

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2411899
Decision Date:	09/30/2024	Hearing Date:	9/04/2024
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Karen Redman, MassHealth Member Policy
Implementation Unit

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

Appeal Decision:	Approved	Issue:	Inaction of MassHealth, Request for Hardship Waiver
Decision Date:	09/30/2024	Hearing Date:	9/04/2024
MassHealth's Rep.:	Karen Redman	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Under a Hardship Waiver Request, dated June 26, 2024, the Appellant sought a waiver of the period of ineligibility due to an undue hardship pursuant to 130 CMR 520.019(L). (Exhibit 1) On July 31, 2024, the Appellant filed an appeal with the Board of Hearings, alleging that MassHealth had failed to timely act upon a request for a hardship waiver (Exhibit 2). The failure of the MassHealth agency to act upon a request for assistance within the time limits required by MassHealth regulations is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth received a Hardship Waiver Request that was filed on behalf of the Appellant on June 26, 2024, but did not process it within the 30-day regulatory time limit.

Issue

The appeal issue is whether MassHealth failed to act upon a Hardship Waiver Request within the time limits required by MassHealth Regulations.

Summary of Evidence

The MassHealth representative testified that a Hardship Waiver Request was filed on June 27, 2024. (Testimony). The Request was mis-indexed at the EDMC. (Testimony) MassHealth explained that there is a new form that is suggested for use for Hardship Waiver Requests pursuant to a May 2024 Operations memo. (Testimony) MassHealth confirmed that the Hardship Waiver Request has been received, and MassHealth has not acted on the request as of the Hearing held on September 4, 2024.

The Appellant was represented by an attorney who served as the Appeal Representative. (Exhibit 2). Counsel stated that since MassHealth did not act within the timeframe established under 130 CMR 520.019(L), the Hardship Waiver Request should be approved. (Testimony) No Regulatory authority for the Appellant's position of a default approval due to inaction of MassHealth to act on the Hardship Waiver Request was submitted within the testimony or this Administrative Record. The Appellant currently has an appeal which was pending at the time of this Hearing before a different Hearing Officer. (Testimony). That appeal involves the intent of the Appellant regarding a transfer that has been deemed disqualified. (Testimony) The Record was scheduled to close on that appeal prior to the instant appeal heard on September 4, 2024. (Testimony). The Appeal Representative has requested an extension of the Record Open period in that Appeal and is unsure when the decision is due in that appeal. The Appellant requested a decision to issue regarding MassHealth's inaction on the Hardship Waiver Request, dated June 26, 2024, and filed on June 27, 2024. (Testimony)

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 65. (Exhibit 4)
2. A Hardship Waiver Request dated June 26, 2024 was filed on the Appellant's behalf on June 27, 2024. (Testimony, Exhibit 1)
3. MassHealth did not process the Hardship Waiver Request within the 30-day time limit set by regulation. (Testimony, 130 CMR 520.019(L))
4. On July 31, 2024, a request for a fair hearing on the issue of the inaction of MassHealth to process the Hardship Waiver Request was filed on the Appellant's behalf. (Exhibit 2)

5. As of the hearing date on September 4, 2024, the Appellant's Hardship Waiver Request had not yet been processed by MassHealth. (Testimony)

Analysis and Conclusions of Law

Pursuant to 130 CMR 520.019(L), MassHealth is held to the following time standards for rendering a determination on a request for a waiver of the period of ineligibility due to undue hardship:

520.019: Transfer of Resources Occurring on or after August 11, 1993

(L) Waiver of the Period of Ineligibility Due to Undue Hardship.

In addition to revising a trust and curing a transfer, the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility.

(1) The MassHealth agency may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. The MassHealth agency may waive the entire period of ineligibility or only a portion when all of the following circumstances exist.

(a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.

(b) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.

(c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.

(d) There is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

(2) Undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing-facility resident at risk of serious deprivation.

(3) Where the MassHealth agency has issued a notice of the period of ineligibility due to a disqualifying transfer of resources, the nursing-

facility resident may request a hardship waiver. For transfers occurring on or after February 8, 2006, nursing facilities may apply for a hardship waiver on behalf of a resident, with the consent of the nursing-facility resident or the resident's authorized representative.

(4) If the nursing-facility resident feels the imposition of a period of ineligibility would result in undue hardship, the nursing-facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within 15 days after the date on the notice. ***Within 30 days after the date of the nursing-facility resident's request, the MassHealth agency will inform the nursing-facility resident in writing of the undue-hardship decision and of the right to a fair hearing. The MassHealth agency will extend this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances as determined by the MassHealth agency require additional time.***

(5) The nursing-facility resident may appeal the MassHealth agency's undue-hardship decision and the imposition of a period of ineligibility by submitting a request for a fair hearing to the Office of Medicaid Board of Hearings within 30 days after the nursing-facility resident's receipt of the MassHealth agency's written undue-hardship notice, in accordance with 130 CMR 610.000: MassHealth: Fair Hearing Rules.

(6) The nursing-facility resident's request for consideration of undue hardship does not limit his or her right to request a fair hearing for reasons other than undue hardship. ***(Emphasis added)***

In this case, a Hardship Waiver Request was filed on the Appellant's behalf on June 27, 2024. It is undisputed that the Hardship Waiver Request was received by MassHealth and has not been acted on by MassHealth. (Testimony) Although a separate appeal on the issue of the Appellant's intent regarding a disqualifying transfer was pending at the time of the instant Hearing, the Appellant is seeking approval of the Waiver, due to the inaction of MassHealth. The Appellant has provided no Statutory nor Regulatory authority in support of this request.

Since it remains undisputed that MassHealth has not acted on the Appellant's Hardship Waiver Request, this appeal is APPROVED: MassHealth shall process the Hardship Waiver Request forthwith. From this determination on the Appellant's Hardship Waiver Request, the Appellant retains the right to Appeal, should the Appellant so choose.

Order for MassHealth

Process the Appellant's request for a waiver of the period of ineligibility due to undue hardship dated June 26, 2024, received by MassHealth on June 27, 2024, forthwith.

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.

Patrick Grogan
Hearing Officer
Board of Hearings

[REDACTED]

Respondent Representative: Karen Redman, MassHealth Member Policy Implementation Unit,
100 Hancock Street, 6th Floor, Quincy, MA 02171, 617-794-3660