

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2312629
Decision Date:	2/7/2024	Hearing Date:	01/02/2024
Hearing Officer:	Mariah Burns	Record Open to:	02/02/2024

Appearance for Appellant:



Appearance for MassHealth:

Elizabeth Cruz, Tewksbury MassHealth
Enrollment Center



*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 in Part; Denied in Part	Issue:	Under 65; Termination; Verifications; Start Date
Decision Date:	2/7/2024	Hearing Date:	01/02/2024
MassHealth's Rep.:	Elizabeth Cruz	Appellant's Rep.:	
Hearing Location:	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

Through a notice dated November 29, 2023, MassHealth approved the appellant's application for MassHealth benefits with an effective start date of November 19, 2023. *See* 130 CMR 502.006(A)(2)(c) and Exhibit 1. The appellant filed this appeal in a timely manner on December 20, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. Challenging agency action to suspend, reduce, terminate, or restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth reinstated the appellant's MassHealth Standard benefits resulting in a gap in coverage from October 11, 2023, to November 19, 2023.

Issue

The appeal issue is whether MassHealth correctly calculated the appellant's start date for benefits.

Summary of Evidence

The appellant is an adult under the age of 65 who resides in a household of one. She was represented at hearing by her sister. MassHealth was represented by a worker from the Tewksbury MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and evidence provided at hearing and during the record open period:

Prior to April 29, 2022, the appellant had been receiving MassHealth Standard benefits through MassHealth's MA-21 computer system for being a disabled adult under the age of 65. On April 29, 2022, MassHealth terminated those benefits, but placed a protection on them due to the ongoing COVID-19 pandemic. MassHealth reported that the protection ended on October 11, 2023, terminating the appellant's benefits in MA-21.

Meanwhile, another application was submitted on the appellant's behalf on April 11, 2023. That application was processed in MassHealth's HIX computer system. The appellant was given temporary benefits pending verification of her residency in the Commonwealth. On April 14, 2023, MassHealth sent a request for information asking for the appellant's proof of residency with a due date of July 13, 2023. MassHealth did not receive a response to that request and, as a result, issued a termination notice on September 16, 2023, with an effective date of September 30, 2023. MassHealth reported that they received proof of residency on November 29, 2023, which led to the reinstatement of the appellant's benefits with an effective date of November 19, 2023. MassHealth reported that this led to a gap in coverage from October 11, 2023, to November 19, 2023.

The appellant's representative reported that she did not receive the April 14, 2023, request for information, nor did she receive the September 16, 2023, termination notice. It was confirmed that those letters were sent to an address at which the appellant still resides, along with her sister, the appeal representative. The appellant's representative stated both at hearing and in a pre-hearing written submission that she did not learn that her sister's benefits had been terminated until October 24, 2023, from the appellant's adult day center. The center informed the appellant's representative of the termination because they were not getting paid for their services. On that day, the appellant's representative called MassHealth, confirmed that MassHealth was missing proof of residency, which was needed to reinstate the appellant's benefits. The appellant's representative sent in a MassHealth copay cap letter from April 11, 2023, believing this to be sufficient proof based on her conversation with MassHealth. At hearing, MassHealth confirmed receipt of the letter.

On November 6, 2023, the appellant's representative called MassHealth when the adult day center reported that the appellant's coverage had not been reinstated. The appellant's representative reported that MassHealth verbally informed her that the letter she provided was not sufficient to show proof of residency and was given examples of what would be acceptable.

On November 9, 2023, the appellant's representative went to the Worcester MassHealth Enrollment Center in-person, bringing additional documentation she thought would be sufficient. She "continued to be informed that the termination of coverage was related to verification of address, and that was all that was needed." Exhibit 5 at 2.

On November 20, 2023, the appellant's representative again went in-person to the Worcester office and was informed that she needed to apply for a conservatorship for the appellant. On November 22, 2023, a worker at the adult day center consulted MassHealth and confirmed that the information sent on October 24 had not been accepted. MassHealth then suggested that a residency attestation be submitted to verify the appellant's address. The appellant's representative did not receive this information until November 28, due to the adult day center being closed for the Thanksgiving holiday. On November 29, 2023, the appellant's representative provided MassHealth with an authorized representative designation form and an affidavit attesting to the appellant's address in the Commonwealth.

Findings of Fact

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

1. The appellant is an adult under the age of 65 who is eligible for MassHealth benefits. Exhibit 1, Exhibit 4, Testimony.
2. Prior to April 2023, the appellant had been receiving MassHealth Standard benefits through the MA-21 computer system due to being a disabled adult under the age of 65. Testimony, Exhibit 4, Exhibit 6 at 2. As of April 29, 2022, the appellant continued to receive that benefit due to a protection put in place because of the COVID-19 pandemic. *Id.* That protection ended on October 11, 2023, terminating the appellant's benefits in MA-21. *Id.*
3. On April 11, 2023, an application for benefits was submitted on the appellant's behalf and was processed in MassHealth's HIX computer system. Testimony, Exhibit 6 at 2. A request for information was sent to the address on file on April 14, 2023, requesting proof of residency with a due date of July 13, 2024. Testimony, Exhibit 6 at 3-4. The appellant continued to receive MassHealth Standard benefits in HIX while the appellant's residence was verified. Testimony.
4. On September 16, 2023, MassHealth sent to the address on file a notice informing the appellant that her appellant's MassHealth Standard benefits were terminated in the HIX system for failure to submit the requested verifications with an effective date of September 30, 2023.
5. The appellant's representative reported that she did not receive the April 14 request for information nor the September 16 termination notice. Testimony, Exhibit 5 at 1-2. She was

informed of the termination on October 24, 2023, by the appellant's adult day center. *Id.* On that day, she spoke with a MassHealth representative and sent in a MassHealth copay cap letter from April 11, 2023, believing this to be sufficient proof based on her conversation with MassHealth. *Id.* At hearing, MassHealth confirmed receipt of the letter. Testimony.

6. When the appellant's coverage was not reinstated, the appellant's representative made multiple efforts to rectify the problem. Testimony, Exhibit 5 at 2. On November 6, 2023, she spoke to a MassHealth customer service representative on the phone, who verbally confirmed that the October 24 submission was not sufficient. *Id.* On November 9, 2023, she went to the Worcester Enrollment Center in person and was told only that proof of residency was the issue. *Id.* On November 20, 2023, she went to the Worcester office again and was told she would need to apply for a conservatorship on her sister's behalf. *Id.*

7. On November 22, 2023, a worker from the appellant's day health center spoke with a MassHealth worker, who suggested that the appellant submit a residency affidavit. *Id.*

8. On November 29, 2023, the appellant's representative submitted a residency affidavit and an authorized representative designation form. Testimony, Exhibit 5 at 1-2. MassHealth accepted the submission and issued an approval notice for MassHealth Standard with a start date of November 19, 2023. Exhibit 1.

9. A gap in the appellant's coverage exists from October 11, 2023, to November 19, 2023. Testimony, Exhibit 2.

10. On December 20, 2023, the appellant submitted a timely notice of appeal to challenge the gap in coverage. Exhibit 2.

11. At no time after October 24, 2023, did MassHealth notify the appellant, in writing, that the letter submitted attempting to show proof of residency was insufficient and not accepted.

Analysis and Conclusions of Law

MassHealth is responsible for the administration and delivery of relevant services to eligible low- and moderate-income individuals, couples, and families. 130 CMR 501.002(A). Individuals may apply for MassHealth benefits online, by telephone, or in-person. 130 CMR 502.001(A). The date of application is considered the date the application is submitted to MassHealth. *Id.* MassHealth may request corroborative information to determine an applicant's eligibility for benefits. *Id.* at 502.002(B). This comes in the form of a Request for Information Notice, which is sent "to the applicant listing all requested verifications and the deadline for submission of the requested verifications." *Id.* at 502.003(C).

The applicant has 90 days to respond to a Request for Information. 130 CMR 502.003(D)(1). If the applicant fails to provide the information within 90 days, MassHealth will attempt to verify the date from electronic data sources. *Id.* at 502.003(D)(2). If the requested information is unavailable by those means, MassHealth will typically deny or terminate coverage. *Id.*

Among other universal eligibility requirements is that “an applicant or member must be a resident of Massachusetts.” 130 CMR 503.002. An individual’s residency “is considered verified if the individual has attested to Massachusetts residency if it has been confirmed by electronic data matching...If residency cannot be verified through electronic data matching...the MassHealth agency may require documentation to validate residency.” *Id.* at 503.002(E). An applicant can establish proof of residency through any of the following means:

- (1) copy of deed and record of most recent mortgage payment (if mortgage is paid in full, provide a copy of property tax bill from the most recent year);
- (2) current utility bill or work order dated within the past 60 days;
- (3) statement from a homeless shelter or homeless service provider;
- (4) school records (if school is private, additional documentation may be requested);
- (5) nursery school or daycare records (if school is private, additional documentation may be requested);
- (6) Section 8 agreement;
- (7) homeowner’s insurance agreement;
- (8) proof of enrollment of custodial dependent in public school;
- (9) copy of lease and record of most recent rent payment; or
- (10) affidavit supporting residency signed under pains and penalties of perjury that states the individual is not visiting Massachusetts for personal pleasure or to receive medical care in a setting other than a nursing facility.

130 CMR 503.002(F). Once eligibility is determined, an applicant’s start date for coverage can depend on whether all verifications were submitted within the 90-day time frame. 130 CMR 502.006(A)(2). If such verifications were timely received by MassHealth, the applicant’s coverage begins “ten days prior to the date of application.” *Id.* at 502.006(A)(2)(a). If the verifications were not timely received, the start date would be “ten days prior to the date of receipt of all requested verifications or a reported change.” *Id.* at 502.006(A)(2)(c).

An applicant may reactivate a denied application by submitting all required information to MassHealth; if such submission is made within a year of the original application, the applicant need not submit a new application. 130 CMR 502.002. MassHealth must provide “all applicants and members a written notice of the eligibility determination” which should contain “an eligibility decision for each member who has requested MassHealth, and either provides information so the applicant...can determine the reason for any adverse decision.” 130 CMR 502.008(A).

The Fair Hearing Rules provide an additional avenue for applicants to demonstrate their eligibility upon appealing a denied application. They state, in relevant part:

The hearing officer may not exclude evidence at hearing for the reason that it had not been previously submitted to the acting entity, provided that the hearing officer may permit the acting entity representative reasonable time to respond to newly submitted evidence. *The effective date of any adjustments to the appellant's eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted.*

130 CMR 610.071(A)(2) (Emphasis added).

Here, the appellant argues that she received neither the April 14, 2023, Request for Information nor the notice informing her of the September 30, 2023, termination of her coverage and is asking that the reinstatement of her coverage be backdated retroactive to the date of termination.¹ Because I credit MassHealth that both documents were sent to the address on file for the appellant, I see no mechanism to reinstate the appellant's coverage retroactive to the termination date. However, the efforts of the appellant's representative to supply MassHealth with a proper residency verification combined with MassHealth's failure to provide written notice of the insufficiency of those efforts is persuasive.

I fully credit the appellant's representative's written testimony contained within Exhibit 5 at 1-2. Most notably, she reported that on October 24, 2023, she spoke to a representative from MassHealth who informed her that the appellant's residency confirmation was the only outstanding information missing, and on that day, she sent a copy of a Notice of Copay Limit from MassHealth that reflected an accurate address for the appellant (the MassHealth representative confirmed receipt of the letter on that date). See Exhibit 5 at 10. While there is no question that this document does not meet the proof of residency requirements contained within 130 CMR 503.002(F), MassHealth gave no such notice of that determination in writing. If the October 24, 2023, submission was not sufficient, MassHealth should have provided written notice of that decision with an opportunity to appeal pursuant to 130 CMR 502.008(A). The question at issue, then, is whether this submission can be considered a reactivation of an application. For the following reasons, I find that it can.

Although MassHealth contends that they did not receive all requested information until November 29, 2023, and therefore used that date to determine the coverage start date pursuant to 130 CMR 502.006(A)(2)(c), the agency's failure to notify the appellant, in writing, despite multiple attempts on the part of the appellant's representative to rectify the problem, that her October 24, 2023

¹ MassHealth reports that, because of a protection put in place on the appellant's account due to the ongoing COVID-19 pandemic, the appellant's coverage was not terminated until October 11, 2023. Thus, that shall be the considered termination date.

submission was not sufficient, suggests otherwise. Further, the fact that the appellant went, in-person, to the Worcester MassHealth Enrollment Center not once, but twice, and no one informed her that all that was needed was a residency affidavit, which could have been completed the first time, is problematic, at best.

Due to this, and because I credit the appellant's representative that she spoke to a MassHealth representative by phone on October 24, I find that the October 24 submission was a good faith effort by the appellant to reactivate her application. The October 24 submission and the November 29 submission were both introduced as evidence at hearing. Exhibit 5 at 5-6. Because the appellant made a good faith effort to submit the requested information and MassHealth did not provide adequate notice that those good faith efforts were not accepted, despite multiple calls and visits in-person to MassHealth by the appellant's representative, I find, pursuant to 130 CMR 610.071(A)(2), that the appellant's October 24, 2023, submission should be treated as a re-application date. Thus, I find that, pursuant to 130 CMR 502.006(A)(2)(c), the appellant's MassHealth Standard benefits should have been reinstated retroactively to October 14, 2023. MassHealth therefore issued the November 29, 2023, notice reflecting a November 19, 2023, benefit start date in error.

As the appellant was receiving a protection on her case due to the ongoing COVID-19 pandemic and MassHealth reported that her effective termination date was October 11, 2023, I find that the only gap in the appellant's coverage should be for October 12-13, 2023. For the foregoing reasons, the appeal is APPROVED in part and DENIED in part.

Order for MassHealth

Reinstate the appellant's MassHealth Standard benefits to an effective date of October 14, 2023, and ensure the only gap in coverage is from October 12-13, 2023.

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.

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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center