

# Office of Medicaid BOARD OF HEARINGS

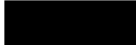
**Appellant Name and Address:**



## CORRECTED ADDRESS

<b>Appeal Decision:</b>	Approved in part, Denied in part	<b>Appeal Number:</b>	2409726
<b>Decision Date:</b>	10/16/2024	<b>Hearing Date:</b>	8/01/2024
<b>Hearing Officer:</b>	Patrick Grogan	<b>Record Open to:</b>	8/30/24

**Appearance for Appellant:**



**Appearance for MassHealth:**

James Walsh, Quincy MEC

**Interpreter:**

N/A



*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>	LTC over 65, Retroactive Coverage Date, Voluntary Withdrawal
<b>Decision Date:</b>	10/16/2024	<b>Hearing Date:</b>	8/01/2024
<b>MassHealth's Rep.:</b>	James Walsh	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Remote (Tel)	<b>Aid Pending:</b>	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 June 10, 2024, MassHealth approved the Appellant's application for MassHealth Standard benefits to cover Long-Term-Care Services in a Nursing Facility with a coverage date beginning April 15, 2024 (see 130 CMR 456 and Exhibit 1). The Appellant filed this Appeal in a timely manner on July 3, 2024. (see 130 CMR 610.015(B) and Exhibit 2). Imposition of a coverage date is a MassHealth action and is valid grounds for appeal (see 130 CMR 610.032(3)).

### Action Taken by MassHealth

MassHealth approved the Appellant for MassHealth Standard benefits to cover Long-Term-Care Services in a Nursing Facility, with coverage beginning on April 15, 2024.

### Issue

The issue the Appellant is seeking to appeal is whether MassHealth was correct, pursuant to 130 CMR 456 and 130 CMR 516, in determining that Long-Term-Care coverage for the member begins April 15, 2024.

## Summary of Evidence

The Appellant, through the Appeal Representative, daughter, sought review of the MassHealth approval of MassHealth Standard benefits for Long-Term-Care Services in a Nursing Facility beginning on [REDACTED] 2024. (Testimony, Exhibit 1) The Appellant is a MassHealth member over the age of 65. (Exhibit 4) The Appellant has proffered information regarding the Appellant's confusion with the application process, and information related to the filing of multiple applications for MassHealth benefits. (Exhibit 6). Most of this history is beyond the scope of the appeal of the June 10, 2024 Notice of approval for MassHealth Standard benefits for Long-Term-Care Services in a Nursing Facility. (Exhibit 1). The history is included within this Summary of Evidence for clarity.

MassHealth testified that on October 2, 2023, MassHealth received a Long-Term-Care application. (Testimony, Exhibit 5, pg. 1). The Appellant sought the Long-Term-Care application to cover rehabilitation therapy upon transfer from a hospital in [REDACTED] of 2023 to [REDACTED] (hereinafter "Rehab Facility 1"). (Testimony, Exhibit 6, pg. 1-2) However, on November 13, 2023, the Appellant contacted MassHealth by telephone to cancel the request for Long-Term-Care as the Appellant wished to return to the community and wished MassHealth coverage as a member residing in the community. (Testimony, Exhibit 5, pg. 1) MassHealth informed the Appellant that the request to withdraw the application must be in writing. (Testimony, Exhibit 5, pg.1) The Appellant submitted a letter, dated December 5, 2023, stating "I want to cancel my long-term care application. This selection was done in error. MassHealth or the Health Safety Net (HSN) aligns with my current needs. Can we cancel the long-term care application from being processed?" (Exhibit 5, pg. 10) MassHealth accepted the voluntary withdrawal, signed by the Appellant. (Testimony)

After the withdrawal of the Long-Term-Care application, the Appellant sought approval for MassHealth benefits through a Senior Application, instead of a Long-Term-Care application, in accordance with the Appellant's signed voluntary withdrawal of the Long-Term-Care application. (Testimony, Exhibit 5, pg. 10, Exhibit 6, pg. 3) MassHealth sent a denial to the Appellant due to excess assets (received by Appellant on December 15, 2023) (Testimony, Exhibit 6, pg. 3) The Appellant sought appeal of the denial due to excess assets. (Testimony, Exhibit 6, pg. 3) At a Hearing held on January 29, 2024, MassHealth indicated that verification of spend down was still required in the form of an updated bank account. (Testimony, Exhibit 6, pg. 3)

According to the Appellant's Representative, the Appellant and her family were working with an entity outside of MassHealth in an attempt to seek approval for MassHealth Standard, in accordance with a Frail Elder Waiver. (Exhibit 6, pg. 4) In March of 2024, the Appellant learned that she had been approved for MassHealth Senior Buy-In. (Testimony, Exhibit 6, pg.4) Follow-up inquiry by the Appellant's family revealed that MassHealth had not received the necessary

documentation needed for a Frail Elder Waiver review. (Exhibit 6, pg. 4).

In April, the Appellant suffered a medical incident. (Exhibit 6, pg. 4) After a visit to the emergency room, the Appellant was transferred to [REDACTED] (hereinafter "Rehab Facility 2") An application for Long-Term-Care coverage was filed with MassHealth on April 23, 2024. (Testimony, Exhibit 7) The Application included 2 SC-1s, one for the Appellant's stay at Facility 2, to begin April 15, 2024, and another requesting retroactive coverage for a portion of the stay in Rehab Facility 1 from [REDACTED] 2023 through [REDACTED] 2024. (Testimony, Exhibit 7) The Appellant learned that a superseding Long-Term Application was filed in an attempt to obtain coverage for the Appellant's stay at Rehab Facility 2. (Exhibit 6, pg. 4) The Appellant's stay at the Rehab Facility 1 from September of 2023 through January 2024 has not been covered, and has been superseded by the subsequent application seeking coverage for the Appellant's stay at Rehab Facility 2. In seeking this appeal, the Appellant specifically stated "We submitted a Fair Hearing Request for her care at [Rehab Facility 1] from September 2023 to January 2024." (Exhibit 6, pg. 5)

On June 10, 2024, pursuant to Notice # 67001254, MassHealth approved the Appellant's MassHealth Standard benefits for Long-Term-Care Services in a Nursing Facility effective [REDACTED] 2024 at Rehab Facility 2. (Exhibit 1). From this, the Appellant filed a Fair Hearing Request, stating the reason of appeal is "to preserve a Med A coins start date of [REDACTED]/23 and room and board start dated of [REDACTED] 2023." In the explanation of why the appeal is sought, the Appellant wrote "need coverage @ [Rehab Facility 1] from [REDACTED] 23-[REDACTED] 24. I pulled my LTC M.H. application in error on December of 2023 not realizing it would impact my stay @ [Rehab Facility 1]" (Exhibit 2) From this Notice # 67001254 (Exhibit 1) and the Fair Hearing Request Form (Exhibit 2), the instant appeal follows.

At Hearing, the parties did not dispute these facts. Rather, the Appellant seeks retroactive payment for the stay at Rehab Facility 1 based upon the reliance on incomplete or inaccurate information. (Testimony, Exhibit 6) MassHealth accepted the voluntary withdrawal from December to close out Long-Term-Care application one, and approved payment beginning on April 15, 2024 for Rehab Facility 2. (Testimony, Exhibit 5). At Hearing, MassHealth agreed that based upon the SC-1 submitted with Long-Term-Care application 2 on behalf of Rehab Facility 1, MassHealth should pay for coverage from January 1, 2024 through January 18, 2024. (Testimony) The Appellant sought additional time to perform research in support of the argument. The Record was left open for the submission of briefs: the Appellant had until August 23, 2024 to submit any brief or legal memorandum, and MassHealth had until August 30, 2024 to submit a response. (Exhibit 8) A request to extend the deadline was allowed, the Appellant had until August 30, 2024, and MassHealth had until September 6, 2024. (Exhibit 9)

On August 30, 2024, information was received on behalf of the Appellant and marked as Exhibit 10. Within the submission, the Appellant, through the Appeal Representative, has posed a new argument, claiming that the voluntary withdrawal was done by the Appeal Representative,

without proper authority in violation of the MassHealth Regulations. (Exhibit 10). This new argument, submitted for the first time within the memorandum and not argued at Hearing, is discussed in the Analysis and Conclusion of Law section infra.

A response from MassHealth was received and marked as Exhibit 11. MassHealth relied on the signed withdrawal form submitted by the Appellant to stand by its Decision. (Exhibit 11)

## Findings of Fact

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

1. On October 2, 2023, MassHealth received a Long-Term-Care application. (Testimony, Exhibit 5, pg. 1). The application sought the Long-Term-Care application to cover rehabilitation therapy upon transfer from a hospital in [REDACTED] of 2023 to Rehab Facility 1. (Testimony, Exhibit 6, pg. 1-2)
2. The Appellant contacted MassHealth to cancel the request for Long-Term-Care as the Appellant wished to return to the community and wished MassHealth coverage as a member residing in the community. (Testimony, Exhibit 5, pg. 1) MassHealth informed the Appellant that the request to withdraw the Application must be in writing. (Testimony, Exhibit 5, pg.1)
3. The Appellant submitted a letter, dated December 5, 2023, stating “I want to cancel my long-term care application. This selection was done in error. MassHealth or the Health Safety Net (HSN) aligns with my current needs. Can we cancel the long-term care application from being processed?” (Exhibit 5, pg. 10)
4. After the withdrawal of the Long-Term Application, MassHealth informed the Appellant that the application was being processed as a Senior Application for MassHealth benefits, instead of a Long-Term-Care application, in accordance with the Appellant’s signed voluntary withdrawal of the Long-Term-Care application. (Testimony, Exhibit 5, pg. 10, Exhibit 6, pg. 3)
5. MassHealth sent a denial to the Appellant due to excess assets (received by Appellant on December 15, 2023) (Testimony, Exhibit 6, pg. 3) The Appellant sought appeal of the denial due to excess assets. (Testimony, Exhibit 6, pg. 3) At a Hearing on the appeal held on January 29, 2024, MassHealth indicated that verification of spend down was still required in the form of an updated bank account. (Testimony, Exhibit 6, pg. 3)
6. In March of 2024, the Appellant learned that she had been approved for MassHealth Senior Buy-In. (Testimony, Exhibit 6, pg.4) Follow-up inquiry by the Appellant’s family

revealed that MassHealth had not received the necessary documentation needed for a Frail Elder Waiver review. (Exhibit 6, pg. 4).

7. Due to a subsequent hospitalization in April as well as a transfer to Rehab Facility 2, an application for Long-Term-Care coverage for the Appellant's stay at Rehab Facility 2 was filed with MassHealth on April 23, 2024. (Testimony, Exhibit 7)
8. The Application included 2 SC-1s, one for the Appellant's stay at Facility 2, to begin [REDACTED], 2024, and another requesting retroactive coverage for a portion of the stay in Rehab Facility 1 from [REDACTED] 2023 through [REDACTED] 2024. (Testimony, Exhibit 7)

## Analysis and Conclusions of Law

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See also Fisch v. Board of Registration in Med., [437 Mass. 128](#), 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., [11 Mass. App. Ct. 333](#), 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, [45 Mass. App. Ct. 386](#), 390 (1998).

The Appellant's application for MassHealth Standard benefits for Long-Term-Care Services in a Nursing Facility received October 2, 2023 was withdrawn. 130 CMR 516.009 controls:

### 516.009: Voluntary Withdrawal

The applicant or authorized representative may voluntarily withdraw his or her application for MassHealth.

MassHealth received a signed voluntary withdrawal from the Appellant dated December 5, 2023 and received December 11, 2023. (Exhibit 5, pg. 10) Accordingly, MassHealth accepted the Appellant's signed voluntary withdrawal in accordance with 130 CMR 516.009. Had the Appellant sought to appeal MassHealth's acceptance of the Appellant's signed voluntary withdrawal, the appeal could not be heard based upon timeliness. The time standards for an Appeal may be found at 610.015(B)(1):

### 610.015: Time Limits

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

- (1) 60 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. 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;

When an Appeal is not timely, the Appeal will be dismissed pursuant to 130 CMR 610.035 (A)(1):

610.035: Dismissal of a Request for a Hearing

(A) BOH will dismiss a request for a hearing when

(1) the request is not received within the time frame specified in 130 CMR 610.015;

Therefore, had the Appellant been seeking to appeal MassHealth's acceptance of the Appellant's signed voluntary withdrawal, the appeal would need to be dismissed pursuant to 130 CMR 610.015(B)(1) and 130 CMR 610.035(A)(1).

For the first time in this Appeal, the Appellant, through the Appeal Representative, appears to be challenging the withdrawal, post hearing, through the submission of the brief marked as Exhibit 10. While this challenge remains untimely as explained supra, the arguments posed in the brief are belied multiple times within the testimony and submissions in this Administrative Record.

On November 13, 2023, the Appellant contacted MassHealth by telephone to cancel the request for Long-Term-Care as the Appellant wished to return to the community and wished MassHealth coverage as a member residing in the community. (Testimony, Exhibit 5, pg. 1) MassHealth informed the Appellant that the request to withdraw the application must be in writing. (Testimony, Exhibit 5, pg.1) The Appellant submitted a letter, dated December 5, 2023, stating "I want to cancel my long-term care application. This selection was done in error. MassHealth or the Health Safety Net (HSN) aligns with my current needs. Can we cancel the long-term care application from being processed?" (Exhibit 5, pg. 10) MassHealth accepted the voluntary withdrawal, signed by the Appellant. (Testimony). Therefore, had the appeal of the voluntary withdrawal been timely, it would fail, since the Appellant, not the Appeal Representative, voluntarily withdrew her application through her signed withdrawal dated December 5, 2023. (Exhibit 5, pg. 10)

Additionally, had the Appellant been seeking to appeal MassHealth's December 2023 determination that the Appellant was over assets, that issue, as well, is untimely pursuant to 130 CMR 610.015(B)(1) and 130 CMR 610.035(A)(1). Moreover, by the Appellant's own admission, the Appellant did appeal the denial, and a Hearing was held in January of 2024. (Exhibit 6, pgs. 1-3)

Had the merits of the issues related to the voluntary withdrawal and denial of the Appellant due to excess assets been reached, the Appellant has provided no credible evidence that this administrative determination by MassHealth is invalid. Specifically, regarding the withdrawal, no credible evidence has been provided to show the invalidity of MassHealth's



administrative determination to accept the Appellant's signed voluntary withdrawal. Regarding the denial due to excess assets, again, no credible evidence has been provided to show the invalidity of MassHealth's administrative determination. In fact, the Appellant provided evidence that the process of the application as a member in the community was acceptable, even so far as to appeal the denial due to excess assets. (Exhibit 6, pg. 1-3) Additionally, the Appellant provided evidence that the appeal hearing in January of 2024 resulted in the Appellant's approval for Senior Buy-In. (Exhibit 6, pg. 4) No evidence has been submitted that this approval has been appealed, and were it raised today, it would be untimely as well, pursuant to 130 CMR 610.015(B)(1) and 130 CMR 610.035(A)(1).

Had the Appellant sought "reactivation" of the voluntarily withdrawn application from October, the challenge would be equally unsuccessful:

516.002: Reactivating the Application

The MassHealth agency will reactivate the application after a denial of eligibility for failure to provide requested verifications.

(A) If the requested information is received within 30 days of the date of denial, the date of receipt of one or more of the verifications is considered the date of reapplication.

(B) The date of reapplication replaces the date of the denied application. The applicant's earliest date of eligibility for MassHealth is based on the date of reapplication.

(C) If the reapplication is subsequently denied and not appealed, the applicant must submit a new application to pursue eligibility for MassHealth. The earliest date of eligibility for MassHealth is based on the date of the new application.

(D) If the denial is due to excess assets, the date of reapplication is described at 130 CMR 520.004: Asset Reduction.

(E) A new application is required if a reapplication is not received within 30 days from the date of denial.

Pursuant to 130 CMR 516.002(B) the date of reapplication replaces the date of the denied application and the Appellant's earliest date of eligibility for MassHealth is based upon the date of reapplication. Any such challenge fails.

With regards to the merits of the issue that is properly encompassed within this Hearing, (effective date of coverage based upon the June 10, 2024 approval Notice #67001254 for a stay at Rehab Facility 2 beginning coverage on [REDACTED] 2024), when a member applies for long-term-care services in a nursing facility, the member must first be assessed for eligibility:

519.006: Long-term-care Residents

(A) Eligibility Requirements. Institutionalized individuals may establish eligibility



for MassHealth Standard coverage subject to the following requirements. They must

- (1) be younger than 21 years old or 65 years of age or older, or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing-facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets when One Spouse is Institutionalized; and
- (5) not have transferred resources for less than fair market value as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

In the instant appeal, the Appellant was approved for MassHealth Standard benefits to cover Long-Term-Care Services in a nursing facility at Rehab Facility 2. (Testimony, Exhibit 1)

456.407: Clinical Authorization of Nursing-facility Services

(D) If the Mass Health agency determines that a member is eligible for nursing-facility services, the MassHealth agency will issue a notice that contains the effective date of coverage and the patient-paid amount. This notice is confirmation to the facility that the MassHealth agency has authorized payment of nursing-facility services for the member.

Here, the effective date of coverage was determined to begin on [REDACTED] 2024. At Rehab Facility 2 (Testimony, Exhibit 1). This is based upon an Application for Long-Term Care received on April 23, 2024, requesting coverage to begin [REDACTED] 2024, which can only preserve an eligibility date three months prior. (Testimony, Exhibit 7) The MassHealth Eligibility section, found at 130 CMR 516, expressly states when an eligibility determination may begin:

516.006: Coverage Date

(A) Start Date of Coverage.

- (1) For individuals applying for coverage, the date of coverage for MassHealth is determined by the coverage type for which the applicant may be eligible. 130 CMR 519.000: MassHealth: Coverage Types

describes the rules for establishing this date.

(2) The begin date of MassHealth Standard, Family Assistance, or Limited coverage ***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 or member would have been eligible at the time services were provided. If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved. Retroactive eligibility does not apply to services rendered under a home- and community-based services waiver provided under section 1915(c) of the Social Security Act. (Emphasis added)

In the instant appeal, the Appellant's eligibility has been approved, retroactive, to [REDACTED] 2024 for her stay at Rehab Facility 2. The Appellant seeks a retroactive application of MassHealth Standard beyond the third calendar month before the month of application to cover the rehabilitation therapy from [REDACTED] 2023 through [REDACTED] 2024 at Rehab Facility 1. However, the Financial Eligibility section of the Regulations, 130 CMR 520, explains the requirements and limitation of eligibility:

520.001: Introduction to General Financial Requirements

(A) 130 CMR 520.000 describes the rules governing financial eligibility for MassHealth. 130 CMR 520.000 is based on financial responsibility, countable income, and countable assets.

(B) The methods for the calculation of the countable-income amount, the deductible, and the income standards used in the determination of eligibility are also explained in 130 CMR 520.000.

Moreover, the Asset Reduction section of the Financial Eligibility section, explicitly limits the retroactive application of an eligibility date:

520.004: Asset Reduction

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

- 1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.
- 2) ***In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application***, if permitted by the coverage type. (Emphasis added)

Although MassHealth Standard benefits for Long-Term-Care Services in a Nursing Facility may be retroactive to the first day of the third calendar month before the month of application, “in no event will the first day of eligibility be earlier than the first date of the third month before the date of application.” The Appellant has provided evidence of the Appellant’s confusion of when the application was filed, when it was processed, and the general confusion regarding the eligibility process. This general confusion does not invalidate that administrative determination by MassHealth which comports with the explicit dictates of 130 CMR 516.006 as well as the other MassHealth controlling Regulations. However, based upon the SC-1 submitted on behalf of Rehab Facility 1 along with the April Long-Term-Care application filed on behalf of Rehab Facility 2, MassHealth must provide coverage for the Appellant’s stay at Rehab Facility 1 from [REDACTED] 2024 through [REDACTED] 2024. MassHealth agreed with this determination at Hearing. (Testimony) On this record, the Appellant has met the burden, by a preponderance of evidence, that the MassHealth determination of approval of MassHealth coverage, effective only as of April 15, 2024 for the Appellant’s stay at Rehab Facility 2 is invalid, in part. Specifically, the Appellant has shown, pursuant to 130 CMR 516.006, the Appellant’s cost covered should include the Appellant’s stay at Rehab Facility 1 from [REDACTED] 2024 through [REDACTED] 2024, only. Accordingly, the portion of this appeal requesting payment for the Appellant’s stay at Rehab Facility 1 from [REDACTED] 2024 through [REDACTED] 2024 is APPROVED IN PART.

However, the Appellant has not met the burden to show the invalidity of MassHealth’s determination to deny payment for the Appellant’s stay at Rehab Facility 1 from [REDACTED] 2023 – [REDACTED] 2024 pursuant to 130 CMR 516.006. Accordingly, the remainder of this appeal is DENIED.

## **Order for MassHealth**

- 1) Provide payment to [REDACTED] to cover a portion of the Appellant’s stay from [REDACTED] 2024 through [REDACTED] 2024, only (see Exhibit 7 and attached SC-1 dated February 2024)
- 2) Continue to provide payment to [REDACTED] pursuant to Notice # 67001254, dated June 10, 2024 effective April 15, 2024. (Exhibit 1)

## **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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Patrick M. Grogan  
Hearing Officer  
Board of Hearings

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 1<sup>st</sup> Floor, Quincy, MA 02171