

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2417086
Decision Date:	12/20/2024	Hearing Date:	11/25/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Kathleen Racine (PIU) & Carmen Fabery (PBU)



*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:	Denied	Issue:	Hardship Waiver
Decision Date:	12/20/2024	Hearing Date:	11/25/2024
MassHealth's Rep.:	Kathleen Racine (PIU) & Carmen Fabery (PBU)	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone		

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 October 8, 2024, MassHealth denied the appellant's hardship waiver in whole because all provisions of the MassHealth regulations at 130 CMR 520.019(L) were not met. (130 CMR 520.019(L); Exhibit 1). The appellant filed this appeal in a timely manner on November 4, 2024. (130 CMR 610.015(B); Exhibit 2). An agency determination regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's hardship waiver request.

Issue

Whether MassHealth was correct in denying the appellant's hardship waiver request. (130 CMR 520.019(L)).

Summary of Evidence

MassHealth representatives from the Policy Implementation Unit (PIU) and the Premium Billing Unit (PBU) appeared by telephone. Documents presented by the PBU were incorporated into the hearing record as Exhibit 4. The parties agreed that the issue on appeal did not involve an agency calculation of a premium. Information submitted by the PBU states that the appeal was for a waiver of a period of ineligibility due to undue hardship. It was noted that the PBU receives hardship waiver requests regarding the payment of a premium but that did not appear to be the issue on appeal. The PBU representative remained on the line but did not offer any testimony at hearing.

On June 13, 2024, MassHealth determined the appellant eligible for long-term care coverage as of May 13, 2024. The calculation of a start date included the application of a penalty period from October 26, 2023 through May 12, 2024 due to disqualifying transfers of assets totaling \$86,942. The appellant appealed that decision and the agency adjusted the transfer amount to \$66,342 and the penalty period to October 26, 2023 through March 26, 2024.

On June 27, 2024, MassHealth received a letter from the skilled nursing facility (SNF) stating that the denial of MassHealth would deprive the appellant of medical care such that her “health of life” would be endangered and she “may well be deprived of food, shelter, clothing or other necessities such that she would be at risk of serious deprivation”.¹ (Exhibit 6). The letter also states that there is no less costly non-institutional alternative available to meet the appellant’s needs. (Exhibit 6). The letter is signed by a physician with a different address from that of the facility. (Exhibit 6).

On July 31, 2024, the appellant filed an appeal due to the agency not acting on a hardship waiver request. A hearing was held on September 4, 2024 and a decision issued on September 30, 2024. (Testimony; Exhibit 5). The Board of Hearings approved the appeal as hearing officer found that the agency received the hardship waiver request and failed to act. At that hearing, counsel for the appellant asked the Board of Hearings to approve the hardship waiver due to the agency’s failure to act. The hearing officer denied the request to approve the waiver stating that the appellant provided no regulatory or statutory authority to support that request. In that decision, the hearing officer ordered the agency to process the appellant’s hardship waiver request. On October 8, 2024, MassHealth issued the decision on appeal denying the hardship waiver request.

The PIU representative testified that the appellant’s hardship waiver request did not meet all the regulatory requirements for a hardship waiver listed at 130 CMR 520.019(L)(1). These requirements include having a member show that:

¹ The documents submitted by the parties include a letter from a physician dated June 27, 2024 and a July 8, 2024 letter from counsel for the appellant’s office stating “document in support of hardship request”. It is not clear what “document” was submitted on July 8, 2024 but testimony presented by the parties appears to show that the agency accepted the June 27, 2024 letter as a hardship waiver request.

- (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.

The PIU representative testified that while the letter from the facility met the requirements under 130 CMR 520.019(L)(1)(a) and 130 CMR 520.019(L)(1)(d), other regulatory requirements were not met. The appellant did not provide documentary evidence to demonstrate 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 nursing facility; and the appellant did not submit information regarding the nursing facility's intent to initiate a discharge because the appellant has not paid for her institutionalization. The MassHealth representative testified that hardship waiver requests must meet all regulatory requirements.

Counsel for the appellant did not dispute the fact that the documents presented to MassHealth did not meet all regulatory requirements for a hardship waiver. Instead, counsel argued that the waiver should be approved "by default" as the agency did not meet the regulatory requirements for processing the waiver request. Counsel noted that the regulations require a member to submit a written request for consideration of hardship and any supporting documentation to the agency within 15 days after the eligibility notice and the agency will inform the member of their undue-hardship decision within 30 days after the date of the request. Counsel argued that because the agency did not act within that 30-day period, the waiver should be approved. Counsel did not cite a statute, regulation or case law to support that argument. It was noted at hearing that the regulations allow the agency to extend the 30-day period if they require additional documentation or extenuating circumstances, as determined by the agency, require additional time.

The MassHealth representative acknowledged that the agency did not act on the hardship waiver within the regulatory 30 days. The waiver request was mis-indexed at the agency's Electronic Data Management Center (EDMC) resulting in the delay in processing the waiver request. (Testimony; Exhibit 5). The MassHealth representative noted that the hearing decision issued in September

2024 ordered the agency to act on the waiver request and MassHealth followed this order by issuing the decision on appeal.

Findings of Fact

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

1. On June 13, 2024, MassHealth determined the appellant eligible for long-term care coverage as of May 13, 2024.
2. MassHealth determined the appellant ineligible from October 26, 2023 through May 12, 2024 due to disqualifying transfers of assets totaling \$86,942.
3. The appellant appealed the June 13, 2024 decision and the agency adjusted the transfer amount to \$66,342 with a penalty period of October 26, 2023 through March 26, 2024.
4. On June 27, 2024, MassHealth received a letter from the skilled nursing facility (SNF) stating that the denial of MassHealth would deprive the appellant of medical care such that her "health of life" would be endangered and she "may well be deprived of food, shelter, clothing or other necessities such that she would be at risk of serious deprivation".
5. The letter from the SNF states that there is no less costly non-institutional alternative available to meet the appellant's needs.
6. MassHealth accepted this letter as a hardship waiver request.
7. The hardship waiver request was mid-indexed at the agency's Electronic Data Management Center (EDMC) resulting in the delay in processing the waiver request.
8. On July 31, 2024, the appellant filed an appeal due to the agency not acting on the hardship waiver request.
9. A hearing was held on September 4, 2024.
10. On September 30, 2024, the Board of Hearings approved the appeal as the hearing officer found that the agency received the hardship waiver request and failed to act on the request.
11. The September 30, 2024 hearing decision ordered the agency to process the appellant's hardship waiver request.

12. On October 8, 2024, MassHealth a decision denying the hardship waiver request.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Pursuant to 130 CMR 520.019(L), 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) MassHealth may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. MassHealth 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 MassHealth 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.

The appellant failed to present evidence of the existence of all of circumstances listed above. (130 CMR 520.019(L)(1)).

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. (130 CMR 520.019(L)(2)). The appellant failed to present evidence that she would be at risk of serious deprivation due to the imposition of a period of ineligibility. The appellant's representative did not present any evidence to demonstrate that an undue hardship exists beyond what was already presented to MassHealth. Instead, counsel relied on the agency's failure to act in requesting an approval of the hardship waiver.

Pursuant to 130 CMR 520.019(L)(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, MassHealth will inform the nursing-facility resident in writing of the undue-hardship decision and of the right to a fair hearing. (130 CMR 520.019(L)(4)). The regulations allow MassHealth to extend this 30-day period if the agency requests additional documentation or if extenuating circumstances, as determined by MassHealth, require additional time. (130 CMR 520.019(L)(4)). The regulations do not require MassHealth to notify the applicant or member of an extension of the 30-day period. The regulations do not specifically define extenuating circumstances. The regulations allow the agency to determine the extenuating circumstances that require additional time. In this case, the extenuating circumstances involved an agency error in processing the hardship waiver and while the final decision was not in favor of the appellant, the agency error did not impact their ability to make a decision or the appellant's ability to receive care or payment for care for which she was otherwise eligible.

As discussed in the hearing decision issued on September 30, 2024, the fair hearing regulations provide members with the right to request a fair hearing due to the failure of MassHealth to act upon a request for assistance within the time limits required by MassHealth regulations. (130 CMR 610.032(A)(8)). That is what occurred in this case resulting in an approval and order for the agency to act on the appellant's request for a hardship waiver in September 2024. (Exhibit 5). Counsel did not cite any legal or regulatory authority that would then require the agency to take action in favor of the member. As noted above, counsel failed to demonstrate that the appellant met the requirements for a hardship waiver.

This appeal is denied.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

[REDACTED]

Respondent Representative: Kathleen Racine, MassHealth, Member Policy Implementation Unit, 100 Hancock Street, 6th Floor, Quincy, MA 02171, 999-999-9999

MassHealth Representative: Maximum Premium Billing, Attn: Karishma Raja, 1 Enterprise Drive, Suite 310, Quincy, MA 02169