

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied-in-part;  
Dismissed-in-part

**Appeal Number:** 2403949

**Decision Date:** 6/27/2024

**Hearing Date:** 04/09/2024

**Hearing Officer:** Casey Groff, Esq.

**Record Closed:** 06/18/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Lynn Bloomquist, Tewksbury MEC



*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>	Denied-in-part; Dismissed-in-part	<b>Issue:</b>	Eligibility; Over 65; Verifications
<b>Decision Date:</b>	6/27/2024	<b>Hearing Date:</b>	04/09/2024
<b>MassHealth's Rep.:</b>	Lynn Bloomquist	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)	<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 2/14/24 (notice #66376165), MassHealth denied Appellant's application for MassHealth benefits because it determined she had countable income and assets that exceeded regulatory limits. See Exh. 1; see also 130 CMR §§ 520.002-004 and 520.028. On 3/13/24, Appellant, through her power of attorney (PoA), filed a timely appeal of the 2/14/24 notice and appointed an attorney to represent Appellant for the hearing. See Exhibit 2; 130 CMR 610.015(B)(1). Challenging a denial of request for benefits is valid grounds for appeal. See 130 CMR 610.032. At hearing, Counsel asserted that Appellant also sought to appeal a MassHealth notice dated 12/6/23 (notice #65940444) which denied Appellant's 8/23/24 re-application for long-term-care (LTC) benefits. See Exh. 2 p. 2. At the conclusion of the hearing, the record was left open through 6/18/24 for Appellant to submit additional information and to see if a resolution could be achieved between the parties. See Exhs. 5-7.

### Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth benefits based on its determination that her income and assets exceeded regulatory program limits.

## Issue

The appeal issues are (1) whether MassHealth was correct, pursuant to its 2/14/24 notice, in denying Appellant's request for benefits based on a determination that Appellant had income and assets that exceeded program limits, and (2) whether Appellant's 3/13/24 fair hearing request was timely to appeal prior denial notices, issued on 8/11/23, 12/6/23, and 12/27/23 pertaining to Appellant's earlier application for LTC benefits.

## Summary of Evidence

A MassHealth eligibility representative appeared at the hearing by telephone and provided the following background information: Appellant is over the age of [REDACTED] and, for all relevant times, has resided at a nursing facility. On 3/24/23, MassHealth received an initial long-term care (LTC) application on behalf of Appellant seeking a benefit start date of 12/27/22. On 3/31/24, MassHealth sent Appellant a request for information (RFI). See Exh. 4(a). On 8/11/23, MassHealth denied the application for failure to provide verifications by the required deadline. Appellant did not appeal the 8/11/23 denial. Following the denial, MassHealth received a portion of the outstanding verifications, prompting a reapplication date of 8/23/23. On 8/23/23, a new RFI was issued with a response deadline of 11/23/23. On 12/6/23, MassHealth denied the 8/23/23 reapplication for failure to submit all verifications by the deadline. On 12/19/23, MassHealth received all remaining verifications allowing it to re-open the 8/23/23 reapplication and render an eligibility determination. Specifically, on 12/27/23, MassHealth denied the 8/23/23 application based on its determination that Appellant had assets that exceeded the program limit. The notice gave Appellant 30 days to show proof of spend-down. As no verification of a spend-down was submitted within 30 days, Appellant's LTC application closed. No appeal was filed on the 12/27/23 denial. On 2/9/24, MassHealth received updated asset information on behalf of Appellant. Because there was not an open LTC application, the information was processed through MassHealth's "ongoing unit" as a community application. The 2/9/24 submission did not show that Appellant's assets were below the \$2,000 limit and therefore, on 2/14/24, MassHealth notified Appellant that she did not qualify for MassHealth community benefits because her income and assets exceeded program limits in accordance with 130 CMR §§ 520.002-004 and 520.028. See Exh. 1. On 3/13/24, Appellant, through her PoA, filed a timely appeal of the 2/14/24 notice with BOH. See Exh. 2.

Counsel for Appellant asserted that Appellant is seeking to reopen the March 2023 LTC application and associated retroactive benefit start date of 12/27/22. Counsel noted that after the application was filed, MassHealth issued three requests for information notices within 13 days of each other, the last of which was issued on 4/11/23 and had a deadline of 7/29/23. Counsel submitted copies of each of the three RFI notices in a pre-hearing submission. See Exhs. 4(a). Counsel argued that Appellant provided a comprehensive response to the requests on 7/23/23 and had conversations with the MassHealth case worker that led Appellant to

believe the production was sufficient. When Appellant received the 8/11/23 denial notice, it was assumed that the notice was generated in error after the verifications were received and there were no outstanding issues. Counsel acknowledged that Appellant did not file appeals on the earlier denial notices or the 12/27/24 notice. Counsel did, however, express his belief that a prior appeal was filed on the 12/6/24 denial, but that he never was informed that it was received by BOH and was awaiting a hearing to be scheduled on the matter. See Exh. 4. Appellant submitted copies of the prior MassHealth notices and the Appellant's various verification productions. Id. None of the documentation showed that Appellant sent BOH a fair hearing request other than the one received on 3/13/24.

In response, the MassHealth representative testified that had Appellant appealed the 12/27/23 denial, it would be able to consider additional evidence of a spend down. MassHealth explained that if Appellant could produce an updated private pay statement with clear information as to when and where the excess assets were paid to the facility (and for what purpose), it could consider the most re-app date of 8/11/23.

Based on the discussion at hearing, the record was left open to determine if the parties could come to a potential resolution if Appellant were to submit updated information of a spend-down.<sup>1</sup> After receiving Appellant's post-hearing submissions, MassHealth confirmed it had information it needed to issue a determination. See Exh. 7. In a follow-up communication, Appellant confirmed that MassHealth had approved Appellant for LTC with an effective start date of 5/1/23; however, she was still looking for an earlier start date of 12/27/22 based on the March 2023 application. See id.

## Findings of Fact

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

1. Appellant is over the age of [REDACTED] and resides at a nursing facility.
2. On 2/9/24, MassHealth received updated asset information on behalf of Appellant, which showed that she had assets in excess of the \$2,000 individual limit.
3. Appellant previously filed applications for LTC benefits, which had been denied on 8/11/23 and 12/27/23, had not been timely appealed, and were subsequently closed.

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<sup>1</sup> At hearing, it was discussed that if the parties were unable to resolve the issue through the record open period, any subsequent decision rendered by the hearing officer would be limited to issues involving only the MassHealth notice(s) timely appealed.

4. Because Appellant did not have an active LTC application at the time the 2/9/24 submission was received, the documentation was processed through MassHealth's "ongoing unit" as a community application.
5. On 2/14/24, MassHealth informed Appellant that she did not qualify for MassHealth community benefits because her income and assets exceeded program limits in accordance with 130 CMR §§ 520.002-004 and 520.028.
6. On 3/13/24, Appellant, through her PoA, filed a timely appeal of the 2/14/24 notice.

## Analysis and Conclusions of Law

The sole issue on appeal is whether MassHealth, through its 2/14/24 notice, correctly determined Appellant was not eligible for community senior benefits because her assets exceeded the program limit. At hearing, the MassHealth representative explained that the 2/14/24 notice was generated after MassHealth received updated financial documentation on behalf of Appellant on 2/9/24. At the time the documentation was received, Appellant's initial 3/23/22 LTC application and 8/23/23 reapplication had been closed after being denied pursuant to MassHealth notices dated 8/11/23 and 12/27/23, respectively. Because her LTC had been closed, with no appeals filed on either, MassHealth did not err in processing the 2/9/24 submission as an application for community benefits. The MassHealth representative testified that, according to the 2/9/24 submission, Appellant had assets that exceeded \$2,000 individual program limit, as imposed under MassHealth regulation 130 CMR 520.003. On this basis, MassHealth appropriately determined that Appellant did not qualify for community benefits pursuant to its 2/14/24 notice. See Exh. 1.

Accordingly, the appeal is DENIED with respect to the 2/14/24 notice.

Appellant, through Counsel, argued that she was appealing the 2/14/24 notice, not to address the issue of her eligibility for MassHealth community benefits, but to reopen and preserve Appellant's initial LTC application date of 3/24/23, and that she was also appealing the 12/6/23 denial notice for verifications. As the evidence indicates, the 12/6/23 denial, which pertained to Appellant's 8/23/23 reapplication, had subsequently been replaced via MassHealth's 12/27/23 LTC denial on the basis of excess assets. To challenge a MassHealth action, an applicant or member must file an appeal to the Board of Hearings (BOH) within "*60 days after [having received] written notice from the MassHealth agency of the intended action.*" See 130 CMR 610.015(B)(1) (emphasis added). In this case, Appellant filed a fair hearing request with BOH on 3/13/24. See Exh. 2. The only appealable MassHealth action rendered within 60-days of the fair hearing request is the 2/14/24 notice, which was not expressly disputed by Appellant and did not appear to be erroneously issued as addressed above. While Appellant wishes to reopen her LTC application(s) with the intent of securing a more beneficial LTC coverage start

date, her right to do so already elapsed by the time she filed the 3/13/24 fair hearing request. See id.<sup>2</sup>

To the extent Appellant seeks to challenge the 12/27/23, 12/6/23, or 8/11/23 denial notices related to her LTC application, the appeal is DISMISSED as untimely. See 130 CMR 610.035(A)(1) (BOH will dismiss a request for a hearing when the request is not received within the time frame specified in 130 CMR 610.015).

## 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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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

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

[REDACTED]

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<sup>2</sup> Based on the parties' communications during the record open period, it appears MassHealth was able to approve the Appellant for LTC benefits preserving the 8/23/23 reapplication date. Because, however, this matter is outside the scope of the instant appeal, the hearing officer does not have jurisdiction to review and/or adjudicate the appropriateness of the MassHealth decision regarding a LTC start date.