

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2412078
Decision Date:	11/12/2024	Hearing Date:	09/17/2024
Hearing Officer:	Scott Bernard		

Appearances for Appellant:




Appearance for MassHealth:

Thomas Ross (Quincy MEC) *via* telephone



*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; Dismissed in part	Issue:	Long Term Care/Coverage Start Date
Decision Date:	11/12/2024	Hearing Date:	09/17/2024
MassHealth's Rep.:	Thomas Ross	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South	Aid Pending:	N/A

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 July 11, 2024, MassHealth approved the appellant's application for MassHealth Long Term Care (LTC) benefits with a start date of January 1, 2024. (See 130 CMR 516.006 and Exhibit (Ex.) 1). The appellant, through her representatives, filed this appeal in a timely manner on August 5, 2024. (See 130 CMR 610.015(B) and Ex. 2). Determination of the coverage start date is valid grounds for appeal. (See 130 CMR 610.032).

On August 7, 2024, BOH sent a notice dismissing the appeal because there was a lack of proof that the person who submitted the fair hearing request had authority to do so; the notice gave instructions on how to remove the dismissal. (Ex. 4). On August 14, 2024, BOH received a response to the dismissal with proof that the person who submitted the appeal had authority to do so and for that reason BOH reinstated the appeal and sent notice on August 21, 2024, scheduling this hearing. (See Ex. 5 and Ex. 6).

Action Taken by MassHealth

MassHealth approved the appellant's application for LTC benefits with a start date of January 1, 2024.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.004; 516.006, in determining that the MassHealth start date for long term care coverage was January 1, 2024, or whether there was authority that would permit an earlier start date.

Summary of Evidence

A benefits eligibility representative from the Quincy MassHealth Enrollment Center (MEC) represented MassHealth and the appellant was represented by her duly appointed representatives. All the parties appeared at the hearing by telephone.

The MassHealth representative testified first to the following.¹ The appellant is unmarried and over the age of 65 years old. (Testimony; Ex. 3). On August 24, 2023, MassHealth received a SACA-2/Senior Application specifically requesting “MassHealth or the Health Safety Net (HSN)” (community based MassHealth). (Testimony; Ex. 8, p. 1). On October 3, 2024, the nursing facility submitted a Status Change (SC-1) form requesting MassHealth pay for short-term care beginning September 1, 2023, with a level of care screening stating that the appellant was clinically eligible for short-term care through December 28, 2023. (Testimony; Ex. 9). On January 22, 2024, the nursing facility submitted an updated level of care screening dated December 28, 2023, stating that the appellant was clinically eligible for LTC services. (Testimony; Ex. 11). On January 31, 2024, the nursing facility submitted an LTC Supplement with another copy of the December 28 level of care screening. (Testimony; Ex. 12). The MassHealth representative stated that MassHealth could not process these submissions, because the appellant had not submitted a proper LTC application. (Testimony). Based on the August 2023 application, MassHealth did determine the appellant was eligible for the Medicare Savings Plan (MSP) and issued a letter on October 13, 2023, notifying the appellant that she was approved for MSP beginning November 1, 2023. (Testimony; Ex. 10).

On March 29, 2024, the appellant submitted the correct application for LTC coverage which MassHealth processed on April 1, 2024. (Testimony; Ex. 13). The application included the SC-1 from October 2023, which indicated that the appellant was seeking a coverage start date of September 1, 2023. (Testimony; Ex. 9, p. 1; Ex. 13, p. 69). Once MassHealth received necessary verifications, MassHealth issued the approval notice on July 11, 2024, with a coverage start date of January 1, 2024. (Testimony; Ex. 1). The MassHealth representative acknowledged that the coverage start date of January 1, 2024 was based on the date MassHealth processed the LTC application, which was April 1, 2024. (Testimony). Based on the date the application was submitted, March 29, 2024, the earliest possible retroactive start date for LTC coverage is

¹ Immediately following the hearing, and at the Hearing Officer’s request, the MassHealth representative submitted copies of the documents cited below. (See Exs. 8-13). These have therefore been incorporated in the following paragraphs as part of the summary of the MassHealth representative’s testimony.

December 1, 2023. (Testimony; Ex. 13; Ex. 1). The MassHealth representative asserted that even though the appellant applied in August 2023, as well as level of care determination and an LTC supplement, these could not be used as the basis for approving an earlier coverage start date. (Testimony). The MassHealth representative stated that he did consult with his supervisors concerning this appeal, and it was MassHealth's position that the August 24, 2023, application, which requested community benefit and not LTC benefits, could not be used to determine the eligibility start date for LTC benefits. (Testimony).

The appellant's representatives then stated the following.² While the appellant was still hospitalized in August 2023, she submitted the August 2023 application to MassHealth with the help of hospital staff. (Testimony; Ex. 8). The appellant was subsequently admitted to the nursing facility on [REDACTED] 2023. (Testimony; Ex. 9). The facility obtained the short-term screening and submitted that with the SC-1 on October 3, 2023. (Testimony; Ex. 9). The appellant's representatives stated that the appellant's family and the facility awaited a determination concerning this application. (Testimony). Although the family received MassHealth's October 2023 MSP approval, there was never a determination concerning the request for LTC services. (Testimony; Ex. 14, pp. 19-20). The appellant's family would have appealed a denial if received. (Testimony).

The appellant's representatives subsequently submitted the LTC supplement on January 31, 2024 with verification of an asset spend-down. (Testimony; Ex. 12). When MassHealth did not appear to response to this, they subsequently submitted the March 29, 2024, application. (Testimony; Ex. 12; Ex. 13). The appellant's representatives stated that since they never received a denial of the earlier application, they waited for the MassHealth determination concerning the March 29, 2024, application to dispute the coverage start date. (Testimony). They stated that they made sure to include a copy of the August 2023 application, faxed while the appellant was still hospitalized, with a fax receipt showing the date it was submitted. (Testimony; Ex. 2, pp. 2-28). The appellant submitted a bevy of verifications within the same fax, including proofs of identity and residency, an income statement from Social Security, a statement from the appellant's Medicare Advantage plan, bank statements, date for a life insurance policy, and a certificate of burial lot. (Testimony; Ex. 2, pp. 29-51).

The appellant's representatives stated that once MassHealth received the SC-1 in October 2023, it should have prompted them to treat the August 2023 application as incomplete and send out a request for information. (Testimony). The appellant's representatives stated that they had never had MassHealth ignore an SC-1 before. (Testimony).

² During their testimony, the appellant's representatives also stated that they wanted to submit further documentation the family provided and, with the Hearing Officer's agreement, faxed the documentation to BOH later on the same day of the hearing. (See Ex. 14). Reference to the document in this fax, as well as documents the appellant's representatives submitted prior to the hearing have therefore been incorporated as part of the summary of the appellant's representatives' testimony. (Exs. 7, 14).

Findings of Fact

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

1. The appellant is unmarried and over the age of 65 years old. (Testimony; Ex. 3).
2. On August 24, 2023, MassHealth received a Senior Application specifically requesting community based MassHealth. (Testimony; Ex. 8, p. 1).
3. The appellant was subsequently admitted to the nursing facility on [REDACTED] 2023. (Testimony; Ex. 9).
4. On October 3, 2024, the nursing facility submitted an SC-1 form requesting MassHealth pay for short-term care beginning September 1, 2023, with a level of care screening stating that the appellant was clinically eligible for short-term care through December 28, 2023. (Testimony; Ex. 9).
5. Based on the August 2023 application, MassHealth determined the appellant was eligible for the MSP and issued a letter on October 13, 2023, notifying the appellant that she was approved for MSP beginning November 1, 2023. (Testimony; Ex. 10).
6. On January 22, 2024, the nursing facility submitted an updated level of care screening dated December 28, 2023, stating that the appellant was clinically eligible for LTC benefits. (Testimony; Ex. 11).
7. On January 31, 2024, the nursing facility submitted an LTC Supplement with another copy of the December 28 level of care screening but MassHealth could not process these because it did not consider it to be a proper application for LTC benefits. (Testimony; Ex. 12).
8. On March 29, 2024, the appellant submitted an application requesting LTC benefits, which MassHealth processed on April 1, 2024. (Testimony; Ex. 13).
9. The appellant is seeking a coverage start date of September 1, 2023. (Testimony; Ex. 9, p. 1; Ex. 13, p. 69).
10. Once MassHealth received necessary verifications, MassHealth issued the approval notice on July 11, 2024, with a coverage start date of January 1, 2024. (Testimony; Ex. 1).
11. The coverage start date of January 1, 2024 was based on the date MassHealth processed the LTC application, which was April 1, 2024 and not the date it was submitted, which was March 29, 2024. (Testimony; Ex. 13; Ex. 1).
12. BOH received the appellant's appeal on August 5, 2024. (Ex. 2).

Analysis and Conclusions of Law

To apply for long-term care services in a nursing facility, the individual or their authorized representative must submit a complete Senior Application and Supplements on paper or apply in person at a MEC. (130 CMR 516.001(A)(1)(b)). The application is officially received by MassHealth on the date it arrives. (130 CMR 516.001(A)(2)(a)). An application is considered complete if any additional information MassHealth requests is provided within 30 days of the request. (130 CMR 516.001(A)(2)(b),(C)). The begin date of MassHealth Standard for individuals needing LTC services 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. (130 CMR 516.006(A)(2)). If more than one application has been submitted and not denied, the start date will be based on the earliest application that is approved. (Id.).

The record indicates that the appellant applied for community MassHealth on August 24, 2023. MassHealth did not approve the appellant for community MassHealth Standard, but by notice dated October 13, 2023, MassHealth approved the appellant for a Medicare Savings Program plan. There is no evidence that MassHealth's October 13, 2023, notice regarding the appellant's August 24, 2023, application was appealed. The appellant first submitted an application for MassHealth Standard for long term care residents on March 29, 2024. The March 29, 2024, application is the only long term care application the appellant submitted. According to MassHealth regulations, coverage should be retroactive to the first day of the third month prior to the application date, which in this case is March 2024. As a result, the coverage start date should be December 1, 2023.

MassHealth, in its determination, incorrectly set the coverage start date as January 1, 2024. MassHealth based the start date on the date the application was processed, April 1, 2024. The record, however, clearly demonstrates that the appellant was receiving covered medical services as of December 1, 2023. Therefore, as long as the appellant was also eligible for coverage on that date, December 1, 2023, should be the correct coverage start date. For that reason, the appeal is APPROVED IN PART in that the appellant's start date for MassHealth Standard for long term care residents could be December 1, 2023, if otherwise eligible on that date, and DENIED IN PART in that the start date for long term care coverage can be no earlier than December 1, 2023.

The appellant's representatives noted that documents submitted on the appellant's behalf between August 24, 2023, and January 31, 2024, should have been considered new applications. MassHealth did not act on any of these documents because there was no long-term care application for the appellant in MassHealth's system. The appellant did not appeal any failure to act by MassHealth. The appellant's representatives submitted the long-term care application on March 29, 2024 and then appealed MassHealth's July 11, 2024 approval notice disputing the start date. They have requested that the Board of Hearings consider approving an earlier start date based on this earlier documentation that MassHealth did not act on.

According to 130 CMR 610.015(B), the date of a request for a fair hearing is the date on which the Board of Hearings receives the written request. When an applicant is challenging MassHealth's failure to act on an application, the appeal must be submitted within 120 days from the date of the application in order to be considered timely (130 CMR 610.015(B)(2)(a)).

On January 31, 2024, the appellant submitted documentation that went unprocessed by MassHealth. The appellant had 120 days, or until May 31, 2024, to file an appeal of MassHealth's failure to act. It does not appear that MassHealth actually failed to act on an application, as there is no evidence that a long-term care application was submitted until March 29, 2024, however BOH cannot even reach that issue as there was no timely appeal of MassHealth's January 31, 2024, inaction. The Board of Hearings did not receive the appellant's request for a fair hearing until August 5, 2024. As a result, the appellant's appeal of MassHealth's failure to act was not timely. The appeal is DISMISSED as to MassHealth's failure to act on documentation submitted prior to March 29, 2024.

Order for MassHealth

Issue a new determination approving MassHealth Standard for long term care residents beginning on December 1, 2023, as long as the appellant was otherwise eligible for those services on that date.

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.

Scott Bernard
Hearing Officer
Board of Hearings

CC:

[REDACTED]

[REDACTED]

Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171