

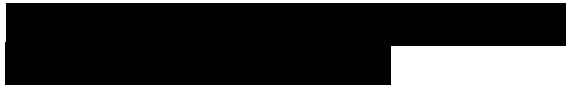
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved; Remanded	Appeal Number:	2407851
Decision Date:	8/2/2024	Hearing Date:	06/17/2024
Hearing Officer:	Marc Tonaszuck	Record Open to:	07/15/2024

Appearances for Appellant:



Appearance for MassHealth:

Caitlen Pynn



*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:	Approved; Remanded	Issue:	Long Term Care – Verifications
Decision Date:	8/2/2024	Hearing Date:	06/17/2024
MassHealth's Rep.:	Caitlyn Pynn	Appellant's Reps.:	
Hearing Location:	Worcester MassHealth Enrollment Center	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 04/22/2024, MassHealth informed the appellant that he was not eligible for MassHealth benefits because failed to provide requested verifications within the time required (130 CMR 515.008; Exhibit 1). A timely appeal was filed on the appellant's behalf by his conservator¹ on 05/15/2024 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

A fair hearing took place on 06/17/2024, at which time the hearing officer requested a response from the MassHealth representative as to whether the verifications requested by MassHealth were "inaccessible," as alleged by the appellant's representatives. The record remained open until 07/01/2024 for MassHealth's submission and until 07/15/2024 for the appellant's reply (Exhibits 3 and 6). Both parties made submissions during the record open period (Exhibits 7 and 8).

¹ See Exhibit 4.

Action Taken by MassHealth

MassHealth denied the appellant's application for long term care benefits.

Issue

Did MassHealth correctly deny the appellant's long term care application?

Summary of Evidence

The MassHealth representative testified telephonically that the appellant applied for MassHealth long term care benefits on 01/10/2024, seeking MassHealth benefits effective on 04/13/2023 (Exhibit 5). On 01/17/2024, MassHealth requested verification of financial information to process the appellant's application. Not all verifications were received by the due date, 04/16/2024, and the application was denied on 04/22/2024. The appellant filed a previous application on 06/12/2023 which was denied on 09/21/2023 and a final denial was issued on 12/29/2023.

The MassHealth representative testified that the following verifications remain outstanding:

- PSI, private payment letter and current PNA statement from the facility;
- Income from Veterans Admin. Compensation 1099R or benefit statement to verify current gross benefit and any deductions;
- Rental Income for [REDACTED] Please provide a current tax return with all schedules and attachments to verify rental income and expenses;
- Health Insurance Medical Fallon Comm Health Plan - Premium bill for this coverage showing 2023 and 2024 rates;
- Health Insurance pharmacy bills-BCBS Medex: Please provide a copy of 2023 and 2024 premium bills for this prescription coverage;
- Real Estate [REDACTED] MA - Please provide verification of cure for transferring partial home ownership to [REDACTED] in November 2022. Has ownership been revoked?;
- Berkshire Bank # [REDACTED] - Complete statement dated 8/1/2023 to current date closure with verification of all transactions over \$1000;
- [REDACTED] Credit Union accounts # [REDACTED], # [REDACTED], and \$6179, complete statements from 08/01/2023 to present with verification of all transactions over \$1,000.00;
- [REDACTED] account # [REDACTED] - Please provide complete statements dated 08/01/2023 to present or date of closure with verification of all transactions over \$1000; and
- [REDACTED] Bank account # [REDACTED] - Please provide complete statements dated 8/1/23 to current or date of closure with verification of all transactions over \$1000.

The appellant's conservator and a paralegal represented the appellant at the fair hearing. Both appeared telephonically. The paralegal argued that verification of the above information is not possible since the assets are "inaccessible." She testified that the conservator was appointed as temporary conservator on 03/12/2024. Attorney [REDACTED], in her post-hearing submission, argued that the appellant's assets were inaccessible up until the time the conservator was appointed and, pursuant to the regulations, for six months after acquisition (date of appointment of the conservator). Counsel concluded that the appellant's LTC benefits should be approved effective 10/01/2023 (the date the facility is seeking payment) and for six months after the conservator was appointed on 03/12/2024, which is 09/12/2024 (Exhibit 8).

MassHealth argued that the assets are not inaccessible because the conservator was appointed in March 2024. MassHealth only determines assets to be inaccessible during a period while a conservator is being appointed, not afterwards.

Findings of Fact

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

1. The appellant submitted an application for MassHealth long term care benefits on 01/10/2024, seeking 10/01/2023² as a benefit start date.
2. On 01/17/2024, MassHealth sent the appellant a request for verification of various financial information necessary to make an eligibility determination. The verifications were due by 04/16/2024.
3. The requested verifications were not received by MassHealth by the deadline and on 04/22/2024, the appellant's application for long term care benefits was denied by MassHealth.
4. On 05/15/2024, the appellant's conservator filed a timely appeal with the Board of Hearings.
5. A fair hearing was held before the Board of Hearings on 06/17/2024.
6. The record was held open in this matter until 07/15/2024 for both parties to make submissions regarding whether the appellant's assets were "inaccessible," pursuant to MassHealth's regulations.

² The MassHealth representative testified that the appellant was seeking 04/03/2023 as a benefit start date; however, appellant's counsel states in her post-hearing memorandum, that the facility is seeking 10/01/2023 as a benefit start date. Pursuant to MassHealth regulations at 130 CMR 516.006, "coverage may be retroactive to the first day of the third calendar month before the month of application." The earliest date the appellant is eligible for MassHealth benefits is 10/01/2023.

7. Both parties made submissions during the record open period.
8. The conservator was appointed as a temporary conservator on 03/12/2024.

Analysis and Conclusions of Law

Inaccessible assets are defined by regulation 130 CMR 520.006 as follows:

(A) Definition - An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to,
(1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and
(2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

(1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or

(2) from the period beginning six months after the date of application or acquisition, whichever is later, if

(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

MassHealth contends that the verifications requested to process the appellant's application for long term care benefits are not accessible because, by the date of the fair hearing, a conservator had been appointed. Appellant's counsel argued that the assets are inaccessible effective on the date the appellant is seeking benefits, 10/01/2023, and for six months after the temporary conservator was appointed. The conservator was appointed on 03/12/2024

and counsel is seeking approval of the appellant's benefits from 10/01/2023 to 09/12/2024, based on inaccessibility. Appellant's counsel correctly applied the above regulations and the assets which MassHealth seeks verification must be determined to be inaccessible based on the appointment of the conservator and for six months afterwards. MassHealth may re-review the appellant's eligibility after 09/12/2024, including making requests for verifications.

Order for MassHealth

Determine that the assets listed on the denial notice dated 04/22/2024 are inaccessible from 10/01/2023 to 09/12/2024. Process 01/10/2024 application for long term benefits and inform the appellant of MassHealth's eligibility determination. Include appeal rights. Review the appellant's eligibility after 09/12/2024.

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, Division of Medical Assistance, 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

[REDACTED]

MassHealth Representative: Worcester MEC, Attn: Michael Rooney, 55 SW Cutoff Suite 1A,

Worcester, MA 01604