

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Approved in part	Appeal Number:	2408641
Decision Date:	9/17/2024	Hearing Date:	07/02/2024
Hearing Officer:	Mariah Burns	Record Open:	08/09/2024

Appearance for Appellant:



Appearance for MassHealth:

Raybryana Dasher, Elizabeth Landry, Taunton
MassHealth Enrollment Center



*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 in part; Approved in part	Issue:	Long-Term Care; Application
Decision Date:	9/17/2024	Hearing Date:	07/02/2024
MassHealth's Rep.:	Raybryana Dasher, Elizabeth Landry	Appellant's Rep.:	[REDACTED]
Hearing Location:	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

Through a notice dated April 16, 2024, MassHealth denied the appellant's June 3, 2021, application for MassHealth long-term care benefits for missing verifications and approved the appellant for the Medicare Savings Plan for Qualified Medicare Beneficiaries, a MassHealth community benefit. *See* Exhibit 1. The appellant filed this appeal in a timely manner on May 31, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied a June 3, 2021, application for long-term benefits and approved the appellant for the Medicare Savings Plan.

Issue

The appeal issue is whether there remains any dispute between the appellant and MassHealth over which the Board of Hearings can take jurisdiction, and whether MassHealth failed to act on an application for long-term care benefits filed on the appellant's behalf.

Summary of Evidence

The appellant is an adult over the age of 65. He was represented at hearing by a worker from [REDACTED]. The appellant was previously a resident at this facility and seeks MassHealth long-term care coverage of his stay. MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center who specializes in members who are over 65 and reside in the community. The following is a summary of the evidence presented at hearing and during the record open period.

The appellant was a resident of a different nursing facility back in 2021 and was discharged that year. The MassHealth representative reported that, at the time of the hearing, no long-term care application was on file for the appellant to cover his stay [REDACTED]. On April 16, 2024, MassHealth generated a notice that denied a June 3, 2021, application for long-term care benefits for missing verifications, namely a notification of admission to the facility, or SC-1. The notice also approved the appellant for the Medicare Savings Plan (MSP) as a Qualified Medicare Beneficiary (QMB), a MassHealth community benefit.

At the hearing, the appellant's representative reported that it was her belief that an application had been filed for the appellant as a resident of [REDACTED]. The MassHealth representative reiterated that no application had been received for long-term care benefits since 2021, at which time the appellant lived in a different facility.

The record was kept open for the MassHealth representative to consult with a MassHealth long-term care worker due to the concern that a particular start date may not be able to be preserved in this case. The long-term care worker stated that she was assigned to the appellant's case when he was a resident of the previous facility in 2020 and 2021. MassHealth received a Status Change for a Member in a Nursing Facility form (SC-1) for [REDACTED] on March 21, 2023. A long-term care conversion request was sent on March 23, 2023, June 26, 2023, and April 9, 2024, all of which went unanswered, meaning there was no application received for the appellant's stay at [REDACTED]. The long-term care worker opined that the notice at issue generated automatically because MassHealth had not been processing termination of benefits during the COVID-19 pandemic, but she reported that there was no information edited in the system that would have led to the notice being issued.

During the record open period, a different representative from [REDACTED] took over, and she submitted a long-term care application which is now pending. The appellant's representative sent a series of documents intending to demonstrate that a long-term care application for [REDACTED] was previously submitted. Those documents included fax confirmations from December 21, 2023, and March 29, 2024, as well as an email sent on March 29, 2024, that states, in relevant part, "Please see the attached for the long-term coverage for [the appellant]." Attached to that email was an SC-1 reflecting the appellant's admission to [REDACTED] for long-term care on [REDACTED] 2023, an

indication that his stay would be more than six months, and a MassHealth requested pay date of [REDACTED] 2023.

The appellant's representative requested that the record remain open on this appeal until a case worker is assigned out of concern for preserving a particular start date. That request was denied.

Findings of Fact

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

1. On April 4, 2024, MassHealth generated a notice denying the appellant's June 3, 2021, application for long-term care benefits due to a missing SC-1 and approving community benefits of the MSP as a QMB. Exhibit 1.
2. The appellant filed a timely request for fair hearing on May 30, 2024. Exhibit 2.
3. There is no challenge to the appellant's currently approved community benefits. Testimony.
4. At the time of the issuance of the April 4 notice, and at the time of the hearing, MassHealth reported that it did not have a long-term care application on file for the appellant's stay [REDACTED] [REDACTED] Testimony, Exhibit 5 at 3-4. MassHealth did have an SC-1 on file for the facility for a short-term stay. *Id.*
5. The April 4 notice denying long-term care benefits was related to a different application for a different facility. Testimony, Exhibit 5 at 3-4.
6. The only issue that remains between the parties, at this time, is whether a long-term care application was received for [REDACTED] and whether any application date prior to the hearing may be preserved. Testimony, Exhibit 5 at 10-21.
7. MassHealth has since received a long-term care application for the appellant's stay at [REDACTED] and it is being processed. Exhibit 5 at 21.
8. [REDACTED] successfully sent two faxes to MassHealth, one on December 21, 2023, and one on March 26, 2024. The March 26 fax includes an email that states "Please see the attached for the long-term coverage for [the appellant]" as well as an SC-1 reflecting a [REDACTED] 2023, admission to long-term care for the appellant at [REDACTED] and requested benefit start date. Exhibit 5 at 25-27.

Analysis and Conclusions of Law

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth

members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old and an institutionalized person, he is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

A member or applicant seeking coverage of "long-term care services in a nursing facility...must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center." 130 CMR 516.001(1)(b). The process by which a prospective member may apply for long-term care benefits may be found generally at 130 CMR 516.001. The date of application is the date on which the application is received. *Id.* at 516.001(A)(2)(a). Once an applicant is deemed eligible, the start date for benefits "may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant...would have been eligible at the time services were provided." 130 CMR 516.006(A).

The scope of proceedings authorized by the Board of Hearings is described at 130 CMR 610.003 and includes the ability "to review certain actions or inactions by the MassHealth agency..." A request for fair hearing is defined as "a written statement by the appellant that asks for administrative review of an appealable action" by MassHealth. 130 CMR 610.034. Such a request must generally, with exceptions, be made either within 60 days "after an applicant or member receives written notice from...MassHealth...of the intended action," or "120 days from...the date of application when the MassHealth agency fails to act on an application." 130 CMR 610.015(B)(1) and (2)(c). The Board of Hearings may dismiss an appeal, in relevant part, under the following circumstances:

(4) the stated reason for the request does not constitute grounds for appeal as set forth in 130 CMR 610.032.

...

(5) the stated reason for the hearing request is outside the scope of 130 CMR 610.000 as set forth in 130 CMR 610.003; [or]

...

(8) BOH learns of an adjustment or action that resolves all of the issues in dispute between the parties;

130 CMR 610.035(A).

Based on the following, the appeal is dismissed in part and approved in part. I find that the appealed notice does not involve a dispute between the parties. However, I also find that the appellant has properly appealed MassHealth's failure to act on a March 29, 2024, long-term care

benefit application for his stay at [REDACTED] within 120 days.

First, the appellant has not identified a dispute related to the April 16, 2024, notice that he appealed. The appellant and his representatives are not challenging the approval of the appellant's community benefits, and the long-term care portion of the notice relates to a prior nursing facility admission for which the appellant is not currently seeking coverage. Therefore, the appellant's appeal of the April 16, 2024, notice is appropriately dismissed pursuant to 130 CMR 610.035(A).

Nevertheless, I am persuaded that the appellant filed an application for coverage of his stay at [REDACTED] on [REDACTED] 2024, and that MassHealth failed to act on that application. The email provided by [REDACTED] clearly states an intent to file an application for MassHealth benefits, and the attached SC-1 reflecting a change from a short-term stay to a long-term stay complies with the requirements of 130 CMR 516.001(1)(b) and Eligibility Operations Memo 23-16: *Level-of-Care Conversion Screening Process* (July 2023). As the appellant filed this request for fair hearing on May 31, 2024, which is within 120 days of March 29, 2024, I find that MassHealth should preserve the [REDACTED] application date of March 29, 2024, forthwith. However, because the appellant did not request a fair hearing within 120 days of the alleged December 21, 2023, application date, the Board of Hearings lacks jurisdiction to take that matter into consideration. Thus, I am without the authority to order the preservation of any application date prior to March 29, 2024. MassHealth may, in its discretion, honor an earlier application date if it chooses.

For the foregoing reasons, the appeal is hereby dismissed in part and approved in part.


Order for MassHealth

Preserve the appellant's long-term care application date of March 29, 2024, and proceed with the eligibility determination process in the normal course of business.

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.

Mariah Burns
Hearing Officer
Board of Hearings



MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616