

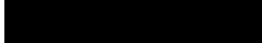
**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in Part; Denied in Part	<b>Appeal Number:</b>	2404533
<b>Decision Date:</b>	6/27/2024	<b>Hearing Date:</b>	05/22/2024
<b>Hearing Officer:</b>	Susan Burgess-Cox		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Victoria Ragbir



*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>	Approved in Part; Denied in Part	<b>Issue:</b>	Long Term Care; Start Date
<b>Decision Date:</b>	6/27/2024	<b>Hearing Date:</b>	05/22/2024
<b>MassHealth's Rep.:</b>	Victoria Ragbir	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through notices dated February 26, 2024, MassHealth notified the appellant that he is eligible for MassHealth as of April 10, 2023 with a patient paid amount of \$3,523.39 each month. (130 CMR 520.000; Exhibit 1A; Exhibit 1B). MassHealth determined that the appellant was ineligible for MassHealth from February 4, 2023 to April 9, 2023 due to a transfer of assets. (130 CMR 520.000; Exhibit 1A; Exhibit 1B). The appellant passed away in (b) (6) (Exhibit 4). The administrator of the appellant's estate filed a timely appeal on March 21, 2024. (130 CMR 610.015(B); Exhibit 2; Exhibit 5). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth determined that the appellant is eligible for MassHealth benefits beginning April 10, 2023 with a patient paid amount of \$3,523.39 each month. (130 CMR 516.001; 130 CMR 520.000).

## **Issue**

Whether MassHealth was correct in calculating the start date for the appellant's eligibility.

## **Summary of Evidence**

All parties appeared by telephone. Documents submitted by MassHealth were incorporated into the hearing record as Exhibit 7. Documents submitted by counsel for the appellant were incorporated into the hearing record as Exhibit 8.

MassHealth received an application for long-term care seeking coverage as of August 11, 2022. In making an eligibility determination, MassHealth utilized an application date of March 1, 2023. On February 26, 2024, MassHealth approved the appellant for coverage as of April 10, 2023 due to the calculation of a penalty period.

The parties noted that there were originally three issues to address during this appeal. First, the calculation of a start date based upon the date the agency received the application. Second, a determination regarding a transfer of assets into a pooled trust. Third, a transfer of funds from an Individual Retirement Account (IRA). At hearing, the MassHealth representative acknowledged that the agency made errors regarding the transfer of funds from the IRA and the transfer of assets into a pooled trust. The MassHealth representative testified that the agency is taking steps to correct both actions. The parties agreed that the only issue outstanding for this appeal was the earliest possible date of eligibility.

As noted above, the agency acknowledged the receipt of an application on March 1, 2023 which would allow coverage back to December 1, 2022 if the appellant is otherwise eligible. Counsel for the appellant argued that MassHealth should utilize an application date of February 28, 2023 in making an eligibility determination. This would allow coverage back to November 1, 2022 if the appellant is otherwise eligible.

Counsel for the appellant testified that on February 28, 2023 his office tried to submit an application for long-term care coverage via facsimile. Counsel stated that several attempts were made to send the application via facsimile. Documents submitted by counsel for the appellant included two electronic mail messages confirming the status of fax transmissions. The first message, dated February 28, 2023 at 11:39 PM, states "the fax you recently attempted to send through eFax to 16178778799 Re:UNKNOWN did not go through because someone answered the call". (Testimony; Exhibit 7; Exhibit 8). The second message, dated March 1, 2023 12:57 AM, states "Your fax was successfully sent to 16178878799 by eFax". (Testimony; Exhibit 8). The message from March 1, 2023 states that the length of transmission was 5587 seconds. The submission was 67 pages. Counsel asked MassHealth to look to the date in which the transaction was initiated, February 28, 2023 rather than the date in which the agency received the document,

March 1, 2023, as there appeared to be technical difficulties in the agency's receipt of the application.

## **Findings of Fact**

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

1. MassHealth received an application for long-term care seeking coverage as of August 11, 2022.
2. In making an eligibility determination, MassHealth utilized an application date of March 1, 2023.
3. On February 28, 2023, counsel for the appellant attempted to send an application for long-term care via facsimile.
4. On February 28, 2023 at 11:39 PM, counsel for the appellant received a message that the "fax you recently attempted to send through eFax to 16178778799 Re:UNKNOWN did not go through".
5. On March 1, 2023 12:57 AM, counsel for the appellant received a message that the "fax was successfully sent to 16178878799 by eFax".
6. The March 1, 2023 message indicates the number of pages as 67.
7. The March 1, 2023 message indicates a length of transmission as 5587 seconds or 93 minutes.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged ■ or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

To apply for MassHealth for an individual in need of long-term-care services in a nursing facility, a person or his or her authorized representative must file a complete paper Senior Application and

Supplements or apply in person at a MassHealth Enrollment Center (MEC). (130 CMR 516.001(A)(1)). A Senior Application is the request for health benefits for an individual who is [REDACTED] years of age and older, or not living in the community that is received by the MassHealth agency and includes all required information and a signature by the applicant or his or her authorized representative. (130 CMR 515.001). The regulations clearly state that the date of the application is the date the application is received by MassHealth. (130 CMR 516.001(A)(2)(a)).

While counsel for the appellant noted that a 63-page fax was sent to the agency on February 28, 2023, it was not received by the agency until March 1, 2023. Therefore, MassHealth was correct in determining the date of the application. Counsel's arguments regarding consideration of technical difficulties in sending the application via eFax are not persuasive. Applicants have a variety of means to file a Senior Application and counsel utilized only one. The evidence presented shows that attempts to send an application were not made until 11:30 PM on February 28, 2023. If counsel truly wanted to preserve an application date in February, the submission should have started before that time. Counsel's argument would also allow for the agency to honor postmarks for applications sent via US Mail. The regulations only speak to the date an application is received. There is nothing that speaks to a date in which one starts a fax transmission or a postmark.

The decision made by MassHealth regarding the application date was correct.

This part of the appeal is denied.

To ensure that the agency continues to correct actions taken regarding the calculation of a penalty period, this appeal is approved in part. Any future agency actions will utilize an application date of March 1, 2023.

## **Order for MassHealth**

Continue to process an application received on March 1, 2023.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

