

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2412510
<b>Decision Date:</b>	1/10/2025	<b>Hearing Date:</b>	09/11/2024
<b>Hearing Officer:</b>	Kenneth Brodzinski	<b>Record Open to:</b>	11/15/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Paula Vivieros



*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>	DENIED	<b>Issue:</b>	Failure to Verify
<b>Decision Date:</b>	1/10/2025	<b>Hearing Date:</b>	09/11/2024
<b>MassHealth's Rep.:</b>	Paula Vivieros	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Taunton MEC		

## Authority

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

## Jurisdiction

Through notice dated June 10, 2024, MassHealth terminated Appellant's MassHealth Long Term Care benefits as of June 24, 2024 due to her failure to provide MassHealth with requested documentation needed to determine her continued financial eligibility (Exhibit A). Appellant filed for this appeal in a timely manner on August 13, 2024 (see 130 CMR 610.015(B) and Exhibit A). Termination of MassHealth benefits constitutes valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth terminated Appellant's MassHealth Long Term Care benefits as of June 24, 2024, due to her failure to provide MassHealth with requested documentation needed to determine her continued financial eligibility.

## Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it terminated Appellant's MassHealth Long Term Care benefits as of June 24, 2024, due to her failure to provide MassHealth with requested documentation needed to determine her continued financial eligibility.

## Summary of Evidence

The MassHealth representative testified that Appellant is a resident of a long term care facility who is receiving MassHealth Long Term Care benefits. On October 24, 2023, MassHealth sent Appellant a renewal form that she was to complete and file by a specific due date. The purpose of the renewal form is to re-assess Appellant's continued financial eligibility. Based on information that was provided in the renewal form that Appellant filed, MassHealth sent a written request dated March 5, 2024 to Appellant requesting that she file copies of bank statements from an account in her name at [REDACTED]. When the bank statements were not received by the specified due date, MassHealth issued notice on June 10, 2024 to Appellant notifying her that her Long Term Care benefits would terminate on June 24, 2024 because she had failed the file requested financial verifications.

Appellant's representative works in the business office at the nursing facility where Appellant resides. Appellant's representative testified that in 2019 MassHealth had requested the same financial verifications and at that time she explained to MassHealth that she was unable to obtain copies of the bank statements from [REDACTED] because Appellant, who is suffering from dementia, lacks capacity, cannot physically leave the nursing facility and is unable to authorize the release of her bank statements. Appellant's representative explained she had an appeal which she withdrew after speaking to the MassHealth worker who told her the appeal was no longer necessary because she was restoring MassHealth benefits without the need to file the missing bank statements. Appellant's representative further explained that she thought this matter was resolved until she received a copy of the verification request earlier this year. Appellant's representative testified that she has reached out numerous times to the MassHealth Enrollment Center to explain the situation hoping that she would again be able to secure the reinstatement of Appellant's benefits.

Appellant's representative testified that Appellant is suffering from dementia, is nonverbal and is basically in a vegetative state. She testified that Appellant's healthcare proxy is in place due to her incapacity. Appellant's representative explained that the delay in obtaining the bank statements has been prolonged by her efforts to try to resolve the issue with MassHealth short of having to file for a legal conservator. Appellant's representative explained that the nursing facility will have to spend between \$3,000 and \$5,000 in legal fees in order to have a conservator appointed.

Appellant's representative also testified that Appellant's family has offered no assistance and that her husband is believed to reside in a nursing facility in Puerto Rico. Upon questioning by the hearing officer, Appellant's representative indicated that a petition for conservator has been filed and they are waiting on a Court date. Appellant's representative testified that she could not say when the petition for conservatorship was filed with the Court because her copy was not signed and dated.

Upon Appellant's request, the record was held open for a little over two months to allow time for the conservator to be appointed and for the conservator to take action to obtain the bank statements. Appellant was instructed to keep the MassHealth representative and the Board of Hearings updated with her ongoing efforts to secure the appointment of a conservator and otherwise obtain the requested verifications. The record was held open until the close of business on November 15, 2024.

As of November 15, 2024, Appellant had not filed any additional information with the Board of Hearings or requested additional time to do so; however, on November 19, 2024 Appellant filed a copy of a *Petition for Appointment of Conservator for Disabled Person* that was signed by the petitioner on September 30, 2024 and signed by the petitioner's attorney on October 29, 2024 (Exhibit B). On November 29, 2024 Appellant filed a copy of a *Notice of Assignment* dated November 25, 2024 indicating that Appellant's petition had a hearing date of February 25, 2025 (Exhibit C). Despite being filed beyond the record-open date and having failed to request an extension of the record-open date, both submissions were accepted into the record.

## Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant is a resident of a long-term care facility who has received MassHealth Long Term Care benefits.
2. On October 24, 2023, MassHealth sent Appellant a renewal form that she was to complete and file by a specific due date.
3. Based on information that was provided in the renewal form that Appellant filed, MassHealth sent a written request dated March 5, 2024, to Appellant requesting that she file copies of bank statements from an account in her name at [REDACTED].
4. When the bank statements were not received by the specified due date, MassHealth issued notice on June 10, 2024 to Appellant notifying her that her Long Term Care benefits would terminate on June 24, 2024 because she had failed to file requested financial verifications (Exhibit A).
5. Appellant suffers from dementia, lacks capacity, cannot physically leave the nursing facility and is unable to authorize the release of her bank statements.
6. Appellant's healthcare proxy is in place due to her incapacity.
7. Appellant's representative reached out to the MassHealth Enrollment Center to try to

resolve the issue short of having to file for a legal conservator.

8. At hearing, Appellant's representative indicated that a petition for conservator has been filed and she was waiting on a Court date.
9. Upon Appellant's request, the record was held open for a little over two months to allow time for the conservator to be appointed and for the conservator to take action to obtain the bank statements.
10. Appellant was instructed to keep the MassHealth representative and the Board of Hearings updated with her ongoing efforts to secure the appointment of a conservator and otherwise obtain the requested verifications.
11. The record was held open until the close of business on November 15, 2024.
12. As of November 15, 2024, Appellant had not filed any additional information with the Board of Hearings or requested additional time to do so.
13. On November 19, 2024, Appellant filed a copy of a *Petition for Appointment of Conservator for Disabled Person* that was signed by the petitioner on September 30, 2024 and signed by the petitioner's attorney on October 29, 2024 (Exhibit B).
14. A copy of a letter from the filing attorney was also sent to this Board on November 19, 2024, which states that the Petition was filed with the Court electronically on October 30, 2024 (Exhibit B).
15. On November 29, 2024 Appellant filed a copy of a *Notice of Assignment* dated November 25, 2024 indicating that Appellant's petition had a hearing date of February 25, 2025 (Exhibit C).
16. Appellant has not provided this Board with any additional communication or information other than the filings made on November 19 and 29, 2024 (Exhibits B and C).

## Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)).

Regulation 130 CMR 516.003 in pertinent part states:

### *Verification of Eligibility Factors*

*The MassHealth agency requires verification of eligibility factors including income, assets, residency, citizenship, immigration status, and identity as described in 130 CMR 517.000: MassHealth: Universal Eligibility Requirements, 130 CMR 518.000: MassHealth: Citizenship and Immigration, and 130 CMR 520.000: MassHealth: Financial Eligibility.*

*(A) Information Matches. The MassHealth agency initiates information matches with federal and state agencies and other informational services, as described at 130 CMR 516.004, when an application is received in order to verify eligibility.*

*(B) Electronic Data Sources. If electronic data sources are unable to verify or are not reasonably compatible with the attested information, additional documentation will be required from the individual.*

*(C) Request for Information Notice. If additional documentation is required, including corroborative information as described at 130 CMR 516.001(B), a Request for Information Notice will be sent to the applicant listing all requested verifications and the deadline for submission of the requested verifications.*

*(D) Time Standards. The following time standards apply to the verification of eligibility factors.*

*(1) The applicant or member has 30 days from the receipt of the Request for Information Notice to provide all requested verifications.*

*(2) If the applicant or member fails to provide verification of information within 30 days of receipt of the MassHealth agency's request, MassHealth coverage is denied or terminated.*

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

Regulation 130 CMR 516.007(C) in pertinent part states:

*(3) Review Form for Individuals in Need of Long-term-care Services in a Nursing Facility. If the individual is in need of long-term-care services in a nursing facility and his or her continued*

*eligibility cannot be determined based on reliable information contained in his or her account or electronic data match with federal and state agencies, a written update of the member's circumstances on a prescribed form must be completed.*

*(a) The MassHealth agency will notify the member of the need to complete the prescribed review form.*

*(b) The member will be given 45 days to return the review form to the MassHealth agency.*

- 1. If the review is completed within 45 days, eligibility will be determined using the information provided by the individual with verification confirmed through electronic data matches if available.*
- 2. If the review is not completed within 45 days, eligibility will be terminated within 14 days from the date of the termination notice.*
- 3. If the requested review form is submitted within 30 days from the date of the termination, a second eligibility determination is made within 15 days. Eligibility may be established retroactive to the date of termination, if otherwise eligible.*

MassHealth issued a written verification request on March 5, 2024 and scheduled the termination of Appellant's MassHealth Long term Care benefits on June 24, 2024 through notice dated June 10, 2024 (Exhibit A). This action comports with the above-cited regulations given the fact that Appellant did not file the requested financial verifications needed to redetermine Appellant's ongoing financial eligibility for MassHealth benefits by the stated due date.

At hearing, Appellant's representative explained the protracted delay in obtaining the requested verifications which by the date of this decision still have not been filed. At hearing, Appellant's representative indicated that a petition for conservator had already been filed, but she was waiting on the assignment of a Court date. This appears not to be the case because documentation filed by Appellant on November 19, 2024 shows that the petition was not signed and dated by the filing attorney until October 29, 2024 and filed electronically with the Court the next day – more than five weeks after the hearing (Exhibit B). Appellant delayed further in filing a copy of the filed petition with this Board for nearly another three weeks (id) and did so outside of the record open period which had closed on November 15, 2024.

At hearing, Appellant's representative explained that the delay up until that time was caused by her attempts to work with MassHealth to resolve the issue short of needing to file for a conservator. Such efforts, however, do not justify a delay of six full months which extended from the date of the verification request (March 5, 2024) and the date of hearing (September 9, 2024). This record also contains no information whatsoever to justify a further delay of more than 7 weeks after the hearing for Appellant to even file the petition for a conservator with the Court,

especially after Appellant's representative had indicated to this Board that the petition had already been filed as of the date of hearing.

On this record, there is no basis in law or fact to overturn MassHealth's determination of June 10, 2024 terminating Appellant's benefits as of June 24, 2024.

## **Order for MassHealth**

None.

## **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.

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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc: Appellant Representative: Cathi Fitts-Johnson, c/o Kimwell Healthcare, 495 New Boston Road, Fall River, MA 02720, 508-679-0106

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