

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2313348
Decision Date:	2/6/2024	Hearing Date:	1/16/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

Andrea Pelczar, 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

Appeal Decision:	Approved in part	Issue:	LTC eligibility, start date, verification
Decision Date:	2/6/2024	Hearing Date:	1/16/2024
MassHealth's Rep.:	Andrea Pelczar	Appellant's Rep.:	Attorney
Hearing Location:	Tewksbury (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

By notice dated November 22, 2023, MassHealth approved Appellant for long term care benefits beginning June 1, 2023 with a patient paid amount (PPA) of \$1,363.20. Exhibit 1. Appellant filed this appeal in a timely manner on December 19, 2023. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved Appellant for long term care benefits beginning June 1, 2023.

Issue

The appeal issue is whether Appellant is entitled to an earlier start date of coverage.

Summary of Evidence

The MassHealth representative appeared by phone and submitted documents in support, Exhibit 4. Appellant's attorney appeared by phone and submitted documents in support, Exhibit 5. A summary follows.

Appellant initially applied for benefits on May 12, 2023 seeking coverage beginning February 1, 2023. On the application, Appellant indicated that she has a burial plot but did not answer the question of whether she had a burial-only account. Exhibit 4 at 34. On May 17, 2023, MassHealth issued a request for information (RFI). Exhibit 5 at 6. The items requested, due August 15, 2023, were:

- Burial Plans
 - You did not answer each part of the burial plans question on page 14 question 9 – do you have a burial trust. Do you have a burial-only account? Answer yes or no. If yes, provide documentation.
- PNA/Private Pay
 - Nursing facility please send PNA statement
 - Send letter with room and board payments only with dates of coverage for private payments. Be sure to include dates that each payment was [sic].
 - Do not include PPA payments in this letter.
- PSI for Facility
 - If you would like MassHealth to share information with the nursing facility, please complete a Permission to Share form with the facility.
- Tufts Health Plan
 - Provide a copy of the current premium bill.
- [REDACTED] Savings Bank Checking Account xxxxxx [REDACTED]
 - Explain and send proof of source of deposit 3/23/23 for \$2,025
 - Explain and verify withdrawal 1/7/23 for \$1,500
 - Explain all checks that were written to [identified individuals]. Provide proof if any were for reimbursements.
- Boston Partners other type of security xxx [REDACTED]
- Burial Plot
- Verification of Long Term Care Insurance xxx [REDACTED] John Hancock
 - You stated on the application's Long-Term Care supplement that you do not have a long-term care insurance policy, however you provided long-term care documents for a policy. Please clarify if this is still an active policy.

Id. at 7.

Appellant's attorney testified that in response to the May 17, 2023 RFI, he submitted all requested information by fax on August 1, 2023. Appellant's attorney provided evidence that his 17 page fax to MassHealth was successful. Exhibit 5 at 3. The cover letter to this submission states that Appellant provided an updated page 14 of the application, indicating that Appellant does not have a burial plot but has a burial bank account, [REDACTED] Savings Bank ending [REDACTED]. *Id.* at 3, 4. The submission includes a bank statement from this account covering January 1, 2023 through March 31, 2023. *Id.* at 9.

On August 21, 2023, MassHealth denied Appellant's application for failure to submit all requested verifications. Exhibit 4 at 3. The denial states that MassHealth did not receive:

- PSI for Facility
 - If you would like MassHealth to share information with the nursing facility, please complete a Permission to Share form with the facility.
- Boston Partners other type of security xxxx [REDACTED]
- Burial Plot
- [REDACTED] Savings Burial Only Account xxxx [REDACTED]
 - **All financial accounts/resources, both open and closed send monthly statements 02/01/22 to 12/31/22, 4/1/23 fwd.**
 - **Explain and send proof of all transactions \$1000 over, including the source of deposits. Proofs would be copies of the check(s), copy of invoice(s) showing funds paid, deposit slips, etc.**
- Verification of Long Term Care Insurance xxxx [REDACTED] John Hancock
 - You stated on the application's Long-Term Care supplement that you do not have a long-term care insurance policy, however you provided long-term care documents for a policy. Please clarify if this is still an active policy.

Id. at 5 (emphasis added). The denial also states that:

If your application for MassHealth was denied because you did not give us the information or proof we needed to decide if you are eligible for MassHealth, you can either:

- send us some of the needed information or proof within 30 days of the date on this notice (if you are eligible for MassHealth, the date we get the needed information or proof will be your reapplication date.); or
- ask for a fair hearing if you want us to go back to your original application date.

Id. at 3. Appellant did not appeal this denial by asking for a fair hearing.

On August 23, 2023, Appellant's attorney received an email from the case worker that MassHealth only received eight of the 17 faxed pages sent on August 1, 2023. Exhibit 5 at 21. Appellant's attorney sent the documents by priority mail and email on September 6, 2023. *Id.* at 22.

On September 8, 2023, MassHealth relogged Appellant's application. On September 12, 2023, MassHealth issued a second RFI. Exhibit 4 at 8. The two items listed on the new RFI are:

- [REDACTED] Savings Burial Only Account xxxx [REDACTED]
 - All financial accounts/resources, both open and closed send monthly

- statements 02/01/22 to 12/31/22, 4/1/23 fwd.
- Explain and send proof of all transactions \$1000 over, including the source of deposits. Proofs would be copies of the check(s), copy of invoice(s) showing funds paid, deposit slips, etc.
- Provide proof this account is for burial only purposes.
- Verification of Long Term Care Insurance xxxx [REDACTED] John Hancock
 - Please send in ALL Long-Term-Care policies that are currently in effect AND verification of ANY payments which may have already been made on this policy. Provide proof of amount of days for waiting perio [sic] benefit amount.

Id. at 9.

On November 22, 2023, MassHealth approved Appellant for long term care benefits beginning June 1, 2023 with a patient paid amount (PPA) of \$1,363.20. Exhibit 1. The issue on appeal is whether Appellant is entitled to an earlier coverage start date. Appellant sought a coverage start date of February 1, 2023.

The MassHealth representative argued that June 1, 2023 is the earliest retroactive date available in accordance with 130 CMR 516.002(A) and 130 CMR 516.006(A)(2) based on the September 8, 2023 reapplication date. The MassHealth representative testified that there is no basis for preserving the May 12, 2023 application date because Appellant did not appeal the August 21, 2023 denial. The MassHealth representative argued that even assuming MassHealth received the complete 17 page fax on August 1, 2023, Appellant provided inaccurate and incomplete information on the application and incomplete verifications, and therefore did not fulfill the obligation of submitting necessary corroborating evidence by the August 15, 2023 due date. This is evidenced by the fact that a second RFI issued after the relogged application. The August 21, 2023 denial was valid and would have issued even if the complete fax had been received. The case worker did not rescind the August 21, 2023 denial. MassHealth did not receive all corroborating information until November 9, 2023.

Appellant's attorney argued that he submitted all information requested by MassHealth as part of the May 17, 2023 RFI. When he received the August 23, 2023 email from the case worker, he had not yet received the August 21, 2023 denial notice in the mail. Appellant's attorney argued that Appellant was prejudiced by the fact that MassHealth did not notify Appellant of the fax error until after the August 15, 2023 RFI deadline. Appellant's attorney asserted that had MassHealth received all of the pages that had been sent on August 1, 2023 (or if MassHealth notified Appellant earlier of the fax error), MassHealth would not have issued a denial notice on August 21, 2023. Instead, MassHealth would have preserved the application date and issued a new RFI.

Regarding the decision not to appeal the August 21, 2023 denial, Appellant's attorney believed that the contemporaneous correspondence with the prior case worker resolved the issue and that appealing the August 21, 2023 notice would have been an unnecessary bureaucratic exercise.

Appellant's attorney exercised the good faith belief that the August 1, 2023 submission satisfied the RFI and therefore nullified the denial notice. The order in which Appellant received information from MassHealth (first receiving the email notice of the fax error, then receiving the mailed denial notice) affected Appellant's attorney's understanding of whether the issue had been resolved.

Findings of Fact

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

1. On May 12, 2023, Appellant applied for MassHealth long term care benefits beginning February 1, 2023.
2. On the application, Appellant indicated that she has a burial plot but did not answer the question of whether she had a burial only account. Exhibit 4 at 34.
3. On May 17, 2023, MassHealth issued an RFI to Appellant due August 15, 2023. Exhibit 5 at 6.
4. On this RFI, MassHealth requested that Appellant answer the question of whether she had a burial-only account. *Id.* at 7.
5. On this RFI, MassHealth requested verification of the John Hancock long term care insurance policy, including whether or not the policy was active. *Id.*
6. On August 1, 2023, Appellant's attorney faxed 17 pages to MassHealth, which included an updated application page with the burial account question answered yes. Appellant provided the bank account number and a statement covering January 1, 2023 – March 31, 2023. Exhibit 5 at 3, 4, 9.
7. On August 1, 2023, Appellant's attorney received a fax confirmation showing that the 17 page fax was transmitted successfully. *Id.* at 3.
8. On August 21, 2023, MassHealth denied Appellant's application for failure to submit all requested verifications. Exhibit 4 at 3.
9. The denial states that MassHealth did not receive, *inter alia*,
 - [REDACTED] Savings Burial Only Account xxxx [REDACTED]
 - All financial accounts/resources, both open and closed send monthly statements 02/01/22 to 12/31/22, 4/1/23 fwd.

- Explain and send proof of all transactions \$1000 over, including the source of deposits. Proofs would be copies of the check(s), copy of invoice(s) showing funds paid, deposit slips, etc.
- Verification of Long Term Care Insurance xxx[REDACTED] John Hancock
 - You stated on the application's Long-Term Care supplement that you do not have a long-term care insurance policy, however you provided long-term care documents for a policy. Please clarify if this is still an active policy.

Id. at 5.

10. The denial states that

If your application for MassHealth was denied because you did not give us the information or proof we needed to decide if you are eligible for MassHealth, you can either:

- send us some of the needed information or proof within 30 days of the date on this notice (if you are eligible for MassHealth, the date we get the needed information or proof will be your reapplication date.); or
- ask for a fair hearing if you want us to go back to your original application date.

Id. at 3.

11. Appellant did not appeal this denial by asking for a fair hearing.

12. On August 23, 2023, Appellant's attorney received an email from the case worker that MassHealth only received eight of the 17 faxed pages sent on August 1, 2023. Exhibit 5 at 21.

13. Appellant's attorney sent the documents by priority mail and email on September 6, 2023.
Id. at 22.

14. On September 8, 2023, MassHealth relogged Appellant's application.

15. On September 12, 2023, MassHealth issued a second RFI. The two items listed on the new RFI are as follows:

- Watertown Savings Burial Only Account xxx[REDACTED]
 - All financial accounts/resources, both open and closed send monthly statements 02/01/22 to 12/31/22, 4/1/23 fwd.
 - Explain and send proof of all transactions \$1000 over, including the source of deposits. Proofs would be copies of the check(s), copy of invoice(s) showing funds paid, deposit slips, etc.
 - Provide proof this account is for burial only purposes.

- Verification of Long Term Care Insurance xxx [REDACTED] John Hancock
 - Please send in ALL Long-Term-Care policies that are currently in effect AND verification of ANY payments which may have already been made on this policy. Provide proof of amount of days for waiting period [sic] benefit amount.

Exhibit 4 at 8-9.

16. On November 22, 2023, MassHealth approved Appellant for long term care benefits beginning June 1, 2023 with a patient paid amount (PPA) of \$1,363.20. Exhibit 1.

17. Appellant requested a fair hearing on December 19, 2023. Exhibit 2.

Analysis and Conclusions of Law

An individual applying for MassHealth long term care benefits (or the individual's authorized representative) must submit a complete application and all required supplements. 130 CMR 516.001(A)(1). The date of application is the date it is received by MassHealth, and the application is considered complete upon MassHealth's receiving all corroborative information. 130 CMR 516.001(A)(2)(a) and (b), 130 CMR 516.001(C). If an application contains missing or inconsistent information, MassHealth cannot determine eligibility. 130 CMR 516.001(A)(3).

MassHealth requires verification of eligibility factors, including but not limited to assets as described 130 CMR 520.000. 130 CMR 516.003. "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." 130 CMR 516.003(C).

After receiving an application for MassHealth benefits, MassHealth proceeds as follows:

The MassHealth agency requests all corroborative information necessary to determine eligibility.

(1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of the receipt of the [application].

(2) The notice 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 received [by MassHealth] within 30 days of the date of the request, the [application] is considered complete...If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied" 130 CMR

516.001(C). Pursuant to 130 CMR 515.008(A), an “applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility.”

If an applicant submits requested information within 30 days of a denial of eligibility for failure to provide requested verifications, MassHealth will consider the date this information is received as the date of reapplication. 130 CMR 516.002(A). The reapplication date replaces the date of the denied application, and the earliest date of MassHealth eligibility is based on the reapplication date. 130 CMR 516.002(B). The first day of MassHealth eligibility may be as early as the first day of the third month before the date of the application as long as the individual was otherwise eligible for coverage as of that date. 130 CMR 520.004(A)(1) and (C)(2).

The Board of Hearings must receive a request for a fair hearing within 60 days after an applicant receives written notice from MassHealth of the intended action. 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)(1).

In this matter, Appellant’s eligibility for MassHealth is not disputed. The relief Appellant seeks in this appeal is a finding of eligibility effective February 1, 2023. According to 130 CMR 520.004(A)(1) and (C)(2), Appellant is only eligible for coverage to begin in February if the May 12, 2023 application date is preserved. In order to preserve the May 12, 2023 start date, Appellant would have had to submit a request for fair hearing of the August 21, 2023 denial notice by October 25, 2023. Appellant’s request for hearing dated December 19, 2023 is not timely to challenge the August 21, 2023 denial.

Appellant’s rationale for not appealing the August 21, 2023 denial is not compelling. Moreover, Appellant’s assertion that MassHealth would not have issued the denial if the complete fax had been received on August 1, 2023 is not supported. When MassHealth issued its August 21, 2023 denial, it had received the burial account answer and January-March 2023 statement as part of the incomplete fax. This is evidenced by the fact that MassHealth listed the account and the months of statements not received on the August 21, 2023 denial. Appellant waived the opportunity to challenge MassHealth’s August 21, 2023 denial on the basis of information not listed in the May 17, 2023 RFI by not appealing the August 21, 2023 notice. To the extent that Appellant seeks coverage effective February 1, 2023, this appeal is denied in part.

However, Appellant’s argument that it was prejudiced by MassHealth’s delay in notifying Appellant’s attorney that the fax had not gone through is sensible. MassHealth relogged Appellant’s application on September 8, 2023, the date it received the complete 17 page submission that Appellant had originally sent on August 1, 2023. Appellant provided proof that the fax had been sent and seemingly received in its entirety on August 1, 2023. As the documents received on September 8, 2023 were sufficient to relog the application, this appeal is approved in part to substitute August 1, 2023 as the reapplication date, in lieu of September 8, 2023. MassHealth is ordered to redetermine financial eligibility based on an August 1, 2023 application

date and issue a new notice without appeal rights.

Order for MassHealth

Redetermine financial eligibility based on an August 1, 2023 application date and issue a new notice without appeal rights.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

General Counsel – Sharon Boyle

