

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2408086
Decision Date:	8/19/2024	Hearing Date:	6/28/2024
Hearing Officer:	Cynthia Kopka	Record Closed:	8/16/2024

Appearance for Appellant:



Appearance for MassHealth:

Scott Michael, for Mary Vieira, Taunton



*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	Issue:	LTC services, start-date
Decision Date:	8/19/2024	Hearing Date:	6/28/2024
MassHealth's Rep.:	Scott Michael for Mary Vieira	Appellant's Rep.:	Attorney
Hearing Location:	Taunton (remote)	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

By notice dated April 17, 2024, MassHealth approved Appellant for MassHealth long-term care services effective July 1, 2023. Exhibit 1. Appellant filed this appeal in a timely manner on May 20, 2024. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032. The record was reopened through August 16, 2024 for additional information from Appellant.

Action Taken by MassHealth

MassHealth approved Appellant for MassHealth long-term care services effective July 1, 2023.

Issue

The appeal issue is whether Appellant is entitled to an earlier coverage start date.

Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. MassHealth received Appellant's current application for long-term care benefits on October 16, 2023. This application was denied for verifications and appealed (Appeal No. 2404497). On April 17, 2024, MassHealth approved Appellant for coverage beginning July 1, 2023. Exhibit 1. This was the earliest available retroactive coverage date based on the application date. Earlier applications were denied and not appealed to MassHealth's knowledge.

Appellant was represented at hearing by an attorney who submitted a brief and documentary evidence in support, Exhibit 5. A summary follows. Appellant admitted to the facility back in [REDACTED] and seeks coverage beginning June 1, 2022. Appellant is in his [REDACTED] and has dementia. On July 22, 2022, Appellant's first MassHealth application for long-term care benefits was filed, presumably by Appellant's daughter. Appellant's daughter was Appellant's health care proxy invoked on December 2, 2022. Exhibit 5 at 24-27. Documentation from the facility showed that Appellant's daughter was not cooperative in assisting Appellant obtain MassHealth benefits. *Id.* at 16-22. On October 27, 2022, MassHealth issued a request for information related to the July 2022 application. *Id.* at 29. On December 29, 2022, MassHealth denied Appellant's July 2022 application for failure to submit all verifications requested by October 27, 2022. *Id.* at 33. Appellant's attorney alleged that Appellant's daughter failed to appeal MassHealth's denial and took no further action for over ten months.

On September 11, 2023, the facility filed a petition to appoint a conservator for Appellant, given Appellant's daughter's failure to act on Appellant's behalf. *Id.* at 35. A conservator was appointed on November 21, 2023. *Id.* at 43-44. Appellant's attorney argued that Appellant's daughter presumably filed a new MassHealth application on October 16, 2023 (the present application). Relying on 130 CMR 520.006, Appellant's attorney argued that the verifications needed for the July 2022 application were inaccessible due to Appellant's incapacity and Appellant's daughter's negligence, and this unavailability justifies Appellant's request for retroactive benefits in this appeal.

Appellant's attorney argued that the facility did not have authority to contact MassHealth directly on Appellant's application because they did not have permission via MassHealth's authorized representative designation (ARD) or permission to share information (PSI). Between the December 29, 2022 denial and the September 11, 2023 petition for conservatorship, the facility documented efforts to get information from the family. *Id.* at 17-20. On November 2, 2022, the facility's business office manager (BOM) received MassHealth's information request and called the daughter. *Id.* at 17. On January 4, 2023, the BOM received the December 29, 2022 denial notice and called the daughter and discussed the submission. The BOM noted that the daughter did not know the name of the caseworker, which the BOM gave to the daughter. *Id.* On February 24, 2023, the facility sent an informational statement to the daughter. *Id.* On March 20, 2023, the facility reached out to the daughter. On March 23, 2023, the BOM spoke to the daughter who said that MassHealth requested more information. *Id.* On April 13, 2023, a note indicated that the prior

BOM resigned, and the new employee left a message for the daughter. *Id.* at 18. A note shows that Appellant was listed as ineligible for MassHealth on May 16, 2023. *Id.* The facility sent the matter to their attorney's office and on May 19, 2023, the facility's counsel sent a letter to the daughter. *Id.* The facility's note indicates that the facility asked the attorney's office to notify the family that the facility would seek to have a conservator appointed. *Id.* On July 21, 2023, the facility reached out to the attorney for an update. On July 27, 2023, the facility reached out to the MassHealth caseworker. *Id.* On July 27, 2023, the employee spoke to the daughter, who said that she submitted everything MassHealth asked for. When the daughter did not provide requested proof of her submission to MassHealth, the facility reached out to the son on July 31, 2023. *Id.* at 18-19. On August 4, 2023, the facility began the process to get a conservator. *Id.* at 19. The facility also notified the family that they would discharge Appellant on [REDACTED] but the family refused to pick Appellant up. *Id.* at 19-21. The facility reached out to Elder Services, who could not assist. *Id.* at 20.

Appellant's attorney argued that Appellant's family filed objections to the petition for conservator but ultimately did not follow through. Once a third-party conservator was appointed and Appellant's financial information was revealed, Appellant's attorney alleged that between May 2022 and October 2023, Appellant's daughter misappropriated over \$36,000 of Appellant's money for her own personal use. A spreadsheet provided by Appellant's attorney lists multiple withdrawals and checks. *Id.* at 46-57.

Appellant's attorney argued at hearing and in her brief that her firm filed a suit on behalf of the facility against Appellant's daughter because Appellant is without resources to pursue litigation himself. *Id.* at 5. However, close reading of the complaint submitted by Appellant's attorney showed that Appellant's attorney filed suit against both Appellant and his daughter on behalf of the facility. *Id.* at 62-71. The record was reopened to allow Appellant's attorney to address this conflict of interest, and Appellant's attorney provided a letter from Appellant's conservator waiving the conflict. Exhibit 7.

Appellant's attorney argued that Appellant is entitled to an earlier start date of coverage and should not be punished by the delays caused by his daughter's negligence in handling the MassHealth application. Appellant's attorney argued that the funds misappropriated by the daughter are irretrievable. Appellant's attorney asserted that Appellant's funds were inaccessible until the conservator was appointed, citing to the records showing that Appellant suffered from dementia and that his health care proxy was invoked in December 2022. *Id.* at 6. Appellant's attorney argued that Appellant's daughter misrepresented to the facility that she was working on submitting the necessary information for eligibility when she was taking no action. Appellant's daughter's actions caused unnecessary delays in submitting the required information. Appellant's attorney asserted that facility staff attempted to mitigate these issues by contacting MassHealth directly without success. *Id.* at 8. Appellant's attorney asserted that but for Appellant's daughter's failures, Appellant would have been eligible for benefits effective June 1, 2022.

Findings of Fact

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

1. On July 22, 2022, MassHealth received Appellant's first MassHealth application for long-term care benefits.
2. On October 27, 2022, MassHealth issued a request for information related to the July 2022 application. Exhibit 5 at 29.
3. Appellant's daughter was Appellant's health care proxy, invoked on December 2, 2022. *Id.* at 24-27.
4. On December 29, 2022, MassHealth denied Appellant's July 2022 application for failure to submit all verifications requested by October 27, 2022. *Id.* at 33.
5. The Board of Hearings did not receive an appeal of the December 29, 2022 denial.
6. On September 11, 2023, the facility petitioned to have a conservator appointed for Appellant. *Id.* at 35-41.
7. On November 21, 2023, Appellant's conservator was appointed. *Id.* at 43-44.
8. On October 16, 2023, MassHealth received the present application for long-term care benefits on Appellant's behalf.
9. On April 17, 2024, MassHealth approved Appellant for coverage beginning July 1, 2023. Exhibit 1.
10. Appellant filed this appeal in a timely manner on May 20, 2024. Exhibit 2.

Analysis and Conclusions of Law

An individual applying for MassHealth long term care benefits (or the individual's authorized representative) must submit a complete application and all required supplements. 130 CMR 516.001(A)(1). The date of application is the date it is received by MassHealth, and the application is considered complete upon MassHealth's receiving all corroborative information. 130 CMR 516.001(A)(2)(a) and (b), 130 CMR 516.001(C). If an application contains missing or inconsistent information, MassHealth cannot determine eligibility. 130 CMR 516.001(A)(3).

MassHealth requires verification of eligibility factors, including but not limited to assets as

described 130 CMR 520.000, 130 CMR 516.003. “If additional documentation is required, including corroborative information as described at 130 CMR 516.001(B), a Request for Information Notice will be sent to the applicant listing all requested verifications and the deadline for submission of the requested verifications.” 130 CMR 516.003(C).

After receiving an application for MassHealth benefits, MassHealth proceeds as follows:

The MassHealth agency requests all corroborative information necessary to determine eligibility.

(1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of the receipt of the [application].

(2) The notice advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information.

130 CMR 516.001(B). “If the requested information...is received [by MassHealth] within 30 days of the date of the request, the [application] is considered complete...If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied” 130 CMR 516.001(C). Pursuant to 130 CMR 515.008(A), an “applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility.”

If an applicant submits requested information within 30 days of a denial of eligibility for failure to provide requested verifications, MassHealth will consider the date this information is received as the date of reapplication. 130 CMR 516.002(A). The reapplication date replaces the date of the denied application, and the earliest date of MassHealth eligibility is based on the reapplication date. 130 CMR 516.002(B). The first day of MassHealth eligibility may be as early as the first day of the third month before the date of the application as long as the individual was otherwise eligible for coverage as of that date. 130 CMR 520.004(A) and (C)(2).

The Board of Hearings must receive a request for a fair hearing within 60 days after an applicant receives written notice from MassHealth of the intended action. 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)(1). During the national emergency caused by the COVID-19 pandemic, MassHealth extended the filing deadline for eligibility-related matters to 120 days. Eligibility Operations Memo (EOM) 20-09.

In this matter, MassHealth approved Appellant for benefits beginning July 1, 2023, the earliest retroactive date available to Appellant based on the October 2023 application. The issue on appeal is whether Appellant is entitled to eligibility beginning as early as June 1, 2022. According to 130 CMR 520.004(A)(1) and (C)(2), Appellant is only eligible for coverage to begin in June 2022 if the first application dated July 22, 2022 was preserved. However, there was no appeal of the

December 29, 2022 denial within the 120 days available to appeal under EOM 20-09.

Appellant's attorney argued that the verification factors and financials affecting Appellant's eligibility were unavailable to him due to the negligence of Appellant's daughter in mishandling the MassHealth application. Appellant's attorney relied upon 130 CMR 520.006, MassHealth's regulation regarding inaccessible assets:

(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.

(Emphasis added). Here, even if the earlier application date was preserved, MassHealth's regulations would only consider Appellant's assets inaccessible for a period of six months after the date of the July 2022 application if the nursing facility made a good-faith effort to secure an appointment of a conservator. The facility did not begin the process of having a conservator appointed until September 2023, over ten months after the initial application. Even upon a showing of good faith, a finding of inaccessible assets would not reach the June 1, 2022 start-date

Appellant seeks as relief in this appeal. Finally, there are insufficient facts to show that Appellant would have been asset eligible for benefits earlier than the approved start date. Appellant's own accounting demonstrated excess assets in June 2023.

As the Board of Hearings did not receive a timely appeal of the December 29, 2022 denial, and as MassHealth approved the earliest eligibility date pursuant to 130 CMR 520.004(A) and (C)(2), this appeal is 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780