

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in part; Approved in part	<b>Appeal Number:</b>	2404036
<b>Decision Date:</b>	08/02/2024	<b>Hearing Date:</b>	04/23/2024
<b>Hearing Officer:</b>	Kimberly Scanlon	<b>Record Open to:</b>	07/29/2024

**Appearance for Appellant:**



**Appearances for MassHealth:**

Alyssa Smalley – Tewksbury MEC;  
Carmen Fabery – Premium Billing



*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>	Dismissed in part; Approved in part	<b>Issue:</b>	Eligibility; Over 65; Premiums
<b>Decision Date:</b>	08/02/2024	<b>Hearing Date:</b>	04/23/2024
<b>MassHealth's Rep.:</b>	Alyssa Smalley; Carmen Fabery	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Room 1	<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 February 15, 2024, MassHealth notified the appellant that he was eligible for MassHealth CommonHealth coverage beginning on December 29, 2023, with a monthly premium of \$15.00 (Exhibit 1). The appellant filed this appeal in a timely manner on or about March 15, 2024 (130 CMR 610.015; Exhibit 2).<sup>1</sup> The scope of assistance is valid grounds for appeal (130 CMR 610.032).

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<sup>1</sup> The Board of Hearings (BOH) received a fair hearing request dated March 15, 2024. On March 18, 2024, BOH notified the appellant's representative that it was dismissing the appeal for failure to submit written authorization demonstrating that the appellant is a MassHealth member or applicant (Exhibit 4). On or about March 20, 2024, BOH received a fair hearing request containing a written signature and additional documentation (Exhibit 5). BOH scheduled a hearing upon receiving the pertinent documentation (Exhibit 7).

## Action Taken by MassHealth

MassHealth notified the appellant that he was eligible for MassHealth CommonHealth coverage beginning on December 29, 2023.

## Issue

The appeal issue is whether MassHealth was correct in determining the start date of December 29, 2023.

## Summary of Evidence

MassHealth was represented at the hearing by an eligibility representative from the MassHealth Enrollment Center in Tewksbury and a representative from the Premium Billing Unit. The Premium Billing representative testified by videoconference. The record establishes the following facts and chronology: The appellant is a single individual over the age of 65 who resides in a nursing facility. By way of background, the appellant had previously been on MassHealth CommonHealth with a \$15 monthly premium. The appellant failed to make some premium payments. In August 2023, MassHealth sent the appellant a notice terminating his benefits on [REDACTED] 1, 2023 because of past-due premiums.

In late [REDACTED], the appellant turned [REDACTED] thereby resulting in his case being transferred from MassHealth's under 65 unit to its over 65 unit. Additionally, the change in age required a separate (senior) application to be submitted to MassHealth. MassHealth received the appellant's senior application in December of 2023. MassHealth subsequently sent the appellant a request for additional information which was received and processed. On February 15, 2024, MassHealth notified the appellant that he was approved for MassHealth CommonHealth benefits beginning on December 29, 2023, with a monthly premium of \$15 (Exhibit 1).

The MassHealth representative explained that there was a gap in the appellant's coverage between September and December of 2023 because MassHealth did not receive his senior application until December of 2023. While MassHealth would typically send a notice to MassHealth members notifying them of the requirement to return a senior application when a member turns 65, a notice was not generated in this instance because he had lost his coverage on September 1, 2023 for failing to make premium payments.

The Premium Billing representative testified that it was her understanding that the appellant is up to date in premium payments. The Premium Billing representative confirmed that the appellant was approved on February 15, 2024 for MassHealth CommonHealth coverage with a \$15 monthly premium beginning in March of 2024 (Exhibit 8, p. 5).

The appellant's representative, his brother and guardian, appeared at the hearing and testified that he did not receive the August 2023 termination notice. He stated that his brother's ex-wife makes all premium payments on behalf of the appellant, and he was unaware of a period where the payments were not made. Further, he explained that, in 2001, his brother, the appellant, was married with two minor children. The appellant went for a jog in 2001 and suffered a heart attack that resulted in a permanent loss of oxygen to his brain. Since that time, the appellant has lived in a nursing facility and requires long-term care. The appellant's family attempted to care for the appellant financially, however, his spouse depleted funds and subsequently filed for divorce so she could care for their two minor children. In the interim, the appellant's brother became his legal guardian (Exhibit 5, p. 3). The appellant's ex-wife remains active in his health care and medical and financial needs. In August of 2023, the appellant's guardian contacted the appellant's ex-wife to modify the divorce decree pertaining to child support payments because the appellant's children are adults now (Exhibit 6). The Court did not schedule a hearing until January of 2024 *Id.* The appellant's representative explained that this activity could be the reason for the delayed premium payments. He testified that the appellant's ex-wife receives alimony payments, in accordance with the divorce decree. She uses a percentage of her alimony to pay for the appellant's bills and cost of living expenses, including his premium payments. He stated that his family is extremely grateful for MassHealth, as it assists with paying for the appellant's care at the nursing facility. When the appellant lost his MassHealth coverage in 2023, his brother received a bill from the facility in the amount of approximately \$37,000.00. The appellant does not have much income and his representative is concerned about the outstanding bill. He inquired whether MassHealth can close the gap in his brother's coverage. Additionally, the appellant's representative inquired where the August 2023 termination notice was mailed because he never received a copy.

In response, the MassHealth representative stated that the termination notice would have been sent to the address on file, which in this case is the nursing facility where the appellant resides. The appellant's representative explained that his brother would not have been able to comprehend any notices that were mailed to the facility, given his injuries. The MassHealth representative explained that MassHealth subsequently received the appellant's Authorized Representative Designation (ARD) form and therefore notices will be sent to the appellant's representative moving forward. The appellant's representative implored that any notices regarding his brother are sent to him to alleviate any further confusion. The MassHealth representative inquired whether Premium Billing had any additional information regarding the appellant's payment history that resulted in the termination notice for unpaid premium bills. The MassHealth representative explained that the issue here is two-fold. First, the appellant's benefits terminated on [REDACTED] due to non-payment of premiums; secondly, the appellant turned [REDACTED], which resulted in a change in the application required. Here, MassHealth did not receive the appellant's (senior) application until December of 2023.<sup>2</sup>

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<sup>2</sup> At hearing, the appellant's representative pointed out the fact that MassHealth did not mail the proper application to the appellant until December of 2023, which is the reason that it was not submitted prior to that time. In response, the MassHealth representative stated that the appellant's senior application was not mailed to

The Premium Billing representative stated that she was able to see in her computer system that the appellant was terminated on September 1, 2023. Upon conducting further research, she testified that \$15.00 monthly premiums were not received from the appellant for the months of June, July and August of 2023, totaling \$45.00. Premium Billing subsequently received the appellant's payment in full on October 3, 2023 (Exhibit 8, p. 12). The appellant's representative stated that he would speak to the appellant's ex-spouse to see if she made any payments during the time in question. He added that she sets up payments electronically, so she may have additional documentation (i.e. receipts) regarding premium payments that were made during the time in question. The record was left open for a brief period to allow the appellant time for additional submission (Exhibit 9). The record was further extended and closed on July 29, 2024 (Exhibit 10). During the record open period, the appellant's representative informed all parties that he does not have any additional documentation for submission (Exhibit 10, p. 1).

## Findings of Fact

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

1. The appellant is an adult male over the age of 65 who resides in a skilled nursing facility.
2. The appellant had previously been on MassHealth CommonHealth with a \$15 monthly premium; the appellant failed to make premium payments for the months of June, July, and August 2023.
3. In August 2023, MassHealth sent the appellant a notice terminating his benefits on September 1, 2023 because of past-due premiums; this notice was sent to the nursing facility where the appellant resides.
4. In late [REDACTED] the appellant [REDACTED] thereby resulting in his case being transferred from MassHealth's under 65 unit to its over 65 unit.
5. Additionally, the change in age required a separate (senior) application to be submitted to MassHealth.
6. MassHealth received payment for the appellant's outstanding premiums on October 3, 2023.
7. MassHealth received the appellant's senior application in December of 2023; MassHealth could not provide an exact application date.
8. MassHealth subsequently sent the appellant a request for additional information which was received and processed.

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him because his benefits terminated on September 1, 2023 for non-payment of monthly premiums.

9. On February 15, 2024, MassHealth notified the appellant that he was approved for MassHealth CommonHealth benefits beginning on December 29, 2023, with a monthly premium of \$15 (Exhibit 1).
10. The appellant timely appealed the February 15, 2024 approval notice.
11. The appellant's guardian has recently completed an ARD form and submitted it to MassHealth.

## Analysis and Conclusions of Law

At issue in this appeal is whether MassHealth correctly determined the appellant's MassHealth CommonHealth coverage start date of December 29, 2023. Per 130 CMR 516.006, "[f]or individuals applying for coverage, the date of coverage for MassHealth is determined by the coverage type for which the applicant may be eligible. 130 CMR 519.000: *MassHealth: Coverage Types* describes the rules for establishing this date." The CommonHealth coverage start date is ten days prior to the date of application (130 CMR 502.006(A)92)(b); 505.004(M); 519.012(A)(2)). The appellant's representative argues that the appellant would have applied sooner, but that MassHealth did not mail the proper application until December of 2023. MassHealth persuasively noted that members who are turning 65 do in fact typically receive an application to complete. Here, however, because the appellant's benefits terminated in [REDACTED] he was no longer listed as an active MassHealth member when he turned [REDACTED]. However, MassHealth could not provide an exact application date, but could only provide testimony that the application was submitted in December. Because coverage should be established 10 days prior to the application date, a coverage start date of December 29 cannot be accurate. Thus, this portion of the appeal is APPROVED in part.

The appellant has also disputed MassHealth's August 2023 action terminating his MassHealth CommonHealth benefits effective September 1, 2023. However, to timely appeal a MassHealth action, the member must file an appeal with BOH within 60 days of receiving the written notice in dispute (130 CMR 610.015(B)(1)). Alternatively, when the member has alleged that MassHealth failed to send written notice of the action, the time limitation on the right of appeal is extended to 120 days from the date of the action (130 CMR 610.015(B)(2)(c)). The appellant filed this fair hearing request with BOH on March 15, 2024, almost six months after MassHealth sent the August 2023 termination notice to the appellant.<sup>3</sup> Because the appeal was not filed within the time limitations established by regulation, BOH does not have jurisdiction to adjudicate any issue related to the August, 2023 termination notice. For these reasons, the appeal is dismissed as to this issue (130 CMR 610.035(A)(1)).

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<sup>3</sup> It is noted that the appellant would not have been able to comprehend any written correspondence, given his injuries. To this extent, the appellant's representative submitted the appellant's ARD form to MassHealth so that he can receive all mail correspondence moving forward, which should avoid further confusion.

## Order for MassHealth

Rescind notice dated February 15, 2024 and establish MassHealth CommonHealth coverage start date 10 days prior to the application date.

## 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.

## 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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Kimberly Scanlon  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

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

MassHealth Premium Billing