MassHealth's Rep.:** | Janine Monico | **Appellant's Rep.:** | Pro se |
| **Hearing Location:** | Tewksbury MassHealth Enrollment Center Telephonic | **Aid Pending:** | Yes |

## 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 11/21/23 MassHealth determined the appellant was not eligible for MassHealth because she did not give MassHealth the information needed to decide her eligibility within the required 30-day time frame and apprised her that her Health Safety Net benefits will end on 12/20/23. (130 CMR 515.008 and Exhibit 1).[1] The appellant filed this appeal timely on 12/3/23. (130 CMR 610.015(B); Exhibit 2). The denial of assistance is a valid ground for appeal. (130 CMR 610.032). The record was left open until 1/10/24 for the MassHealth representative to provide copies of all notices issued and call notes between 5/6/23 and 11/21/23 and a copy of what documents are included in the "blue envelope." (Exhibit 5).

## Action Taken by MassHealth

The appellant was denied MassHealth and Health Safety Net because she failed to submit the required verifications.

[1] No notice stated the appellant's CarePlus benefits termination date of 7/12/23.

## Issues

The appeal issues are whether MassHealth was correct in determining that the appellant was not eligible for MassHealth because she did not return the requested information and terminated her Health Safety Net benefits on 11/21/23. The issue of the termination of the appellant's CarePlus benefits on 7/12/23 is also relevant and will be considered.

## Summary of Evidence

The MassHealth representative testified that MassHealth received an application for people over 65 years old on 5/9/23. The MassHealth representative testified that MassHealth sent a request for information on 5/22/23.[2] (Exhibit 6 pp. 1-2). The MassHealth representative testified that some of the requested information was received, and a new request was issued on 6/8/23 with a due date of 8/20/23.[3] (Exhibit 6 pp.3-4). The MassHealth representative testified that the information requested was received. The MassHealth representative testified that MassHealth ran an assets verification and a new request for information was issued on 9/7/23 with a due date of 11/15/23.[4] (Exhibit 6 pp.5-6). The MassHealth representative testified that when no further documents were received a denial notice was issued on 11/21/23. The 11/21/23 notice also stated that if the denial was for missing information the appellant could submit the missing information within 30 days without having to fill out a new application. (Exhibit 1). The 11/21/23 notice stated that the appellant's Health Safety Net coverage would otherwise end on 12/21/23. The Health Safety Net coverage began on 8/1/23 according to the 9/7/23 notice. The MassHealth representative testified that the appellant had been enrolled in MassHealth Care Plus and was terminated on 7/12/23 because she aged out of the program. The MassHealth representative testified that the under-65 MassHealth programs terminate approximately 14 days after the member turns 65. MassHealth did not send a notice stating the date that the appellant's CarePlus would terminate. The MMIS data sheet included in the appellant's appeal file shows the appellant was coded as D1 which is aid category "CarePlus Direct Coverage" from 1/1/14 to 7/12/23. (Exhibit 4 and Exhibit 7 p.13). The MMIS data sheet shows the appellant was coded as AQ which is aid category "Full Health Safety Net" from [redacted]23 (the appellant's birthday) until 12/21/23. (Exhibit 4 and Exhibit 7 p.19). The MassHealth representative could not explain why the appellant was listed in aid category AQ dating back before the 8/1/23 start date on the notice.

The appellant testified that she received a blue envelope in the mail that said she would lose her MassHealth if she did not return it. (Exhibit 6, pp.15-65). The appellant testified that she realized that due to the trusts, she would not qualify for MassHealth for the over-65 population, so she

[2] 5/22/23: The request was for paystubs from earned income and the application signature page.
[3] 6/8/23: The request was for more recent paystubs for earned income and the application signature page.
[4] 9/7/23: The request was for a burial contract, trust documents for the [redacted] Irrevocable Trust, the [redacted] Trust, and the [redacted] and [redacted] 2011 Irrevocable Trust, and information regarding an IRA account. The notice listed the HSN start date as 8/1/23.

enrolled in a Medicare supplemental plan. The appellant testified that the earliest she could enroll in a Medicare supplemental plan was 9/1/23. The appellant testified that she did not know her MassHealth ended in July because she was not notified, and she had medical bills she wanted MassHealth to pay.

The MassHealth representative testified that once an over-65 application is received the computer system will not send out a termination notice while the application is being processed. The MassHealth representative testified that if a member is determined eligible for over-65 benefits those benefits would be retroactive to the date the under-65 benefits would have terminated.

The record was left open so the MassHealth representative could submit copies of the notices issued to the appellant between 5/6/23 and 11/21/23, copies of the call notes that were made when the appellant called MassHealth between 5/6/23 and 11/21/23, and a copy of the information contained in the "blue envelope" the appellant received.

The call notes indicate the appellant called MassHealth on 8/14/23, 8/18/23, 8/21/23, 10/30/23, and 11/1/23. (Exhibit 6, p.14). The notes state the appellant called on 8/14/23 because she discovered she was no longer enrolled in CarePlus, and she informed MassHealth she had faxed the requested information. The notes state the appellant was told that, on 8/18/23, she was enrolled in Health Safety Net, and the appellant inquired if the documents she faxed had been received. On 8/21/23, the appellant called to get information about Health Safety Net. On 10/30/23 the appellant called because she was not notified her CarePlus benefits had ended, and she stated she would not send the requested trust documents because she was told she would not qualify for an over-65 program.

A generic copy of the contents of the "blue envelope" was received during the record open period. The first page was an introduction letter that said:

> You need to respond to this notice in order to renew your MassHealth coverage.
>
> Our records show that you or someone in your household is 65 or will be 65 soon. Different MassHealth rules apply to people 65 years of age or older. Now that you or someone in your household will be in this age category, MassHealth needs more information to renew your eligibility.
>
> What do I need to do?
>
> Fill out the enclosed Eligibility **Review for Seniors and Certain People Needing Long-Term-Care Services** form. Make sure to answer all the questions on the form and sign it. Respond to us with the completed form and any other documents we need by 07/24/2023. We may contact you by mail after we get your renewal to ask about the information on your form. We will let you know by mail if your coverage

> will change or end. MassHealth will not make any changes to your coverage while we process your application.
>
> If you do not send your form back to us by 07/24/2023, you may lose your coverage.

(Exhibit 6, p.16).

The instruction page for the application states in a section called "What Happens Next":

> When we get your filled-out, signed, and dated application, we will review it. If we need more information, we will write or call you. Once we get what we need, we will make a decision about your eligibility and send you a written notice. If you are eligible for MassHealth, show this notice right away to any health care provider if you have paid for medical services that would be covered by MassHealth during your eligibility period. If the health care provider determines that MassHealth will pay for these services, the provider will refund what you paid.

(Exhibit 6, p.19).

# Findings of Fact

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

1. On 5/9/23, MassHealth received an application for people over 65.

2. On 5/22/23, MassHealth sent a request for information.

3. On 6/8/23, a new information request was issued with a due date of 8/20/23.

4. All the information requested was received before 8/20/23.

5. On 9/7/23, MassHealth ran an assets verification, and a new request for information was issued with a due date of 11/15/23.

6. On 11/21/23, a denial notice was issued because no further documents were received.

7. The 11/21/23 notice stated that if the denial was for missing information the appellant could submit the missing information within 30 days without having to fill out a new application.

8. The appellant did not submit any further information.

9. The 9/7/23 notice states the appellant was enrolled in Health Safety Net on 8/1/23.

10. The MMIS data sheet shows the appellant was coded as D1 which is aid category "CarePlus Direct Coverage" from 1/1/14 to 7/12/23.

11. The MMIS data sheet shows the appellant was coded as AQ which is aid category "Full Health Safety Net" from [redacted]23 (the appellant's birthday) until 12/21/23.

12. MassHealth did not send a notice stating the date that the appellant's CarePlus would terminate.

13. The appellant received a blue envelope in the mail with an over-65 application.

14. On 9/1/23, the appellant enrolled in a Medicare supplemental plan.

15. If a member is determined eligible for over-65 benefits those benefits would be retroactive to the date the under-65 benefits would have terminated.

16. The record was left open so the MassHealth representative could submit copies of the notice issued to the appellant between 5/6/23 and 11/21/23, copies of the call notes that were made when the appellant called MassHealth between 5/6/23 and 11/21/23, and a copy of the information contained in the "blue envelope" the appellant received.

17. The call notes indicate the appellant called MassHealth on 8/14/23, 8/18/23, 8/21/23, 10/30/23, and 11/1/23.

18. The call notes state the appellant called on 8/14/23 because she discovered she was no longer enrolled in CarePlus, and she informed MassHealth she had faxed the requested information.

19. The call notes state the appellant was told on 8/18/23 that she was enrolled in Health Safety Net, and the appellant inquired if the documents she faxed had been received.

20. The call notes state that on 8/21/23 the appellant called to get information about Health Safety Net.

21. The call notes state that on 10/30/23 the appellant called because she was not notified her CarePlus benefits had ended, and she stated she would not send the requested trust documents because she was told she would not qualify for an over-65 program.

22. The letter included with the over-65 application states:

> You need to respond to this notice in order to renew your MassHealth

coverage.

Our records show that you or someone in your household is 65 or will be 65 soon. Different MassHealth rules apply to people 65 years of age or older. Now that you or someone in your household will be in this age category, MassHealth needs more information to renew your eligibility.

What do I need to do?

Fill out the enclosed Eligibility **Review for Seniors and Certain People Needing Long-Term-Care Services** form. Make sure to answer all the questions on the form and sign it. Respond to us with the completed form and any other documents we need by 07/24/2023. We may contact you by mail after we get your renewal to ask about the information on your form. We will let you know by mail if your coverage will change or end. MassHealth will not make any changes to your coverage while we process your application.

If you do not send your form back to us by 07/24/2023, you may lose your coverage.

23. The application instruction page also states:

> When we get your filled-out, signed, and dated application, we will review it. If we need more information, we will write or call you. Once we get what we need, we will make a decision about your eligibility and send you a written notice. If you are eligible for MassHealth, show this notice right away to any health care provider if you have paid for medical services that would be covered by MassHealth during your eligibility period. If the health care provider determines that MassHealth will pay for these services, the provider will refund what you paid.

# Analysis and Conclusions of Law

130 CMR 505.000 explains the categorical requirements and financial standards that must be met to qualify for a MassHealth coverage type. And 130 CMR 505.001 lists the different MassHealth coverage types.

(A) The MassHealth coverage types are the following:

(1) MassHealth Standard - for people who are pregnant, children, parents and caretaker relatives, young adults, disabled individuals, certain persons who are HIV positive, individuals with breast or cervical cancer, independent foster care adolescents, Department of Mental Health (DMH) members, and medically frail as such term is defined in 130 CMR 505.008(F);

(2) MassHealth CommonHealth - for disabled adults, disabled young adults, and disabled children who are not eligible for MassHealth Standard;

(3) MassHealth CarePlus - for adults 21 through 64 years old who are not eligible for MassHealth Standard;
(4) MassHealth Family Assistance - for children, young adults, certain noncitizens and persons who are HIV positive who are not eligible for MassHealth Standard, MassHealth CommonHealth, or MassHealth CarePlus;
(5) MassHealth Limited - for certain lawfully present immigrants as described in 130 CMR 504.003(A): Lawfully Present Immigrants, nonqualified PRUCOLs, and other noncitizens as described in 130 CMR 504.003: Immigrants; and
(6) MassHealth Medicare Savings Programs (MSP, also called Senior Buy-in and Buy-in)- for certain Medicare beneficiaries.

The appellant received the "blue envelope" in the mail stating that she needed to renew coverage. "Our records show that you or someone in your household is 65 or will be 65 soon. Different MassHealth rules apply to people 65 years of age or older. Now that you or someone in your household will be in this age category, MassHealth needs more information to renew your eligibility." (Exhibit 6 p.16).[5] The appellant submitted her over-65 application on 5/9/23. The first request for verification was sent on 5/22/23, a second new request for verifications was sent on 6/8/23, and the last new request for verifications was sent on 9/7/23 with a due date of 11/15/23. The appellant failed to submit any additional verification within the required time limits and was therefore determined ineligible for MassHealth benefits for the over-65 population. The appellant's Health Safety Net benefits were terminated on 12/21/23.

130 CMR 516.001: Overview

(C) MassHealth may request additional information and documentation, if necessary, to determine eligibility.

(1) 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.
(2) The notice must advise 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.

(D) If the requested information, with the exception of verification of immigration status, is not provided within 30 days of the date of the request, MassHealth benefits may be denied.

The appellant has failed to verify eligibility and therefore has not complied with the above-

[5] Eligibility Operations Memo 23-13 April 2023. "Members who need to complete a renewal will receive their renewal application in a blue envelope."

referenced regulations and as a consequence, MassHealth is within its discretion to deny the appellant's application. The appeal on this issue is DENIED.

The appellant was notified on the application that there are different MassHealth programs for individuals over 65 and that during the eligibility review process, "MassHealth will not make any changes to your coverage while we process your application." (Exhibit 6, p.16). Further, the information on the application states "[i]f you are eligible for MassHealth, show this notice right away to any health care provider if you have paid for medical services that would be covered by MassHealth during your eligibility period. If the health care provider determines that MassHealth will pay for these services, the provider will refund what you paid." (Exhibit 6, p. 19). Understandably, the appellant would be confused by the messaging received in the "blue envelope" documents. While 130 CMR 505.008 states that CarePlus is a program for individuals who are aged 19-64 the message the appellant received in the "blue envelope" clearly states her coverage would not change during the eligibility review process. However, the coverage did change and was then terminated without prior notice to the appellant.[6] Accordingly, 130 CMR 610.015(A) dictates that "[b]efore an intended appealable action, the MassHealth agency must send a written timely notice to the member except as provided in 130 CMR 610.027.[7] A timely notice is a notice mailed at least ten days before the action. Such notice must include a statement of the right of appeal and the time limit for appealing." The MassHealth representative testified that once an over-65 application is received, the computer system does not send out termination notices because the new over-65 benefits will be retroactive to the date the member's benefits would have been terminated. The messaging to the over-65 population is confusing, contradictory,

[6] 130 CMR 505.008 MassHealth CarePlus (A) Overview. (1) 130 CMR 505.008 contains the categorical requirements and financial standards for MassHealth CarePlus. This coverage type provides coverage to adults 21 through 64 years old. (2) Persons eligible for MassHealth CarePlus Direct Coverage are eligible for medical benefits, as described in 130 CMR 450.105(B): MassHealth CarePlus and 130 CMR 508.000: MassHealth: Managed Care Requirements and must meet the following conditions. (a) The individual is an adult 21 through 64 years old. (b) The individual is a citizen, as described in 130 CMR 504.002: U.S. Citizens, or a qualified noncitizen, as described in 130 CMR 504.003(A)(1): Qualified Noncitizens. (c) The individual's modified adjusted gross income of the MassHealth MAGI household is less than or equal to 133% of the federal poverty level. (d) The individual is ineligible for MassHealth Standard. (e) The adult complies with 130 CMR 505.008(C). (f) The individual is not enrolled in or eligible for Medicare Parts A or B.

[7] 130 CMR 610.027: Timely Notice Exceptions The MassHealth agency need not send a timely notice, as defined at 130 CMR 610.015(A), but must send an adequate notice, as defined in 130 CMR 610.026, no later than the date of an appealable action when (A) the MassHealth agency receives a clear written statement signed by the member that (1) the member no longer wishes to receive assistance; or (2) gives information that requires termination or reduction of services and indicates that termination or reduction of services must be the result of supplying that information; (B) the member has been admitted or committed to an institution and he or she is not eligible for further payments or service under any category of assistance; (C) the member has been placed in a nursing facility or chronic hospital; (D) a member's whereabouts are unknown and the mail from the MassHealth agency to the member has been returned by the Postal Service indicating there is no known forwarding address; (E) the MassHealth agency renders a decision on a request for prior authorization of services; (F) the MassHealth agency establishes the fact that the member has been accepted for Medicaid services by another local jurisdiction, state, territory, or commonwealth; or (G) the MassHealth agency has factual information confirming the death of the member.

and in this case, violated the timely notice regulation under 130 CMR 610.015(A) because the appellant was not notified about the date her CarePlus benefits would terminate. For this reason, the appeal on the issue of the date for the appellant's benefit termination is APPROVED.

# Order for MassHealth

Reinstate the appellant's MassHealth CarePlus coverage effective July 12, 2023, with a new termination date of 12/20/23. Send notice of implementation only, without appeal rights.

# 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.

## 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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center