

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Dismissed in part	Appeal Number:	2403996
Decision Date:	4/24/2024	Hearing Date:	04/16/2024
Hearing Officer:	Alexandra Shube	Record Open to:	04/19/2024

Appearance for Appellant:
Via telephone:
Pro se

Appearance for MassHealth:
Via telephone:
Dianne Braley, Taunton 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

Appeal Decision:	Denied in part; Dismissed in part	Issue:	Eligibility – Over assets
Decision Date:	4/24/2024	Hearing Date:	04/16/2024
MassHealth's Rep.:	Dianne Braley	Appellant's Rep.:	Pro se
Hearing Location:	Taunton MassHealth Enrollment Center 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 January 22, 2024, MassHealth determined that the appellant was not eligible for MassHealth benefits because she has more countable assets than MassHealth benefits allow (Exhibit 1). The appellant filed this appeal in a timely manner on March 15, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant MassHealth benefits.

Issue

The appeal issue is whether MassHealth correctly determined that the appellant is not eligible for MassHealth benefits because she is over the allowable asset limits.

Summary of Evidence

Both the MassHealth representative and the appellant appeared at hearing via telephone. The MassHealth representative testified as follows: the appellant is over the age of 65 with a household size of one. On January 22, 2024, MassHealth issued a notice informing the appellant that she is over the allowable asset limit to qualify for MassHealth benefits. This is the notice currently under appeal. For an individual over the age of 65, assets cannot exceed \$2,000. Including a bank account and security, the appellant has \$111,705.68 in assets, putting her \$109,705.68 over the allowable asset limit. The MassHealth representative stated that on November 20, 2023, Disability Evaluation Services (DES) determined that the appellant was not disabled. After the DES determination, MassHealth issued a denial notice on November 21, 2023 informing the appellant she did not qualify for MassHealth benefits because she was over the allowable asset limit.

The appellant testified that she requested the hearing because she is disputing the disability determination. She is seeking MassHealth CommonHealth benefits based on her disability. She stated that she did not receive the disability determination from DES and did not have any information on why DES determined she was not disabled. She did receive the MassHealth notice in November 2023 informing her that she was over assets.

The MassHealth representative stated that the only information she had on this disability determination was the decision dated November 20, 2023 and DES coding her 210, which means it found the appellant not disabled or her disability not severe.¹ Previously, the only other DES information in her system was a letter from August 26, 2015 which stated that DES received a disability supplement and would review it. But she did not see any other DES information from that date until the most recent November 2023 determination. The appellant had MassHealth Standard from June 6, 2020 through July 28, 2023, but that was when the COVID-19 Public Health Emergency protections were in place and the appellant was under 65. There are different eligibility regulations once an individual turns 65.

The record was held open until April 19, 2024 for the MassHealth representative to reach out to DES and obtain a copy of the determination notice, if any was produced and sent to the appellant. The MassHealth representative spoke with DES who informed her that a notice was issued to the appellant on November 20, 2023 and the appellant had 60 days from that date to appeal the disability determination. DES provided a copy of its November 20, 2023 notice which the MassHealth representative submitted to this hearing officer via email and via mail to the appellant. The notice stated that DES determined the appellant was not disabled according to Federal and State laws and regulations. The hearing officer followed up with the appellant via telephone to update her on the information MassHealth obtained from DES.

¹ The MassHealth representative provided the MassHealth Tracking Determination Tracking Form in her pre-hearing submission showing the DES determination and date. See Exhibit 5.

Findings of Fact

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

1. The appellant is over the age of 65 with a household size of one (Testimony and Exhibit 4).
2. On January 22, 2024, MassHealth issued a notice informing the appellant that she is over the allowable asset limit to qualify for MassHealth benefits (Testimony and Exhibit 1).
3. On March 15, 2024, the appellant timely appealed the January 22, 2024 denial notice (Exhibit 2).
4. Including a bank account and security, the appellant has \$111,705.68 in assets, putting her \$109,705.68 over the \$2,000 allowable asset limit (Testimony and Exhibits 1 and 5).
5. The appellant did not dispute her asset limit, but was looking for MassHealth CommonHealth coverage based upon a disability (Testimony).
6. On November 20, 2023, Disability Evaluation Services determined that the appellant was not disabled and issued a notice informing her of its determination (Exhibit 6).
7. On November 21, 2023, after receiving the determination from DES, MassHealth issued a notice informing the appellant that she was over the allowable asset limit (Testimony).
8. The appellant did not appeal either of the November, 2023 MassHealth notices (Testimony).

Analysis and Conclusions of Law

Pursuant to 130 CMR 519.005, the following applies to MassHealth Standard coverage for community residents 65 years of age and older:

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C), noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

- (1) the countable-income amount, as defined in 130 CMR 520.009: *Countable-income Amount*, of the individual or couple is less than or equal to 100 percent of the federal poverty level; and
- (2) the countable assets of an individual are \$2,000 or less**, and those of a married couple living together are \$3,000 or less.

The appellant has \$111,705.68 in assets, putting her \$109,705.68 over the \$2,000 allowable asset limit. The appellant did not dispute her assets. As she is over the allowable asset limit, the MassHealth determination was correct and the appeal is denied.

The appellant's main issue at hearing, however, is the November 20, 2023 disability determination. To address that issue, it is necessary to establish jurisdiction over one of the November 2023 notices, which cannot be done here. Under 130 CMR 610.015(B)(1), the Board of Hearings must receive a request for a fair hearing within 60 days after an applicant or member receives written notice from MassHealth of the intended action. It is presumed that the notice was received on the fifth day after mailing. See 130 CMR 610.015(B)(1). Additionally, under 130 CMR 610.015(B)(2)(c), unless waived by the Director or his or her designee, the Board of Hearings must receive a request for a fair hearing within 120 days from the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action.

Here, the appellant alleges she never received the DES disability determination. While the appellant's testimony is credible, the burden is on the appellant to show that MassHealth erred in its action and the appellant has not done so here. MassHealth provided a copy of the November 20, 2023 disability notice, which informed the appellant of its determination that she is not disabled according to Federal and State laws and regulations. The appellant also testified that she received MassHealth's over asset notice in November 2023. Unfortunately, the appellant's March 15, 2024 Request for a Fair Hearing was not received within 60 days (plus five for mailing) of the November 2023 notices. As written notice was sent, 130 CMR 610.015(B)(2)(c) is not applicable here. As such, the November 20, 2023 disability determination is outside the scope of this appeal. Because the request for hearing is not timely, the appeal is dismissed as to the issue of the disability determination.

For these reasons, the appeal is denied in part and dismissed in part.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780