Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2418190
Decision Date:	01/21/2025	**Hearing Date:**	12/19/2024
Hearing Officer:	Susan Burgess-Cox	**Record Open to:**	01/09/2025

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Sandy Xie

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	**Issue:**	Eligibility – Long Term Care, Failure to Verify
Decision Date:	01/21/2025	**Hearing Date:**	12/19/2024
MassHealth's Rep.:	Sandy Xie	**Appellant's Rep.:**	[redacted]
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 notices dated September 23, 2024 and November 13, 2024, MassHealth denied applications for long-term care benefits as the appellant failed 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 26, 2024, the appellant filed a timely appeal of both decisions naming the individual present at the hearing as the appeal representative. (130 CMR 610.004; 130 CMR 610.015(B); Exhibit 2). 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 5).

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

Action Taken by MassHealth

MassHealth denied two applications 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 two applications for MassHealth benefits for failure to give MassHealth the information it needs to decide eligibility within the required time frame.

Summary of Evidence

On June 11, 2024, MassHealth received an application for long-term care seeking coverage as of July 1, 2024. On June 20, 2024, MassHealth issued a notice seeking information necessary to make a final eligibility determination. (Testimony; Exhibit 4). Information was due on or before September 18, 2024. (Testimony; Exhibit 4). On July 1, 2024, MassHealth issued a second request for information seeking information beyond what was listed in the request sent on June 20, 2024, including statements for two specific bank accounts. The MassHealth representative testified that the agency obtained information about two other bank accounts after the issuance of the first request for information, so sent out a subsequent request listing these accounts. (Testimony; Exhibit 4). This new request provided the appellant until September 18, 2024 to provide this additional information. On September 23, 2024, MassHealth issued a notice denying the appellant's application for failure to give MassHealth the information it needs to determine eligibility within the required timeframe.

The MassHealth representative testified that the agency received a second application for long-term care coverage on October 9, 2024.In response to this application, MassHealth issued a notice seeking information necessary to make a final eligibility determination. (Testimony; Exhibit 4). On November 13, 2024, MassHealth issued a notice denying this second application for failure to give MassHealth the information it needs to determine eligibility within the required timeframe. At the time of the application submitted in October 2024, the required timeframe was 30 days. (Testimony; Exhibit 4; Exhibit 6).

At hearing, the MassHealth representative acknowledged that some of the information was received prior to the hearing. The appellant's representative responded that they have had difficulty in obtaining information from one bank in particular and requested that the Board of Hearings issue a subpoena. No documentation of attempts to contact this institution were provided before or at the hearing. The individuals present at hearing appeared to assume that the Board of Hearings would issue a subpoena simply at their request without demonstrating any action on their part to obtain information necessary to complete an application for MassHealth benefits. The appellant's representative also appeared to assume that the record would be held open to allow them to obtain the information necessary to complete an application for MassHealth benefits.

It was noted at hearing that MassHealth provided the appellant with 30 days to provide the information necessary to complete the second application while providing 90 days for the first

application. At the hearing, there was testimony 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 she was unaware of this EOM and stated that their "system" determines the number of days for a member to provide information necessary to complete an application. The MassHealth representative testified that agency employees were informed that, as of September 2024, MassHealth would provide applicants 30 days to provide information necessary to determine eligibility. The MassHealth representative could not identify any memorandum or notice issued to the public regarding this policy change.

The record was held open to provide MassHealth with the opportunity to respond to the issue of the agency no longer following policies listed in EOM 23-09. The appellant's representatives were also provided the opportunity to present evidence related to their attempts to obtain information and/or provide MassHealth with the information necessary to determine eligibility.

During the record open period, the MassHealth representative sent an electronic mail message stating that EOM 23-09, 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. (Exhibit 6). 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)

Both parties 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), 130 CMR 516.001(C) and 516.003(D). (Exhibit 6). 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. (Exhibit 6).

During the record open period the appellant’s representative provided the necessary information and MassHealth agreed to make a new eligibility determination honoring the original application date. (Exhibit 7; Exhibit 8).

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 June 11, 2024, MassHealth received an application for long-term care from the appellant seeking coverage as of July 1, 2024.

2. On June 20, 2024, MassHealth issued a notice seeking information necessary to make a final eligibility determination.

3. Information was due on or before September 18, 2024

4. On July 1, 2024, MassHealth issued a second request for information seeking information beyond what was listed in the request sent on June 20, 2024, including statements from

two specific bank accounts.

5. This new information was due on or before September 18, 2024.

6. On September 23, 2024, MassHealth issued a notice denying the appellant's application for failure to give MassHealth the information it needs to determine eligibility within the required timeframe.

7. On October 9, 2024, MassHealth received a new application from the appellant for long-term care.

8. MassHealth issued a notice seeking information necessary to make a final eligibility determination.

9. Information was due in November 2024.

10. On November 13, 2024, MassHealth issued a notice denying the October 2024 application for failure to give MassHealth the information it needs to determine eligibility within the required timeframe.

11. 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.
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> 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 stated 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 a citation to 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 it is temporary. The public is entitled to notice of 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 testimony of the MassHealth representative that the agency returned to the requirement of giving applicants 30 days to provide the information as of September 2024 has no basis in fact, and appears to be a change in agency policy without notice to the public of this change. 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. It is unclear how the agency would want to align the redetermination process for MAGI and non-MAGI populations after supposedly rescinding a policy to align the application process for the two 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.

The appellant's representatives should also be aware that their failure to present evidence at or before the hearing explaining their failure to provide information necessary to determine eligibility could have resulted in a denial. The fair hearing regulations at 130 CMR 610.000 set out the process for requesting and participating in a fair hearing that allows dissatisfied applicants, members, or nursing facility residents to have administrative review of certain actions or inactions on the part of the MassHealth agency. (130 CMR 610.001(A)(1)). The fair hearing process is an administrative, adjudicatory proceeding where dissatisfied applicants, members, and nursing facility residents upon written request, obtain an administrative determination of the appropriateness of:

(1) certain actions or inactions by the MassHealth agency;
(2) certain actions or inactions by a managed care contractor;

(3) actions to recover payment for benefits to which the member was not entitled at the time the benefit was received;
(4) alleged coercive or otherwise improper conduct by a MassHealth agency employee;
(5) a notice of intent or failure to give notice of intent by a nursing facility to discharge, transfer, or readmit a resident; or
(6) a PASRR determination. (130 CMR 610.012(A)).

The hearing process is designed to secure and protect the interests of both the appellant and, as appropriate, the MassHealth agency or its personnel and to ensure equitable treatment for all involved. (130 CMR 610.012(B)). The definition of the hearing process does not indicate that it is a means to extend the application process for members or representatives as was sought at this hearing. To ensure equitable treatment, both parties should be prepared to offer testimony and evidence at the hearing. (130 CMR 610.012(B)).

This appeal is APPROVED.

Order for MassHealth

Continue processing the long-term care application dated June 11, 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

[redacted]

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