

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2410442
Decision Date:	10/7/2024	Hearing Date:	08/06/2024
Hearing Officer:	Mariah Burns	Record Open to:	08/24/2024

Appearance for Appellant:



Appearance for MassHealth:

Maria Piedade, 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:	Approved in part; Denied in Part	Issue:	Over 65; Long-Term Care; Eligibility; Start Date
Decision Date:	10/7/2024	Hearing Date:	08/06/2024
MassHealth's Rep.:	Maria Piedade	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 May 8, 2024, MassHealth approved the appellant's application for MassHealth long-term care benefits with a start date of October 8, 2024. See 130 CMR 516.006(A), 130 CMR 520.019(G), 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. Agency action regarding scope and amount of assistance is valid grounds for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth calculated an October 8, 2024, start date for long-term care benefits based on the date the appellant's application was received and the imposition of a period of ineligibility due to a disqualifying transfer of assets.

Issue

The appeal issue is whether MassHealth properly (1) complied with the regulations in determining the date that the appellant's application was received (2) calculated the period of ineligibility due

to a disqualifying transfer of assets.

Summary of Evidence

The appellant is an adult over the age of 65 who is currently residing in a skilled nursing facility. She was represented at the hearing by her spouse and her daughter. MassHealth was represented by a worker from the Taunton MassHealth Enrollment Center. The following is a summary of the testimony given and the evidence provided at the hearing and during the record open period.

On November 16, 2023, MassHealth received a Status Change for a Member in a Nursing Facility (SC-1) for the appellant from the nursing facility indicating a MassHealth start date request of September 10, 2023¹. On November 28, 2023, MassHealth sent the facility a Long-Term Care Conversion Information Request Form (LTC conversion request) detailing all information and documentation MassHealth would need to receive to determine the appellant's benefit eligibility and to honor the start date listed on the SC-1. The due date for a response to the LTC conversion request was December 28, 2023. The MassHealth representative reported that MassHealth received the appellant's LTC conversion form on January 16, 2024. She explained that MassHealth does not consider the filing of the SC-1 to be an application for benefits, and an application is not considered received, in this context, until the LTC conversion form is returned. Therefore, the earliest date of eligibility that MassHealth could find was October 1, 2023. MassHealth also found that the appellant made a disqualifying transfer of assets in gifting her vehicle to her grandson during the look-back period. Based on the Kelly Blue Book value of that vehicle, MassHealth imposed a period of ineligibility for that disqualifying transfer of seven days and found that the appellant's start date for benefits is October 8, 2023.

The appellant's representatives agreed that the gifting of the vehicle was a disqualifying transfer but argued that MassHealth did not properly consider the value of the vehicle in calculating the period of ineligibility. The record was kept open for the appellant's representatives to provide proof of the vehicle's value and submitted that information on August 8, 2024. After review, the MassHealth representative reported that she would be able to use that documentation to cure MassHealth's calculation of the period of ineligibility, but did not provide a specific value or date.

The appellant's representatives further argued that several factors should be taken into consideration as to why they did not submit the LTC conversion within the required 30-day period. First, they argued that the facility did not receive the request until December 1, 2023, and that the family did not receive the request from the facility until December 8 because their mail is routed through Hartford, CT before it reaches them. Second, they argued that they should be entitled to a grace period for the Christmas and New Year's holidays. Third, they argued that they walked into the Springfield MassHealth Enrollment Center on January 12, 2024, which is three days after

¹ The SC-1 indicates that the appellant's length of stay is intended to be short-term (less than six months), however all parties seem to agree that the appellant is a long-term resident.

the 30th day from which they received the LTC conversion request. They reported that they were told by the workers in Springfield that the application would need to be mailed to the Taunton Enrollment Center to be considered received. They argued that they made their best efforts to comply with the 30-day requirements but that, due to circumstances beyond their control, they were slightly over two weeks late and asked for consideration for their efforts.

Findings of Fact

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

1. The appellant is an adult over the age of 65 who currently resides in a skilled nursing facility. Testimony, Exhibit 1, Exhibit 4.
2. On November 16, 2023, MassHealth received a Status Change for a Member in a Nursing Facility (SC-1) for the appellant from the nursing facility indicating a MassHealth start date request of September 10, 2023. Testimony, Exhibit 6 at 10.
3. On November 28, 2023, MassHealth sent a Long-Term Care Conversion Information Request to the nursing facility requesting an application and additional information needed to determine the appellant's eligibility for long-term care benefits. Testimony, Exhibit 5 at 5, Exhibit 6 at 7. The information was due within 30 days of the notice for MassHealth to consider the start date requested on the SC-1. *Id.*
4. On either January 12 or January 16, 2024, the appellant responded to the LTC conversion request and submitted an application for long-term care benefits. Testimony, Exhibit 6 at 7.
5. On May 8, 2024, MassHealth approved the appellant for long-term care benefits. Exhibit 1. MassHealth deemed that the appellant was eligible as of October 1, 2023, but imposed a period of ineligibility until October 8, 2023, due to the appellant's making a disqualifying transfer of assets. *Id.*
6. The appellant agrees that a disqualifying transfer of assets was made. Testimony. MassHealth has agreed to recalculate that period of ineligibility due to information provided by the appellant during the record open period. Exhibit 7 at 1.

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, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

Long-term care residents are eligible for MassHealth Standard coverage if they meet the following requirements:

- (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.

130 CMR 519.006(A). An applicant for long-term care benefits typically “must file a complete Senior Application and Supplements or apply in person at a MassHealth Enrollment Center.” 130 CMR 516.001(A)(1)(b). The date of application is considered the date that the application is received by MassHealth. *See Id.* at 516.001(A)(2)(a). A member's start date for MassHealth Standard coverage, whether they are in the community or institutionalized, can begin on the first day of the third calendar month after the application is received, provided they are otherwise eligible on that day. *See* 130 CMR 516.006.

The exact process by which MassHealth requires the submission and consideration of a long-term care application is not directly derived from the regulations and can be best described, in relevant part, as follows: If MassHealth receives an SC-1 form on behalf a member from a nursing facility, that SC-1 is not treated as an application. *See* MassHealth Eligibility Operations Memo 23-16 – *Level of Care Conversion Screening Process – Updated* (Published July 2023) (A skilled nursing facility is required to submit an SC-1 within 10 days of a MassHealth member's admission). Instead, MassHealth sends the nursing facility an LTC conversion request that lists all documentation that needs to be provided for MassHealth to consider payment of long-term care services. A member or applicant has 30 days to return that form along with the documentation for MassHealth to consider the benefit start date request listed on the SC-1. Otherwise, MassHealth

will use 130 CMR 516.006 to determine the start date, using the date that the appellant returns the conversion form as the application date.

The regulations discuss, in multiple contexts, the specific time frames by which an applicant or member must abide when responding to a MassHealth request during the application process. See 130 CMR 516.003(D)(time standards for responding to a request for information); *see also* 130 CMR 516.001(C)(receipt of corroborative information) and 130 CMR 516.001(A)(3)(missing or inconsistent information with application). Nowhere do the regulations contemplate any grace period for any reason. Per 130 CMR 510.001, a day refers to “a calendar day unless a business day is specified.”

In this case, the appellant agrees that her application was not received by MassHealth within the 30 days required by the LTC conversion request.² She argues, instead, that she should be given some consideration for the time that it took to mail the request to the facility, the holidays, and the time it took for the facility to mail the form to the family. The regulations provide no authority for the Board of Hearings to provide such a remedy.

It could be argued that, pursuant to 130 CMR 516.001(C), MassHealth should have sent a notice that the SC-1 benefit start date request of September 10, 2024, was unable to be honored due to the appellant’s failure to submit the LTC conversion form within 30 days of the request. However, MassHealth did not deny the appellant’s application, and this appeal provides her the avenue by which she can challenge the start date.

Thus, there is no mechanism for the Board of Hearings to require MassHealth to deem the appellant’s LTC conversion form timely received to be approved for an earlier benefit start date. I find no error with MassHealth’s determination that October 1, 2023, is the earliest possible start date based on when the application was received.

The appellant also agreed that gifting her vehicle to her grandson was a disqualifying transfer of assets pursuant to 130 CMR 520.018 and .019 but argued that MassHealth miscalculated the value of the vehicle in determining the number of days of ineligibility based on that disqualifying transfer. After the appellant submitted documentation during the record open period, MassHealth agreed to cure its calculation of the vehicle’s value and determine a new start date based on a smaller transfer period.

For the foregoing reasons, the appeal is DENIED as it pertains to the appellant’s request to deem the LTC conversion form timely received, and APPROVED as it pertains to MassHealth’s calculation of the period of ineligibility due to a disqualifying transfer of assets.

² The appellant argues the application was submitted on January 12, 2024, while MassHealth asserts that it was not received until January 16, 2024. As both of these dates are beyond the 30-day due date and the start date for benefits is not impacted by the four-day difference, it is not necessary to find the exact date the application was submitted.

Order for MassHealth

Recalculate the appellant's period of ineligibility based on the cured transfer of assets. Issue a new approval notice with an updated start date for long-term care benefits, with the earliest possible date of eligibility beginning on October 1, 2023.

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.

Mariah Burns
Hearing Officer
Board of Hearings

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center