

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2417969
Decision Date:	1/21/2025	Hearing Date:	12/19/2024
Hearing Officer:	Susan Burgess-Cox	Record Open to:	01/09/2024

Appearance for Appellant:



Appearance for MassHealth:

Wilfred Colon



*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>	Approved	<b>Issue:</b>	Eligibility – Long Term Care, Failure to Verify
<b>Decision Date:</b>	1/21/2025	<b>Hearing Date:</b>	12/19/2024
<b>MassHealth's Rep.:</b>	Wilfred Colon	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	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 31, 2024, MassHealth denied the appellant's application for long-term care benefits for failure to give MassHealth the information it needs to decide eligibility within the required time frame. (130 CMR 515.008; 130 CMR 516.001; Exhibit 1). On November 18, 2024, the appellant's Health Care Proxy filed a timely appeal naming the party present at hearing as the appeal representative. (130 CMR 610.004; 130 CMR 610.015(B); Exhibit 2; Exhibit 3). A hearing was held on December 19, 2024 and, at the request of the parties, the record was held open until January 9, 2025. (Exhibit 6).

Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits for failure to give MassHealth the information it needs to decide eligibility within the required time frame. (130 CMR 515.008; 130 CMR 516.001).

## **Issue**

Whether MassHealth was correct in denying the appellant's application for MassHealth benefits for failure to give MassHealth the information it needs to decide eligibility within the required time frame.

## **Summary of Evidence**

On August 7, 2024, MassHealth received an application for long-term care seeking coverage as of June 15, 2024. (Testimony; Exhibit 5). On September 9, 2024, MassHealth issued a notice seeking information necessary to complete the eligibility determination.(Testimony; Exhibit 5). Information was due on or before October 9, 2024. (Testimony; Exhibit 5). On October 11, 2024, MassHealth issued the notice on appeal denying the application for failure to give MassHealth the information it needs to decide eligibility within the required timeframe.

At hearing, the MassHealth representative acknowledged that some of the information was received prior to the hearing. At hearing, the parties agreed that the only remaining information was from a [REDACTED] checking account. (Testimony; Exhibit 5). The appellant's representative responded that they are in the process of obtaining information from [REDACTED]. The record was held open to provide the appellant's representative the opportunity to provide this information. (Exhibit 6). During the record open period, the appellant's representative provided the necessary information and MassHealth agreed to process the case honoring the original application date. (Exhibit 8; Exhibit 9).

It was noted at hearing that MassHealth provided the appellant with 30 days to provide the information necessary to complete the application. At the hearing, there was a discussion about Eligibility Operations Memo (EOM) 23-09. This Eligibility Operations Memo was issued in March 2023 and states:

In an effort to align timelines for MAGI and non-MAGI populations, MassHealth extended the number of days non-MAGI members and applicants will have to send MassHealth verifications and information necessary for an eligibility determination and additional time non-MAGI members have to complete their renewal after the due date. (Eligibility Operations Memo 23-09).

Effective April 1, 2023, MassHealth will extend the time that non-MAGI applicants and members will have for verifying eligibility factors and providing corroborative information, from 30 days to 90 days. This extension will provide more time to respond to a Request for Information and submit verifications and information necessary for MassHealth to make an

eligibility determination.

Effective April 1, 2023, MassHealth will extend the time that non-MAGI members will have to submit their annual renewal after they have had their coverage terminated for not submitting the renewal form by the due date, from 30 days to 90 days. This extension will give non-MAGI members more time to complete their annual renewal without a gap in coverage. (Eligibility Operations Memo 23-09).

The MassHealth representative at hearing testified that this EOM was no longer in effect as of April 2023, one month after its issuance, as MassHealth issued a subsequent EOM (EOM 23-13) regarding the return to normal business operations in April 2023. The introduction to EOM 23-13 states:

Federal law says MassHealth must review eligibility no more than once every 12 months. This “check” is called a Renewal or an Annual Review. Through this process, members’ circumstances are reviewed to ensure they still qualify for MassHealth benefits. This is called “redetermination”.

As of April 1, MassHealth is redetermining all members to ensure that they still qualify for their current benefits. Whenever possible, MassHealth will automatically process a member’s renewal by matching their information against state and federal data. If a member’s renewal cannot be automatically processed, they will receive a blue envelope in the mail with a renewal form to complete and return to MassHealth. Not responding to that renewal could result in a loss or change of coverage for the member. (EOM 23-13)

The parties both acknowledged that the notice on appeal involved an application for benefits, not a renewal or annual review. The MassHealth representative testified that the return to normal business operations included the continuation of following regulations at 130 CMR 516.001(B) and 516.001(C). These regulations state that MassHealth requests all corroborative information by sending an applicant written notification and the requested information must be received within 30 days of the date of the request. The MassHealth representative was provided with additional time to provide the EOM’s and any other information related to their applicability to this case.

The MassHealth representative sent a link to EOM 23-13 regarding the return to normal business operations as well as a citation to the regulations at 130 CMR 516.001(C) regarding the receipt of corroborative information. The MassHealth representative also stated that there exists an internal memo dated September 6, 2024: “LTC Information Request Due Dates Changing to 30 Days.” The MassHealth representative stated that this memorandum provides current guidance found in “LMS and MEC Sharepoint.” (Exhibit 7). The MassHealth representative did not explain what “LMS” or “MEC Sharepoint” are or how the public can access these sources or other internal agency memoranda.

In July 2023, MassHealth issued EOM 23-18 which updated EOM 23-13 by increasing the number of days for residents in a nursing facility to provide a redetermination from 30 days to 45 days. This change aligns the redetermination process for residents in a nursing facility with those in the community. That appears to be the only change between the two EOMs. (EOM 23-13; EOM 23-18). Neither EOM speaks to an application, only the redetermination or renewal process.

## **Findings of Fact**

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

1. On August 7, 2024, MassHealth received an application for long-term care from the appellant seeking coverage as of June 15, 2024.
2. On September 9, 2024, MassHealth issued a notice seeking information necessary to complete the eligibility determination.
3. Information was due back to MassHealth on or before October 9, 2024.
4. On October 11, 2024, MassHealth issued a notice denying the appellant's application for failure to give MassHealth the information it needs to decide eligibility within the required timeframe.
5. During the course of the appeal, MassHealth received the information necessary to determine eligibility.

## **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 515.008, applicants or members must cooperate with MassHealth in providing information to establish and maintain eligibility and must comply with all of the rules

and regulations governing MassHealth, including recovery. MassHealth may request additional information and documentation, if necessary, to determine eligibility. (130 CMR 516.001).

To obtain the necessary information and documentation, MassHealth sends the applicant written notification requesting verifications to corroborate information necessary to determine eligibility, generally within five days of the receipt of the application. (130 CMR 516.001(B)). The notice advises the applicant that the requested verifications must be received within 30 days of the date of the request, and of the consequences of failure to provide the information. (130 CMR 516.001(B)). Under the regulations, if the requested information, with the exceptions of verification of immigration status, is not provided within 30 days of the date of the request, MassHealth benefits may be denied. (130 CMR 516.001(C)).

In March 2023, MassHealth issued Eligibility Operations Memo 23-09 which states:

In an effort to align timelines for MAGI and non-MAGI populations, MassHealth extended the number of days non-MAGI members and applicants will have to send MassHealth verifications and information necessary for an eligibility determination and additional time non-MAGI members have to complete their renewal after the due date.

Effective April 1, 2023, MassHealth will extend the time that non-MAGI applicants and members will have for verifying eligibility factors and providing corroborative information, from 30 days to 90 days. This extension will provide more time to respond to a Request for Information and submit verifications and information necessary for MassHealth to make an eligibility determination.

Effective April 1, 2023, MassHealth will extend the time that non-MAGI members will have to submit their annual renewal after they have had their coverage terminated for not submitting the renewal form by the due date, from 30 days to 90 days. This extension will give non-MAGI members more time to complete their annual renewal without a gap in coverage. (Eligibility Operations Memo 23-09).

As noted above, the MassHealth representative at hearing testified that this EOM was no longer in effect as of April 2023, one month after its issuance, as MassHealth issued EOM 23-13 regarding the return to normal business operations as of April 1, 2023. (MassHealth EOM 23-13). The introduction to EOM 23-13 states:

Federal law says MassHealth must review eligibility no more than once every 12 months. This “check” is called a Renewal or an Annual Review. Through this process, members’ circumstances are reviewed to ensure they still qualify for MassHealth benefits. This is called “redetermination”.

As of April 1, 2023 MassHealth is redetermining all members to ensure that they still qualify for their current benefits. Whenever possible, MassHealth will automatically process a member's renewal by matching their information against state and federal data. If a member's renewal cannot be automatically processed, they will receive a blue envelope in the mail with a renewal form to complete and return to MassHealth. Not responding to that renewal could result in a loss or change of coverage for the member.

(MassHealth EOM 23-13)

The argument presented by MassHealth that this memorandum supersedes EOM-23-09 is flawed for several reasons. First, EOM 23-13 deals with the renewal or redetermination process, not the application process. Second, EOM 23-13 was issued within weeks of the issuance of EOM 23-09 and nothing in EOM 23-13 states that it supersedes EOM 23-09.

Third, the MassHealth representative did not provide any other EOM, regulation, judicial or adjudicatory decision since the application of EOM 23-09 that states that it was a temporary policy or no longer in effect. The policy itself does not indicate that is temporary. The public is entitled to notice of any changes in agency policies that have been created and implemented in a public forum such as an Eligibility Operations Memorandum or regulation. An agency cannot simply make internal changes that impact a public decision without notice to the public. The statement presented by the MassHealth representative during the record open period that there exists "an internal memo dated September 6, 2024 entitled 'LTC Information Request Due Date Changing to 30 days'" demonstrates that the agency is attempting to make policy changes without notice to the public. It is unclear how the agency feels such action complies with a public's right to notice of agency actions.

Fourth, in July 2023, MassHealth issued EOM 23-18 which updated EOM 23-13 with a provision that increases the number of days for residents in a nursing facility to provide a redetermination from 30 days to 45 days. This change aligns the redetermination process for residents in a nursing facility with those in the community, similar to the purpose of EOM 23-09 as an effort to align timelines for MAGI and non-MAGI populations.

While this appeal could be dismissed as the issue has been resolved, it is APPROVED to ensure the agency follows proper regulatory and policy requirements by providing an applicant with proper notice and time to provide information requested by the agency.

## **Order for MassHealth**

Continue processing the long-term care application dated August 7, 2024.

## 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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

[REDACTED]

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