

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied; Dismissed	Appeal Number:	2404177
Decision Date:	6/5/2024	Hearing Date:	04/26/2024
Hearing Officer:	Christopher Jones		

Appearances for Appellant:




Appearance for MassHealth:

Evelyn Daniel – Springfield Intake



*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; Dismissed	Issue:	Long Term Care; Coverage Start Date; Timeliness
Decision Date:	6/5/2024	Hearing Date:	04/26/2024
MassHealth's Rep.:	Evelyn Daniel	Appellant's Reps.:	
Hearing Location:	Telephonic	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 March 8, 2024, MassHealth denied the appellant's application for long-term-care benefits because the appellant's assets were over \$2,000. (Exhibit 1, p. 3; 130 CMR 520.003; 520.004.) The appellant filed this appeal in a timely manner on March 19, 2024.¹ (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth denied the appellant's application for excess assets. Prior to the hearing, this application was approved as of August 1, 2023. MassHealth had denied an earlier application in June 2023.

¹ The appellant's true dispute is regarding a June, 2023 denial of an earlier application. This appeal is untimely with regards to that denial and must be dismissed.

Issue

The appeal issues are whether MassHealth was correct, pursuant to 130 CMR 516.006, in determining the earliest available coverage date based upon a November 2023 application, and whether the appellant may appeal MassHealth's denial of an earlier application, pursuant to 130 CMR 610.015 and 610.032.

Summary of Evidence

This appeal was filed based upon an application for long-term-care services from November, 2023. Pending the hearing date, the November, 2023 application was approved with a benefits-start date of August 1, 2023. The appellant's real dispute is regarding an application that was filed in January, 2023.

The appellant's representative is a Medicaid application consultant who assists individuals in filing Medicaid applications. She testified that the appellant had filed an application on or around January 19, 2023, and that her office was retained to assist the appellant in with the application process. A colleague assisted the appellant with verifying his assets, including filing an earlier appeal that was resolved administratively when her office provided the needed verifications prior to hearing. In April, 2023, the appellant was informed that he would need to reduce his assets in order be eligible for MassHealth benefits, and the appellant was unwilling to take that step. The nursing facility at which the appellant is residing chose to seek a conservator to manage the appellant's finances as he appeared to not be acting in his own financial interest. Around this time, there was a staffing change at the appellant's representative's office.

The conservator petition was filed on or around [REDACTED] On or about July 24, 2023, MassHealth denied the January, 2023 application again. No appeal was filed with the Board of Hearings at that time. The appellant's representative testified that she misunderstood the process of appealing pending the appointment of a conservator. She believed that a conservator decree needed to be in effect in order to file an appeal. The appellant filed an appeal on November 10, 2023, after the conservator was appointed. This appeal was dismissed as untimely, based upon the July 24, 2023 denial notice. (See Appeal No. 2311305.) The appellant's representatives did not request to vacate this dismissal, but rather filed a new application with MassHealth. This application was denied for excess assets on March 8, 2024, and this appeal followed.

The appellant's representative testified that she did not know she could file the appeal while the conservator was pending, and she further did not know that she could request to vacate the dismissal of the November 10, 2023 appeal. MassHealth's representative confirmed that she could have approved the case in June, 2023 if she had known that there was a conservatorship pending, but she could not find anything in her notes to indicate that she was aware of the pending conservatorship. The appellant's representative believed that she had called MassHealth at the

time, but she admitted that she could not find any documentation regarding notifying MassHealth of the conservatorship.

The appellant understands that the November, 2023 application can only reach back to August 1, 2023, and there is no dispute regarding MassHealth's processing of the November, 2023 application. The appellant's sole contention is that the January, 2023 application should be revived, as the appellant's representatives were continuing to take the necessary steps to have it approved, and it would have been approved but for a clerical error arising from the hand-off of the case from one colleague to another.

Findings of Fact

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

- 1) On or around January 19, 2023, an application for long-term-care benefits was filed on the appellant's behalf. This application was denied on or about July 24, 2023, due to excess assets. (Testimony by MassHealth's and the appellant's representatives.)
- 2) On or around [REDACTED] a conservator petition was filed on the appellant's behalf. (Testimony by the appellant's representatives.)
- 3) After the conservator was appointed, an appeal was filed on or around November 10, 2023. This appeal was dismissed as not timely. The appellant did not seek to vacate the dismissal. (Testimony by the appellant's representatives; Appeal No. 2311305.)
- 4) A new application was filed in November, 2023 on the appellant's behalf. This application was denied for excess assets on March 8, 2024, and an appeal was filed on March 19, 2024. (Exhibits 1 and 2.)
- 5) This application was approved prior to the hearing with a coverage-start date of August 1, 2023. (Testimony by MassHealth's and the appellant's representatives.)

Analysis and Conclusions of Law

The date of coverage for MassHealth benefits is determined by the coverage type for which the applicant is applying. Long-term-care services require an applicant have MassHealth Standard coverage, and that "coverage may be retroactive to the first day of the third calendar month before the month of application If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved." (130 CMR 516.006(A).) The appellant does not dispute that the earliest coverage date for the November 2023 application is August 1, 2023. To the extent that they do, this appeal must be DENIED.

Rather, they argue that the appellant's earlier application should have been approved, and if they got a fair hearing regarding the denial of that application, it would have been. Ultimately, this issue cannot be adjudicated because this appeal is untimely.

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

(1) **60 days after an applicant or member receives written notice from the MassHealth agency of the intended action.** Such notice must include a statement of the right of appeal and the time limit for appealing. 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).)

There is an extended 120-day timeframe for appeals where MassHealth "fails to act on an application; ... fails to act on [a request for services]; ... fails to send written notice of the action; or" the date on which it is alleged that a MassHealth employee has coerced or otherwise improperly deterred the member from filing an appeal. (130 CMR 610.015(B)(2).) Appeals must be dismissed where "the request is not received within the time frame specified in 130 CMR 610.015." (130 CMR 610.035(A)(1).) If an appeal is dismissed as untimely by the Board of Hearings, an appellant must request that the Board of Hearings vacate the dismissal "within ten days of the date of the dismissal notice." (130 CMR 610.048(C)(2).)

The appellant's representatives acknowledged that they did not appeal the July, 2023 denial notice because a conservator appointment was pending at the probate court.² Once they did so, the appeal was dismissed as untimely, and they did not seek to vacate that dismissal. This appeal is therefore DISMISSED as untimely with regards to the July, 2023 denial of the appellant's January, 2023 application.

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

² Though technically not written to include conservator and guardian appointments, the Board of Hearings does stay appeals under the same procedure used for pending appointments of personal representative of estates of deceased applicants. (See 130 CMR 610. 016(B).)

Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88
Industry Avenue, Springfield, MA 01104

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