

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed; Denied	Appeal Number:	2407878
Decision Date:	7/31/2024	Hearing Date:	06/28/2024
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Michael Richelson – Tewksbury Ongoing



*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:	Dismissed; Denied	Issue:	Community; Over-65; Application Date
Decision Date:	7/31/2024	Hearing Date:	06/28/2024
MassHealth's Rep.:	Michael Richelson	Appellant's Rep.:	Pro se
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 7, 2024, MassHealth approved the appellant for the Medicare Savings Program – Qualified Medicare Beneficiaries as of April 1, 2024. (Exhibit 1; 130 CMR 519.010.) The appellant filed this appeal on May 16, 2024.¹ (Exhibit 2.) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth approved the appellant for the Medicare Savings Program – Qualified Medicare Beneficiaries in the month following the month in which the appellant completed his renewal application.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.010(C), in starting the appellant's Medicare Savings Program – Qualified Medicare Beneficiaries benefits in the

¹ This appeal was initially dismissed as untimely. The appellant requested that the dismissal be vacated on May 22, 2024, and this matter was set for hearing. (Exhibits 3; 4; see 130 CMR 610.015(B).) The issue of timeliness was to be reviewed as part of the appeal. (Exhibit 4.)

month following the month in which he applied for the coverage.

Summary of Evidence

The appellant has been covered by MassHealth for decades. He turned [REDACTED] years old during the Federal Public Health Emergency regarding Covid-19 (“FPHE”). Because the federal government was protecting benefits for Medicaid recipients, MassHealth automatically converted his benefits from CarePlus coverage for people under [REDACTED] to MassHealth Standard for people over [REDACTED] without requiring that he complete an over-65 application. When the appellant turned [REDACTED] he also started receiving Medicare coverage. MassHealth Standard typically includes “Buy-in” coverage that pays the member’s Medicare Parts A and B premiums when a member is also covered by Medicare. Due to a technical error at MassHealth, the appellant’s Medicare premiums were not automatically covered when his coverage was converted.

According to the appellant, Medicare informed him in 2023 that MassHealth should have been covering his monthly premiums ever since he turned [REDACTED]. After a significant amount of effort and stress on the appellant’s part, he was able to get through to the Medicare Savings Program (“MSP”) department at MassHealth, and he was approved Buy-in benefits retroactively. In late 2023, he was finally reimbursed for 25 months of Medicare premiums.

MassHealth’s representative testified that, shortly after the retroactive benefits were sorted out, MassHealth mailed the appellant an application in late December 2023, so that he could apply for over-65 benefits for the first time. This application was not returned, and MassHealth mailed out a termination notice on February 14, 2024. After his benefits terminated, the appellant called the MSP department back and was connected with the telephonic application line. He completed a MassHealth MSP-only application on March 5, 2024. On March 7, 2024, the appellant was approved for the MSP – Qualified Medicare Beneficiaries (“QMB”) benefit starting April 1.

The appellant testified that he received the renewal application, but when he read the application, he knew he was ineligible for MassHealth benefits because he had assets in excess of the programmatic limits.² Once he was terminated, he called the MSP department back, and he was informed that the asset limits for MSP – QMB coverage were eliminated as of March 1, 2024. When he was approved starting April 1, he called the MSP department again, and was told that he would need to file an appeal, because they were not able to backdate his coverage again. He filed his appeal after he spoke with the MSP department, at some point in May 2024.

The appellant expressed frustration with the MassHealth process, though he applauded the representatives from the MSP department. He complained that he would regularly receive

² MassHealth benefits for individuals under the age of 65 generally do not consider assets in determining eligibility. (See 130 CMR 506.000.)

differing answers from different people whenever he called, and that he needed to tell the application representative that the asset limit was lifted as of March 1, 2024.

Findings of Fact

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

- 1) The appellant turned [REDACTED] during the FPHE. Prior to then, he was covered by MassHealth CarePlus. (Testimony by MassHealth's representative; Exhibit 6.)
- 2) At the end of the FPHE, the appellant needed to renew his eligibility. MassHealth mailed him an application for individuals over the age of 65 in late December 2023. (Testimony by MassHealth's representative.)
- 3) The appellant received the application, but he did not complete it because he did not believe he would be eligible for any benefits based upon his countable assets. (Testimony by the appellant.)
- 4) On February 14, 2024, MassHealth mailed the appellant a notice terminating his benefits for failing to return his renewal application. (Testimony by MassHealth's representative and the appellant.)
- 5) On March 5, 2024, the appellant completed a telephonic MSP-only application. (Testimony by MassHealth's representative and the appellant.)
- 6) On March 7, 2024, the appellant was approved for the MSP-QMB benefit. (Exhibit 1.)
- 7) This appeal was filed on May 16, 2024. (Exhibit 2.)

Analysis and Conclusions of Law

The Board of Hearings "must receive the request for a fair hearing within ... **60 days after an applicant or member receives written notice from the MassHealth agency of the intended action.**" MassHealth notices are presumed received five business days following the date on the notice unless there is evidence to the contrary. (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.³ (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).)

Understandably, the appellant’s view of this appeal is a continuous interaction regarding his eligibility to have MassHealth pay for his Medicare Parts A and B premiums. The appellant’s Medicare premium should have been covered from the moment he was covered by MassHealth Standard during the FPHE. MassHealth conceded its error with regards to this coverage and, eventually, approved payment for the Medicare premiums that always should have been covered. Despite the fact that this retroactive approval did not occur until after the end of the FPHE, it was premised upon the benefits the appellant received as a result of the FPHE protections. It was not premised upon the appellant’s substantive eligibility for these benefits as determined following an application.

The December 2023 renewal application sent to the appellant was a demarcation that signaled the return to normal MassHealth coverage requirements. Under the usual course of MassHealth operations, any appeal of the February 14 termination notice is untimely. This appeal was filed 92 days after the date of the termination notice and 70 days after the approval notice. Even with the five days for mailing, the appellant did not appeal within the 60-day timeline allowed for appeals. Nor does the appellant allege that he was “improperly deterred” from filing an appeal by a MassHealth representative, rather he delayed filing until he was affirmatively told to do so by a representative from the MSP department with whom he had worked previously. Therefore, none of the situations applicable to the extended 120-day timeline apply, and this appeal must be DISMISSED as untimely.

Alternatively, MassHealth was correct to approve his MSP-QMB benefits prospectively, beginning April 1, 2024. The “date of coverage for MassHealth is determined by the coverage type for which the applicant may be eligible.” (130 CMR 516.006(1).) For the MSP-QMB benefit, the “begin date ... is the first day of the calendar month following the date of the MassHealth eligibility determination.” (130 CMR 519.010(C).) The eligibility requirements for the MSP-QMB benefit also changed, effective March 1:

- (A) Eligibility Requirements. MSP (Buy-in) QMB coverage is available to Medicare beneficiaries who...
- (3) Effective until February 29, 2024, have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid

³ The regulation allows the time limits for appeal to be “waived by the BOH Director or his or her designee ... ” (130 CMR 610.015(B)(2).) This appeal was scheduled, in part, to address the issue of timeliness, therefore the requisite time limits are not waived. (See Exhibit 4.)

Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website.

Effective March 1, 2024, MassHealth will disregard all assets or resources when determining eligibility for MSP-only benefits

(130 CMR 519.010(A)(3).)

The appellant's benefits were terminated for not completing a renewal application. The appellant admits that he did not complete the application because he had assets in excess of the programmatic limits. These programmatic asset limits were only removed effective March 1. Therefore, he could only have applied in March and been asset-eligible for coverage effective April 1. He did, and MassHealth correctly approved his benefits effective April 1. If this appeal were not untimely, any effort to seek retroactive coverage of the MSP-QMB benefit based upon a March application must be DENIED.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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