

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |             |                       |            |
|-------------------------|-------------|-----------------------|------------|
| <b>Appeal Decision:</b> | Denied      | <b>Appeal Number:</b> | 2415214    |
| <b>Decision Date:</b>   | 12/30/2024  | <b>Hearing Date:</b>  | 11/14/2024 |
| <b>Hearing Officer:</b> | Casey Groff |                       |            |

**Appearance for Appellant:**



**Appearance for Managed Care Contractor:**

James Farrell, Appeals Compliance Mgr., Health New England (HNE);  
Robert Azeez, Behavioral Health Mgr., HNE;  
Ann Marie Powers, Case Manager for ABA Authorization, Massachusetts Behavioral Health Partnership (MBHP);  
Tiffani Bell Washington, M.D., Medical Director, Medical Affairs Dept., MBHP  
Ramon Madrigal, Legal Specialist, MBHP;  
Orlando Leon, Appeals Supervisor, MBHP;  
Anthony Holson, Staff VP, Appeals MBHP



*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>             | Managed Care Contractor; Denial of Level 1 Appeal |
| <b>Decision Date:</b>    | 12/30/2024  | <b>Hearing Date:</b>      | 11/14/2024  |
| <b>Respondent Reps.:</b> | James Farrell, Health New England; Ann Marie Powers, MBHP; <i>et. al.</i> | <b>Appellant's Reps.:</b> | Mother; ABA Provider                              |
| <b>Hearing Location:</b> | Board of Hearings, Remote   | <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 Level I Internal Appeal Determination dated 8/30/24, the Massachusetts Behavioral Health Partnership (MBHP), on behalf of Health New England BeHealthy Partnership Plan (HNE) - jointly operating as MassHealth Managed Care Contractor (MCC)<sup>1</sup> - informed Appellant, a minor, that it modified his prior authorization (PA) request for Applied Behavioral Analysis (ABA) services. *See* Exh. 1. Appellant, through his parent/guardian, appealed the determination to the Board of Hearings in a timely manner, designating Appellant's ABA provider as his authorized appeal representative. *See* 130 CMR 610.015(B) and Exhibit 2. An MCC's decision to deny or provide limited authorization of a requested service is grounds for appeal to BOH, provided that the member has exhausted all remedies available through the MCC's internal appeals process. *See* 130

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<sup>1</sup> Under MassHealth Fair Hearing Rules, a Managed Care Contractor is used as an umbrella term to include any MassHealth contracted managed care organization, including a SCO or an ICO, or behavioral health contractor. *See* 130 CMR 610.004. HNE's BeHealthy Partnership Plan is a type of managed care contractor which was responsible for managing Appellant's MassHealth benefits.

CMR 610.032(B)(2). As Appellant exhausted the MCC's internal appeals process, BOH has jurisdiction over the Level 1 Appeal Determination. *Id.*

## **Action Taken by MCC**

MBHP/HNE modified Appellant's PA request for 35 hours per-week of ABA services by approving 30 hours per-week for the applicable PA period.

## **Issue**

The issue on appeal is whether MBHP/HNE, as a MassHealth MCC, erred in its decision to provide limited authorization of Appellant's request for ABA services.

## **Summary of Evidence**

Respondent, a MassHealth managed care contractor (MCC), was represented by individuals from the Massachusetts Behavioral Health Partnership (MBHP) and Health New England (HNE) (collectively "MBHP/HNE" or "Respondents"). MBHP is the behavioral health contractor for MassHealth. HNE is a managed care provider that administers the BeHealthly Partnership Plan, an accountable care partnership plan (ACPP) for MassHealth beneficiaries. HNE partners with MBHP to manage and coordinate the provision of MassHealth covered behavioral health services for BeHealthly enrollees.

Through documentation and testimony, the MBHP/HNE representatives presented the following evidence: Appellant is a minor MassHealth member, under the age of [REDACTED] and has a diagnosis of autism spectrum disorder (ASD). See Exh. 5, pp. 8-10. Appellant's MassHealth benefit is managed through HNE's BeHealthly Partnership Plan. MBHP is the entity responsible for administering and coordinating behavioral health services to BeHealthly members. *Id.* at 6. In this capacity, MBHP, reviews and renders authorization determinations for requested behavioral health services, including PA requests seeking coverage of applied behavioral analysis (ABA) services.

The case manager for ABA authorization at MBHP ("case manager") testified that that she has been the peer clinical reviewer for Appellant's ABA services since he initially began services in February 2024. The case manager testified that as a peer clinical reviewer, she renders PA determinations based on the information submitted with the PA request, including the member's age and ABA-related assessment scores. She then determines whether the documentation supports medical necessity for the ABA units or hours requested. A copy of MBHP's ABA medical necessity criteria for ABA services was submitted into evidence, and provides in relevant part, the following:

### **Admission Criteria**

*All of the following criteria are necessary for admission.*

1. The Member has a definitive diagnosis of an Autism Spectrum Disorder (DSM-5-TR) and is under the age of [REDACTED]
2. The diagnosis in (1) above is made by a licensed physician or psychologist experienced in the diagnosis and treatment of autism with developmental or child/adolescent expertise.
3. The child or adolescent has received a comprehensive diagnostic and/or functional assessment (e.g., ABLLS-R, Vineland-II, ADI-R, ADOS-G, CARS2, VB-MAPP, or Autism Behavior Checklist), which include the following:
  - a. Complete medical history to include pre- and perinatal, medical, developmental, family, and social elements
  - b. Physical examination dated within the past year, which may include items such as growth parameters, head circumference, and a neurologic examination
  - c. Detailed behavioral and functional evaluation outlining the behaviors consistent with the diagnosis of ASD and its associated comorbidities. A diagnostic evaluation must include the scores from the use of formal diagnostic tests and scales as well as observation and history of behaviors. Screening scales such as the MCHAT-R are not sufficient to make a diagnosis and will not be accepted as the only formal scale.
  - d. Medical screening and testing has been completed to identify the etiology of the disorder, rule out treatable causes, and identify associated comorbidities as indicated.
4. The Member exhibits atypical or disruptive behavior that significantly interferes with daily functioning and activities or that poses a risk to the Member or others related to aggression, self-injury, property destruction, etc.
5. Initial evaluation from a licensed applied behavior analyst supports the request for the ABA services.
6. The diagnostic report clearly states the diagnosis and the evidence used to make that diagnosis.

#### **Continuing Stay Criteria**

All of the following criteria are necessary for continuing treatment at this level of care.

1. The individual's condition continues to meet admission criteria for ABA, either due to continuation of presenting problems, or appearance of new problems or symptoms.
2. There is reasonable expectation that the individual will benefit from the continuation of ABA services.
3. Assessment from a licensed applied behavior analyst supports the request for ABA services.

4. There is documented skills transfer to the individual and treatment transition planning from the beginning of treatment.
5. Services are not duplicative of services that are part of an Individual Educational Plan (IEP) or Individual Service Plan (ISP) when applicable.

*Id.* at 58-60

In the initial PA request, submitted on 2/2/24, Appellant's provider sought a total of 35 hours per-week of ABA services. On review, the MBHP case manager found that the documentation did not demonstrate medical necessity for the full amount of hours requested but, instead, supported partial authorization for 25 hours per-week. Appellant was notified of this decision on 2/22/24. The provider disagreed, but did not appeal the determination through the appropriate internal appeal process. The parties were able to resolve the matter internally when MBHP supervisors authorized a one-time increase of 5 hours to the existing authorization, bringing Appellant to 30 hours of authorized ABA services per-week.

On 8/13/24, MBHP received a new PA request, on behalf of Appellant, for continued ABA services, seeking authorization for 3,640 units, or 35 hours, per-week, of ABA services<sup>2</sup> for dates of service 8/23/24 to 2/23/25. *Id.* at 8-10. MBHP explained that in conducting a "concurrent review" it determines medical necessity based on the documentation submitted by the provider and in accordance with the section pertaining to "continued stay criteria" in MBHP's ABA medical necessity guidelines. Specifically, the case manager reviews all baseline data from the initial authorization, and the compares this information with the member's current data to assess the member's progress. When the concurrent PA request seeks an *increase* in ABA services, as it did here, the review assesses whether the member has had any regression or increase in maladaptive behaviors in the preceding 6-month period.

The MBHP case manager testified that in reviewing Appellant's PA request, and after discussing the case with Appellant's ABA provider, she found that Appellant had made progress towards his goals and that he had decreased targeted behaviors such as screaming and tantrums. *Id.* at 8-10. The case manager noted Appellant continued to experience maladaptive behaviors in his home. However, to address the behavior, the request would need to be geared to skills training provided in the home setting, i.e., the environment where the member is experiencing difficulty. Here, the PA request sought authorization for ABA services to be provided in a clinical setting and would therefore not be effective in treating the difficulties Appellant was having at home. The case manager concluded that Appellant warranted continued authorization of 30 hours per-week, but did not find medical necessity to warrant an increase to 35 hours per

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<sup>2</sup> The ABA services were requested under CPT code 97153 *Adaptive Behavior Treatment by Protocol*. *Id.* Adaptive Behavior Treatment is described as services "administered by technician under the direction of a physician or other qualified health care professional, face-to-face with one patient, each 15 minutes [per-unit]." *Id.*

week. Accordingly, on 8/19/24, MBHP, on behalf of HNE, modified the request, authorizing a total of 3,120 units, or 30 hours per-week, of ABA services. *Id.* at 8-10.

On 8/27/24, Appellant's parent/guardian filed an internal Level I member appeal with MBHP to dispute the denied portion of the PA request, i.e., the 5 hours, or 520 units, that were not approved by MBHP. *Id.* at 6.

On appeal, a subsequent review of the PA request was performed by [REDACTED] the Medical Director for MBHP's Medical Affairs Dept. [REDACTED] appeared at the hearing and testified that she is board certified in psychiatry and specializes in behavioral health medicine. Her internal appeal involved a subsequent review of all documentation and discussing the request directly with Appellant's ABA provider. Pursuant to her review, [REDACTED] concurred with MBHP's initial determination, finding no clear justification to increase the frequency of Appellant's ABA services. On 8/30/24, MBHP notified Appellant that his Level 1 Appeal was denied. See Exh. 1. Appellant timely appealed the adverse determination to the Board of Hearings. See Exh. 2.

At hearing, Appellant was represented by his mother and his ABA provider from New England ABA (collectively "Appellants representatives"). Appellant's provider, who presented the bulk of testimony, provided relevant background information relating to the initial PA request. The provider testified that when Appellant presented for his initial assessment, he was non-verbal, and his skills were extremely limited. Given the intensity of service he required, an initial request for 35 hours of ABA services per-week was submitted to MBHP for authorization. The provider testified that although MBHP approved only 25 hours per-week, a miscommunication subsequently led the provider to mistakenly render 35 hours per-week as requested, on the belief that Appellant could seek additional hours within the authorization period if and when his hours ran out. On this assumption, the provider serviced Appellant for 35 hours per-week, with services being provided 5 days per-week, Monday through Friday. When Appellant eventually ran out of hours, the provider was forced to stop services and place a request for additional hours. At that time, MBHP authorized 30 hours of ABA services per-week for the remainder of the PA period. Appellant's provider testified that to accommodate the change, they had to eliminate 30 minutes from the beginning and end of each ABA service day. The provider testified that Appellant had been making progress when he was receiving 35 hours per-week, but he began having difficulty once his schedule changed, particularly with the interruption in his morning routine, and exhibited an increase in screaming and tantrum behaviors.

Appellant's provider testified that contrary to MBHP's testimony, there was documentation of these increased behaviors, as well as goals and treatment plans to address them in the continuing PA period. For example, under the section pertaining to social skills in Appellant's progress report, it was documented that Appellant "will independently complete group activities." The provider testified that the morning routine is a key component in meeting this

goal, as it allows Appellant to be around and communicate with his peers, follow rules, and practice social greetings.

Appellant's provider also disagreed with MBHP's assertion that Appellant had made progress within the review period. The biggest concern at this time, Appellant's provider alleged, is that Appellant continues to score low in his assessments, indicating that he is extremely behind for his age, developmentally, had only mastered 3 goals within the last PA period, and was still working on goals from the first authorization period.

Appellant's mother confirmed that she has seen improvement, particularly in Appellant's speech, since he started services. She testified that Appellant had good routine when receiving 35 hours, but the reduction to 30 hours set him back. She testified that Appellant will be entering kindergarten next year and she does not feel Appellant is ready, developmentally, at this time.

In response, the MBHP case manager and medical director testified that an increase in maladaptive behaviors was understandable given the disruption in schedule, especially for a child on the autism spectrum and who relies on routines; however, there was no specific data on these behaviors, nor reference to how the provider intended to address the behaviors through targeted interventions. To provide a benchmark, MBHP explained that the amount of ABA services depends on a variety of factors, but that 20-30 hours per-week on average, is typical amount of ABA services for someone with Appellant's needs. Only in extreme cases would it be necessary to exceed 30 hours per-week. Without the specific and detailed documentation on the increased behaviors and plan for targeted interventions, MBHP believed that its modification was appropriate in this case.

## **Findings of Fact**

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

1. Appellant is a minor MassHealth member, under the age of [REDACTED] and has a diagnosis of ASD.
2. Appellant's MassHealth benefit is managed through HNE's BeHealthly Partnership, and as such, Appellant's behavioral health services are coordinated through MBHP.
3. In the initial PA request, submitted on 2/2/24, Appellant's provider sought a total of 35 hours per-week of ABA services.
4. On 2/22/24, MBHP modified the request authorizing 25 hours per-week of ABA services.

5. During the initial PA period, the provider exceeded the authorized ABA units and sought authorization for additional hours through MBHP.
6. MBHP authorized a one-time increase of 5 hours to the existing authorization, bringing Appellant to 30 hours of authorized ABA services per-week.
7. On 8/13/24, MBHP received a new PA request, on behalf of Appellant, for continued ABA services, seeking authorization for 3,640 units, or 35 hours, per-week, of ABA services for dates of service 8/23/24 to 2/23/25.
8. In the six-month period of review, documentation indicated that Appellant made progress towards his goals and had a decrease in targeted behaviors such as screaming and tantrums.
9. Although Appellant continued to have maladaptive behaviors, these behaviors primarily occurred in the home setting or, alternatively, were the result of the disruption to Appellant's schedule during the initial PA period.
10. On 8/19/24, MBHP, on behalf of HNE, modified the request, authorizing a total of 3,120 units, or 30 hours per-week, of ABA services.
11. On 8/27/24, Appellant's parent/guardian filed an internal Level I member appeal with MBHP to dispute the denied portion of the PA request, i.e., the 5 hours, or 520 units, that were not approved by MBHP.
12. On review, the Medical Director for MBHP's Medical Affairs Dept. found no documentation to support the increased hours and concurred with MBHP's 8/19/24 coverage determination.
13. On 8/30/24, MBHP notified Appellant that his Level 1 Appeal was denied.

## **Analysis and Conclusions of Law**

Appellant is a minor MassHealth member enrolled in HNE's BeHealthy Partnership Plan, an accountable care partnership plan (ACPP)<sup>3</sup> and managed care contractor (MCC) for MassHealth.

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<sup>3</sup> MassHealth defines an Accountable Care Partnership Plan as "a type of ACO with which the MassHealth agency contracts under its ACO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis and which is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO) and which is organized primarily for the purpose of providing health care services." See 130 CMR 501.001



HNE partners with the Massachusetts Behavioral Health Partnership (MBHP), the behavioral health contractor for MassHealth,<sup>4</sup> to manage and coordinate covered MassHealth behavioral health services to BeHealthy enrollees. See BeHealthy Partnership Member Handbook, p. 14.<sup>5</sup>

As an managed care provider for MassHealth services, HNE/MBHP must “[a]uthorize, arrange, coordinate, and provide to Covered Individuals all Medically Necessary behavioral health Covered Services listed [in its contract with MassHealth] and in an amount, duration, and scope that is no less than the amount, duration, and scope for the same services furnished to Members under MassHealth fee-for-service as set forth in 42 CFR 440.230, and, for Covered Individuals under the age of ■■■ as set forth in 42 CFR subpart B.” See MassHealth Behavioral Health Vendor Contract, Appendix A-1; see also Accountable Care Partnership Plan Contract, § 2.7(A)(1), p. 141.<sup>6</sup>

MassHealth covers applied behavioral analysis (ABA) services to eligible members who are under the age of ■■■ and have been diagnosed with ASD. ABA services are defined, under the MassHealth program, as follows:

Applied Behavioral Analysis – A MassHealth service that focuses on the analysis, design, implementation, and evaluation of social and other environmental modifications to produce meaningful changes in human behavior. This service provides for the performance of behavioral assessments; interpretation of behavior analytic data; development of a highly specific treatment plan; supervision and coordination of interventions; and training other interveners to address specific objectives or performance goals in order to treat challenging behaviors that interfere with a youth’s successful functioning.

See 101 CMR 358.02: *General Definitions*; see also Appendix A-1, Exh. 3, MassHealth Behavioral Health Vendor Contract.

Under the BeHealthy plan, MBHP reviews all prior authorization requests for ABA services, determinations the extent and amount of ABA services a member may receive based on medical necessity and handles internal appeals that have been filed by members aggrieved by an adverse ABA coverage determination. To guide this process, MBHP has issued medical necessity criteria for ABA services, which has been developed in accordance with 130 CMR

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<sup>4</sup> MassHealth defines “Behavioral Health Contractor” as the entity contracted with EOHHS to provide, arrange for, and coordinate behavioral health care and other services to members on a capitated basis. See 130 CMR 501.001.

<sup>5</sup> This resource is available online at:

[https://behealthypartnership.org/wp-content/uploads/2020/06/Be\\_Healthy\\_Member\\_Handbook\\_2020.pdf](https://behealthypartnership.org/wp-content/uploads/2020/06/Be_Healthy_Member_Handbook_2020.pdf)

<sup>6</sup> Copies of these executed contracts are available online, respectively, at:

<https://www.mass.gov/doc/masshealth-managed-behavioral-health-vendor-contract/download> and

<https://www.mass.gov/doc/acpp-contract-effective-1123-hne-baystate/download>.

450.204, and which provide, in relevant part, the following:<sup>7</sup>

### **Admission Criteria**

*All of the following criteria are necessary for admission.*

1. The Member has a definitive diagnosis of an Autism Spectrum Disorder (DSM-5-TR) and is under the age of [REDACTED]
2. The diagnosis in (1) above is made by a licensed physician or psychologist experienced in the diagnosis and treatment of autism with developmental or child/adolescent expertise.
3. The child or adolescent has received a comprehensive diagnostic and/or functional assessment (e.g., ABLLS-R, Vineland-II, ADI-R, ADOS-G, CARS2, VB-MAPP, or Autism Behavior Checklist), which include the following:
  - a. Complete medical history to include pre- and perinatal, medical, developmental, family, and social elements
  - b. Physical examination dated within the past year, which may include items such as growth parameters, head circumference, and a neurologic examination
  - c. Detailed behavioral and functional evaluation outlining the behaviors consistent with the diagnosis of ASD and its associated comorbidities. A diagnostic evaluation must include the scores from the use of formal diagnostic tests and scales as well as observation and history of behaviors. Screening scales such as the MCHAT-R are not sufficient to make a diagnosis and will not be accepted as the only formal scale.
  - d. Medical screening and testing has been completed to identify the etiology of the disorder, rule out treatable causes, and identify associated comorbidities as indicated.
4. The Member exhibits atypical or disruptive behavior that significantly interferes with daily functioning and activities or that poses a risk to the Member or others related to aggression, self-injury, property destruction, etc.
5. Initial evaluation from a licensed applied behavior analyst supports the request for the ABA services.
6. The diagnostic report clearly states the diagnosis and the evidence used to make that diagnosis.

### **Continuing Stay Criteria**

All of the following criteria are necessary for continuing treatment at this level of care.

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<sup>7</sup> Through its contract with MassHealth, MBHP may place appropriate limits on covered services for utilization purposes, so long as such coverage criteria is no more restrictive than MassHealth Medical Necessity guidelines, and quantitative and non-quantitative treatment limitations.

1. The individual's condition continues to meet admission criteria for ABA, either due to continuation of presenting problems, or appearance of new problems or symptoms.
2. There is reasonable expectation that the individual will benefit from the continuation of ABA services.
3. Assessment from a licensed applied behavior analyst supports the request for ABA services.
4. There is documented skills transfer to the individual and treatment transition planning from the beginning of treatment.
5. Services are not duplicative of services that are part of an Individual Educational Plan (IEP) or Individual Service Plan (ISP) when applicable.

See Exh. 5, p. 58-60

There is no dispute that Appellant, as a MassHealth beneficiary under the age of [REDACTED] with an ASD diagnosis, is eligible for ABA services. The issue on appeal, is whether MBHP, on behalf of HNE, erred in modifying Appellant's PA request from 35 hours per-week, as requested, to 30 hours per-week.

To address this issue, Appellant's initial PA request is relevant. The evidence shows that in February 2024, MBHP rendered a partial approval of 25 hours per-week of ABA services, based on what MBHP determined was medically necessary and supported by the information provided at that time. During the initial PA period, MBHP approved a one-time allowance of an additional 5 hours per-week, bringing Appellant to a total of 30 hours per-week. This adjustment was not based on MBHP's determination that the additional hours were medically necessary, but rather, because the provider erroneously rendered services that exceeded the amount authorized, causing the allotted units to be prematurely exhausted. Appellant's provider argued that despite an increase in *authorized* hours (25 to 30), it was, effectively, a decrease in the amount of ABA services Appellant had been *receiving* (35 hours to 30 hours per-week). Appellant's provider alleged that the increase in maladaptive behaviors that followed the change in services, demonstrates medical necessity for the additional 5 hours sought in the current PA request.

Despite the credible testimony presented by Appellant's representatives at hearing, there is ultimately insufficient evidence to demonstrate that MBHP erred in its 8/30/24 Level 1 Appeal determination. Representatives from MBHP testified to having performed a thorough review of all documentation submitted in support of the request for continuing ABA services. This information was compared to Appellant's baseline data and scoring from his initial assessment. The MBHP reviewers, consisting of an ABA certified peer-reviewer and board-certified psychiatrist specializing in behavioral health, concurred in their findings that Appellant had made improvement in reaching his performance goals in the six-month period since his ABA services began and that there had been a decrease in targeted behaviors (i.e., screaming and

tantrums).

MBHP further demonstrated that while some maladaptive behaviors continued, they primarily occurred at home, and thus could not be appropriately addressed by increasing ABA services that received in a clinic setting. MBHP also appropriately concluded that any increase in maladaptive behaviors, were an expected and understandable consequence of the disruption to Appellant's schedule (which, notably, was caused by a provider error), and did not suggest that 30 hours per-week was inadequate to address Appellant's ongoing ABA needs. Applying the applicable medical necessity guidelines, described above, MBHP appropriately concluded that while Appellant remained eligible for continued ABA services at 30 hours per-week, there was insufficient documentation of medical necessity, to warrant an increase his services to 35 hours per-week. Appellant did not demonstrate that MBHP, on behalf of HNE, erred in denying his Level 1 Appeal.

On this basis, the appeal is DENIED.

## **Order for MCC**

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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Casey Groff  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Health New England, James Farrell, Complaints & Appeals, One Monarch Place, #1500, Springfield, MA 01144-1500