

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2313011
Decision Date:	6/4/2024	Hearing Date:	01/08/2024
Hearing Officer:	Casey Groff, Esq.	Record Open to:	5/20/2024

Appearances for Appellant:




Appearances for MassHealth:

Shelly Ann Lewis, Charlestown MEC
Yous Khieu, Charlestown MEC (post-hearing)



*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:	Denied	Issue:	Eligibility; Over 65; LTC; Verifications
Decision Date:	6/4/2024	Hearing Date:	01/08/2024
MassHealth's Rep.:	Shelly Ann Lewis, Yous Khieu	Appellant's Rep.:	
Hearing Location:	Board of Hearings, 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 12/5/23, MassHealth denied Appellant's application for MassHealth long-term care (LTC) benefits on the basis that Appellant did not provide necessary verifications to determine eligibility within the required time frame. See Exhibit 1 and 130 CMR 515.008. Appellant, through his court appointed guardian, Spooner Guardianship Services, filed this appeal in a timely manner on 12/12/23. See 130 CMR 610.015(B) and Exhibit 1. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

A hearing took place on 1/8/24. See Exh. 3. At the conclusion of the hearing, the record was left open for Appellant to submit outstanding verifications. See Exh. 5. After several extensions were granted for the parties to submit and review the documentation, the record closed on 5/20/24. See Exh. 6-9.

Action Taken by MassHealth

MassHealth denied Appellant's application for LTC benefits for failure to provide the necessary verifications to determine his eligibility within the required time frame.

Issue

The appeal issue is whether MassHealth erred in denying Appellant's application for LTC benefits based on its determination that Appellant failed to submit verifications within the required timeframe.

Summary of Evidence

A MassHealth representative appeared at the hearing via telephone and testified as follows: On 08/22/23, MassHealth received a long-term care (LTC) application on behalf of Appellant requesting a benefit start date of 07/25/23. On 8/31/23, MassHealth issued a request for information (RFI) which identified the verifications needed to be sent to MassHealth by 11/29/23 for MassHealth to render an eligibility determination. Appellant did not provide MassHealth with all requested verifications by the deadline. Accordingly, through a notice dated 12/5/23, MassHealth denied the application based on its determination that Appellant "did not give MassHealth the information it need[ed] to decide [his] eligibility within the required timeframe. 130 CMR 515.008" See Exh. 1. The notice listed the verifications that remained outstanding, including the following:

- 1) Bank statements of accounts held in the [REDACTED] (hereinafter "Appellant's family trust") from 1/1/22 to present, including a [REDACTED] Bank account ending [REDACTED] that "was previously known to MassHealth." See Exh. 1., p. 2. In conjunction with this request, the 12/5/24 denial notice indicated that Appellant was a beneficiary of an irrevocable family trust, or could be added as a beneficiary, and as such, both trust income and principle could be paid to or for his benefit. See Exh. 1., p. 3.
- 2) Three [REDACTED] accounts held by Appellant consisting of:
 - a. Two savings accounts [REDACTED] with statements 7/1/23 to present with verification of all transactions, withdrawals, deposits, and if closed, verification of closure;
 - b. A checking account [REDACTED] with statements 6/16/23 to present with verification of all transactions, withdrawals, deposits, including verification of the source of a \$25,000 deposit into this account on 2/7/23;
- 3) Basic and optional Life Insurance policy information.

As of the hearing date, MassHealth had not received any of the verifications identified in the denial notice.

Appellant's representative appeared at the hearing by telephone and testified that he sent, on behalf of Appellant, a partial response of the requested verifications on 1/5/24. The submission, he alleged, included statements from Appellant's three bank accounts with copies of checks. The Appellant's representative noted that they had been unable to obtain the [REDACTED] family trust account statements as they were currently in a "fight" with the trustee who was unwilling to provide the information, and that the trustee was the only individual with authority to access the account. Appellant's representative did not dispute the existence of a [REDACTED] family trust account but stated that the "trust no longer exists" because the house, which had originally been in the trust, was sold and the proceeds from the sale were deposited into the family trust account.¹

At Appellant's request, the record remained open for Appellant to obtain and submit into evidence the missing verifications; and for MassHealth to review both the 1/5/24 production and any subsequent productions filed pursuant to the record open agreement. See Exh. 5.

On 1/24/24, Appellant submitted what was purported to be the remaining items to satisfy MassHealth's verification request. See Exh. 6 and 6(A). The 1/24/24 submission included records pertaining to four [REDACTED] accounts including Appellant's conservator account [REDACTED] 11/1/23 through 12/29/23 and the headers of three business accounts held by [REDACTED] [REDACTED]. See Exh. 6(A), pp. 2-7, 23. Appellant's representative indicated that the statements from Appellant's conservatorship account ranged from the opening of the account to current. See Exh. 6.

While no reference was made to the [REDACTED] account, Appellant did submit two monthly statements from an [REDACTED] bank account held by Appellant's family trust, reflecting transactions from 10/11/23 through 12/11/23. See Exh. 6(a), pp. 9-14. Per the statement ending 11/10/2023, the account started with a balance of \$0 on 10/11/23 and increased to an ending balance of \$227,316.29 on 11/10/23. See id. In addition, the submission included documents relating to the sale of the home owned by the family trust on or around 10/31/23 which resulted in sale proceeds to the trust of approximately \$226,805.14. See id. at pp. 18-23.

After reviewing the 1/5/24 and 1/24/24 submissions, MassHealth responded on 2/21/24, that the following was still outstanding:

1. Verification of the source of the \$25,000 deposit on 2/7/23.
2. Verification of large withdrawals from Appellant's bank accounts as previously specified in the denial notice.

¹ The appeal representative indicated that he believed the life insurance information had been sent, but that he would resend a copy with the remaining verifications.

3. All monthly pages of statements from one of Appellant's two savings accounts, 6/4/23 to present, with verification of all transactions, including deposits and withdrawals.
4. [REDACTED] Bank account [REDACTED] (the family trust account).
5. Statements for all four [REDACTED] accounts 6/1/23 to present.

See Exh. 7, pp. 3-4.

On 2/27/24, Appellant's representative responded that the 1/5/24 submission included all of Appellant's bank account statements, including the savings account MassHealth alleged was missing. See Exh. 7. A review of the 1/5/24 submission shows a one-page "statement share savings" for the account in question between date ranges 6/1/23 through 1/4/24 with "no transactions within this date range" and a \$0 balance. See Exh. 6(a), p. 3. With respect to the identified withdrawals from Appellant's account, Appellant's representative indicated that these withdrawals would be taken as a transfer penalty. For the remaining [REDACTED] accounts, Appellant's representative indicated that he would not submit statements of the [REDACTED] business accounts but that he could send in receipts for Appellant's purchases along with the invoices. See Exh. 7. Lastly, Appellant's representative responded that "[t]here is no [REDACTED] Bank account, the only trustee account is the [REDACTED] Bank Statement and those were submitted on 1/23," from opening to current and that there "was no trust account" for the timeframe that MassHealth is requesting. See id. At Appellant's request, the record was extended to obtain a copy of the deposit check for the deposit of \$25,000 into Appellant's checking account, along with the invoices from the conservatorship account. See id.

Between 3/25/24 and 5/13/24, the parties exchanged emails regarding what items had been provided and what remained outstanding.² See Exhs. 8-9. On 4/26/24, Appellant's court appointed guardian, [REDACTED], stated that [REDACTED] account, which was the trust held account, was not within her purview as conservator to obtain, and that she had "requested the statements from the Trustee several times but have not received a response." See Exh. 8, p. 1; see also Exh. 9, p. 5.

Through these exchanges, MassHealth clarified that it was still missing all of the items previously referenced in its 2/27/24 email with the exception of the withdrawal verifications, as these would be treated as a transfer. See Exhs. 8-9. On 5/13/24, MassHealth specified that it had not received verification of (1) the source of the \$25,000 deposit; (2) statements from one of Appellant's savings accounts; (3) [REDACTED] family

² During this period, in response to a MassHealth's assertion that had not received nursing facility documents, Appellant's representative submitted a copy of what was sent to MassHealth on 10/30/23, which he indicated, satisfied all nursing facility verifications. See Exhs. 8 and 8(A).

trust account statements 1/1/22 to present; and (4) the statements for each of the four [REDACTED] accounts. See Exh. 9, p. 2. See Exh. 7-9.

On 5/13/24, Appellant's representative responded that all listed verifications had been provided, except for the three [REDACTED] business accounts which Appellant would not provide as they were comingled with other clients' funds. See Exh. 9., p. 1. In the response, Appellant's representative did not make specific reference to where, if at all, the verification for the source of the \$25,000 deposit was located within the submissions. Id. With respect to the "missing" [REDACTED] family trust account documents, Appellant's representative wrote, in relevant part, the following:

As stated in my previous email from 2/27. There is no [REDACTED] Bank account either. The [Appellant] Family Trust account is the [REDACTED] Account, which was not set up until 2023, there would be no statements prior and the attached statements will verify that.

See Exh. 9., p.1.

Attached to Appellant's 5/13/24 response, were copies of the 1/5/24 and 1/23/24 submissions, and a new submission that appeared to have been sent to MassHealth's EDMC processing center on 4/13/24, but which had not previously been entered into evidence. See Exh. 9(A). The 4/13/24 production contained [REDACTED] that were generated between 9/15/23 through 4/30/24. Id.

Findings of Fact

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

1. On 08/22/23, MassHealth received a LTC application on behalf of Appellant requesting a benefit start date of 07/25/23.
2. Appellant is a beneficiary (or could be made as a beneficiary) of an irrevocable family trust, and as such, both trust income and principle could be paid to or for his benefit.
3. On 8/31/23, MassHealth issued an RFI notifying Appellant of verifications that needed to be produced by 11/29/23 for MassHealth to render an eligibility determination.

4. Through a notice dated 12/5/23, MassHealth denied the application based on its determination that Appellant failed to submit verifications by the deadline, listing the missing verifications, which included, but were not limited to, the following: (1) Bank statements of accounts held in the Appellant's family trust from 1/1/22 to present, including [REDACTED] account [REDACTED] that was "previously known to MassHealth;" (2) monthly statements of three [REDACTED] accounts (two savings and one checking) held by Appellant; (3) verification of large transactions/deposits of all accounts, including verification of the source of a \$25,000 deposit into Appellant's checking account on 2/7/23; and (4) basic and optional Life Insurance policy information.
5. As of the hearing on 1/8/24, MassHealth had not received any of the verifications identified in the denial notice (noting that Appellant had sent documents on 1/5/24, the Friday before hearing, which had not been processed for MassHealth to review).
6. Following the hearing, the Appellant was afforded additional time to produce outstanding verifications, including the [REDACTED] trust account statements and verification of the source of the \$25,000 deposit.
7. On 1/24/24, Appellant submitted verifications that included records pertaining to four Unibank accounts, including (1) Appellant's conservator account 11/1/23 through 12/29/23 and the headers of three business accounts held by [REDACTED] (2) two monthly statements (Nov. and Dec.) from an [REDACTED] bank account held by Appellant's family trust, reflecting a \$0 balance on 10/11/23 and increase of \$227,316.29 by 11/10/23; and (3) documents relating to the sale of the home owned by the family trust on or around 10/31/23 which resulted in sale proceeds to the trust of approximately \$226,805.14.
8. At the time of the 1/24/24 submission, Appellant did not provide any updates or explanation on the requested [REDACTED] bank accounts or the source of the \$25,000 deposit.
9. On 2/27/24, Appellant's representative responded that "[t]here is no [REDACTED] Bank account, the only trustee account is the [REDACTED] Bank Statement and those were submitted on 1/23," from opening to current and that there "was no trust account" for the timeframe that MassHealth is requesting.
10. Other than Appellant's 2/27/24 explanation that the [REDACTED] account did not exist, no verifications, such as statements from the trustee or [REDACTED] Bank, were submitted to verify that account [REDACTED] was unrelated to the family trust.

11. As of the record close-date, Appellant did not submit evidence of the source of the \$25,000 deposit on 2/7/23 into Appellant's checking account.

Analysis and Conclusions of Law

This appeal concerns whether Appellant failed to submit necessary verifications to allow MassHealth to determine Appellant's eligibility for long-term care (LTC) benefits; and whether MassHealth appropriately denied Appellant's application for coverage on this basis. Once an application is received, MassHealth requests all corroborative information necessary to determine the individual's eligibility, including information relating to income, assets, residency, citizenship, immigration status, and identity. See 130 CMR 516.001; see also 130 CMR 516.003 (listing eligibility factors that require verification). To establish eligibility for LTC benefits, individuals, such as Appellant, *must* verify that: (1) their assets do not exceed \$2,000, *and* (2) they have not made any disqualifying transfers of resources (i.e. transfers for less than fair market value) within the last five years.³ See 130 CMR 519.006(A), see also 130 CMR §§ 520.018, 520.019.

Pursuant to 130 CMR 516.003, MassHealth notifies the applicant of the specific information that is needed to establish eligibility through the following process:

(C) Request for Information Notice. If additional documentation is required, including corroborative information as described at 130 CMR 516.001(B), a Request for Information Notice will be sent to the applicant listing all requested verifications and the deadline for submission of the requested verifications.

(D) Time Standards. The following time standards apply to the verification of eligibility factors.

(1) The applicant or member has 30 days from the receipt of the Request for Information Notice to provide all requested verifications.

(2) If the applicant or member fails to provide verification of information within 30 days of receipt of the MassHealth agency's request, MassHealth coverage is denied or terminated.

(3) A new application is required if a reapplication is not received within 30 days of the date of denial.

On April 1, 2023, MassHealth extended the time limit for producing verifications from 30-days to 90-days. See Eligibility Operations Memo 23-09 (March 2023).

³ Under MassHealth's financial eligibility regulations, an applicant who is "otherwise eligible" may incur a period of disqualification if their asset history reveals that they (or their spouse) transferred resources for less than fair market value. See 130 CMR §§ 520.018, 520.019.

It is the responsibility of the applicant or member to “cooperate with MassHealth in providing information necessary to establish eligibility... and to comply with all the rules and regulations of MassHealth.” See 130 CMR 515.008.

In the present case, Appellant applied for MassHealth LTC benefits on 08/22/23. Pursuant to the verification process outlined above, MassHealth issued a request for information on 8/31/23, listing necessary verifications Appellant needed to produce by 11/29/23. MassHealth did not receive the requested verifications within 90 days of the 8/31/23 notice. On 12/5/23, MassHealth appropriately denied Appellant’s application for LTC benefits for failure to provide MassHealth with “the information it needs to decide your eligibility within the required time frame.” See Exh. 1 and 130 CMR 515.008. Among the items that remained outstanding were: (1) statements from a [REDACTED] family trust account [REDACTED] from 1/1/22 to present and, if applicable, account closing documents; and (2) the source of a \$25,000 deposit on 2/7/23 into Appellant’s checking account. See Exh. 1. As of the hearing date on 1/8/24, none of the outstanding items had been received by MassHealth.⁴

Appellant was granted additional time, post-hearing, to submit all outstanding documents. Despite multiple extensions, Appellant did not submit any documentation to verify the source of the 2/7/23 deposit of \$25,000. While Appellant sought an extension of the record open period to satisfy this request, there was no subsequent production or communication by Appellant purporting to explain or verify the deposit.

Moreover, Appellant did not satisfy MassHealth’s request for verifications related to the family trust account. In its 12/5/23 denial notice, MassHealth specifically identified a [REDACTED] bank account [REDACTED] held in the Appellant’s family trust, which was “known to MassHealth previously.” See Exh. 1. At hearing, Appellant’s representative did not dispute the existence of the [REDACTED] account; but rather, asked for additional time to produce the statements because of difficulties obtaining them from the trustee. On 1/24/24, Appellant submitted what was purported to be a complete response of the verification request. See Exh. 6. The submission included two monthly statements from an [REDACTED] Bank account held in the name of Appellant’s family trust reflecting transactions between 10/11/23 through 12/11/23. See Exh. 6(A), pp. 9-14. It was not until 2/27/24, after MassHealth reviewed all submissions, that Appellant asserted there was no [REDACTED] account, and that the [REDACTED] account was the only account within the trust. See Exh. 7, p. 1. Throughout the record open period, there was conflicting information from Appellants’ representatives as to the existence of the [REDACTED] account and whether the trustee had turned over all requested information. See Exhs. 8 and 9. Even if the [REDACTED] account was the only trust account, Appellant did submit evidence to substantiate this. For example, Appellant did submit any statement by the trustee or from [REDACTED] Bank to indicate that account [REDACTED] was unrelated to Appellant or the

⁴ While Appellant faxed a partial verification response to MassHealth’s EDMC on 1/5/24, the Friday prior to hearing, it had not been processed for MassHealth’s review by the time of hearing.

family trust. Additionally, Appellant's representative asserted that the [REDACTED] statements would verify that the account was not opened until October of 2023. See Exh. 9. While the November statement reflects a starting balance of \$0 on 10/11/23, there was no specific verification showing when the account was opened, or if it previously held any funds.

As MassHealth was unable to account for all potential assets and/or resource transfers as requested, it was unable to determine Appellant's eligibility for MassHealth benefits. Accordingly, MassHealth did not err in denying Appellant's application for LTC coverage.⁵ This 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.

⁵ As of the record close date, MassHealth asserted that two additional verifications remained outstanding, including bank statements for one of Appellant's two savings accounts. A review of the documents sent on 1/5/24 shows that Appellant included a one-page statement for the "missing" savings account, which shows the account balance and that no transactions were made within the requested timeframe. See Exh. 6(a), p. 3. Additionally, MassHealth alleged that it was still missing verification of the four [REDACTED] business accounts for [REDACTED]. A review of the documents sent on 1/24/23 show that Appellant sent what appears to be complete statements for one of the [REDACTED] accounts which was designated as Appellant's conservatorship account. See Exh. 6(A). Appellant submitted statement headers for the remaining three business accounts but objected to providing the statements for these accounts because they included other client funds. Appellant did send in additional documents, which he purported were the receipts for Appellant's purchases and corresponding invoices. This decision does *not* address whether Appellant was non-complaint with providing verification of the [REDACTED] accounts as these were (1) requested by MassHealth *after* the hearing and were not included in the original RFI or denial notice; and (2) MassHealth has not clearly articulated whether the full statements for the remaining three business accounts are necessary to render an eligibility determination. Nevertheless, MassHealth acted within its authority to deny coverage based on Appellant's failure to submit verification of all assets and potential resources as addressed above.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

[REDACTED]