Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
www.mass.gov/masshealth

MassHealth
Eligibility Letter 241
December 23, 2022

TO: MassHealth Staff

FROM: Amanda Cassel Kraft, Assistant Secretary for MassHealth

RE: **Revisions to MassHealth Fair Hearing Regulations**

We have updated 130 CMR 610.015 to provide written notice to appellants when hearing decisions are not issued within generally required timeframes but there is "good cause" for the extension of time to issue a decision. We have also updated 130 CMR 610.091 to reflect improved administrative consistency for long-term care eligibility decisions by establishing the specific evidence and documentation required to demonstrate that a rehearing is necessary due to inconsistent decisions issued by the board of hearings.

These regulations are effective December 23, 2022.

MANUAL UPKEEP

Insert	**Remove**	**Trans. By**
610.015 (1 of 3)	610.015 (1 of 3)	E.L. 233
610.015 (2 of 3)	610.015 (2 of 3)	E.L. 233
610.091	610.091	E.L. 233
610.092	610.092	E.L. 233
	610.093	E.L. 233

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which BOH receives such a request in writing. BOH must receive the request for a fair hearing within the following time limits:

(1) 60 days after an applicant or member receives written notice from the MassHealth agency of the intended action. Such notice must include a statement of the right of appeal and the time limit for appealing. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing;

(2) unless waived by the BOH Director or his or her designee, 120 days from

(a) the date of application when the MassHealth agency fails to act on an application;

(b) the date of request for service when the MassHealth agency fails to act on such request;

(c) the date of MassHealth agency action when the MassHealth agency fails to send written notice of the action; or

(d) the date of the alleged coercive or otherwise improper conduct, but up to one year from the date of the conduct if the appellant files an affidavit with the BOH Director stating the following, and can establish the same at a hearing (Failure to substantiate the allegation either before or at the hearing will be grounds for dismissal.):

1. he or she did not know of the right to appeal, and reasonably believed that the problem was being resolved administratively or he or she was justifiably unaware of the conduct in question; and
2. the appeal was made in good faith.

(3) 30 days after a resident receives written notice of an intent to discharge or transfer pursuant to 130 CMR 610.029(A);

(4) 30 days after a nursing facility initiates a transfer or discharge or fails to readmit and fails to give the resident notice;

(5) 14 days after a resident receives written notice of an emergency discharge or emergency transfer pursuant to 130 CMR 610.029(B);

(6) 14 days after a resident receives written notice of a transfer or discharge that is the result of a nursing facility's failure to readmit the resident following hospitalization or other medical leave of absence;

(7) for appeals of a decision reached by a managed care contractor:

(a) 120 days after the member's receipt of the managed care contractor's final internal appeal decision where the managed care contractor has reached a decision wholly or partially adverse to the member, provided however that if the managed care contractor did not resolve the member's appeal within the time frames described by 130 CMR 508.010(A), 120 days after the date on which the time frame for resolving that appeal has expired;

(b) for timing of request for continuation of benefits pending appeal, *see* 130 CMR 610.036.

(8) for appeals of PASRR determinations, 30 days after an individual receives written notice of his or her PASRR determination. In the absence of evidence or testimony to the contrary, it will be presumed that the notice was received on the fifth day after mailing.

(C) Computation of Time.

(1) Computation of any period referred to in 130 CMR 610.000 is on the basis of calendar days except where expressly provided otherwise. Time periods expire on the last day of such periods unless the day falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed, in which event the last day of the time period is deemed to be the next day on which BOH is open.

(2) In the absence of evidence or testimony to the contrary, it will be presumed that a notice was received by an appellant on the fifth day after the date of the notice, regardless of whether the fifth day after the date of the notice falls on a Saturday, Sunday, legal holiday, or other day on which BOH is closed. If an appellant dies on or prior to the date of presumed receipt, then for the purposes of determining whether an appeal request is timely, the appealable notice is still presumed to have been received no later than the fifth day after the date of the notice.

(D) Time Limits for Rendering a Decision.

(1) BOH must render a final decision within 45 days of the date of request for a hearing when the issue under appeal is

(a) the denial or rejection of an application for assistance;
(b) the failure to act on an application in a timely manner;
(c) a nursing facility-initiated discharge or transfer; or
(d) a PASRR determination.

(2) BOH must render a final decision within 45 days of a request for a fair hearing about appealable actions by managed care contractors, except where the internal appeal was expedited pursuant to 130 CMR 610.015(G) and (H).

(3) BOH must render a final decision within 90 days of the date of request for a hearing for all other appeals.

(4) The time limits set forth in 130 CMR 610.015(D)(1) and (3) and 130 CM 610.015(E) and (F) may be extended for good cause as follows.

(a) When delays are caused by the appellant or his or her appeal representative, the time limits may be extended by the total number of days of such delays, which may include the advance notice period before any rescheduled hearing dates. Such delays include the appellant's delay in the submission of evidence, briefs, or other statements, rescheduling or continuances granted at the request of or for the benefit of the appellant, and any other delays caused by the actions of the appellant or his or her appeal representative.

(b) When delays occur due to acts of nature, serious illness, or other issues beyond the control of BOH that make a hearing officer unable to render a timely decision, good cause for the extension of the time limits will be deemed to exist.

(c) The hearing officer will document in the hearing record and notify the applicant of any delay that the hearing officer determines is excluded from the time limits set forth under 130 CMR 610.015(D)(1) and (3) and 130 CMR 610.015(E) and (F).

610.091: Review of Hearing Officer Decisions

(A) The Medicaid director (but not his or her designee) may, for good cause shown, send an order for the BOH Director to conduct a rehearing of an appeal. Good cause is defined in regard to the rehearing of long-term care eligibility decisions at 130 CMR 610.091(E)(3). The BOH Director (but not his or her designee) conducts the rehearing, except the BOH Director may appoint another hearing officer to conduct the rehearing if the BOH Director:

(1) is unable to conduct the rehearing due to a conflict of interest;
(2) was the hearing officer at the original hearing for which the rehearing is requested; or
(3) is ill or unavailable and an extended delay would be prejudicial to any of the parties.

(B) An order to conduct a rehearing is not to be construed, for any purpose, as indicating any position by the Medicaid director on the merits of the appeal. The Medicaid director may order such a rehearing on his or her own initiative or at the appellant's request, provided that within 14 calendar days of the date of the hearing officer's decision:

(1) the Medicaid director receives the appellant's rehearing request; or
(2) the Medicaid director notifies the appellant of his or her intent to consider a rehearing.

(C) The BOH Director must send a written notice, seven days in advance of the rehearing, to all parties, including the date, time, and location of such rehearing, which is held at a site reasonably convenient or agreeable to the person appealing. After the rehearing, the BOH Director may issue a superseding decision no later than 30 days after the order to conduct a rehearing. Any party to an appeal may request the BOH to treat an order to conduct a rehearing as an order to remand the appeal for further consideration by the hearing officer who rendered the original decision. The BOH allows such request only when all parties to the appeal agree.

(D) A request for a rehearing or notice of the Medicaid director's intent to consider a rehearing stays implementation or effect of the appeal decision until such request is denied or the Medicaid director otherwise decides not to order a rehearing, or the superseding rehearing decision is issued.

(E) Review of Hearing Officer Decisions - Long-term Care Eligibility Decisions. The following provisions apply only to the review of the hearing officer's decisions regarding the appellant's eligibility for long-term care.

(1) If the Medicaid director does not act upon a timely request for rehearing within 45 days, the request for rehearing is deemed denied, unless the appellant advises the Medicaid director in writing before the expiration of the 45-day deadline that they do not want the request to be deemed denied if it is not acted on within 45 days.

(2) If a request for rehearing has been denied by the Medicaid director or deemed denied because the Medicaid director has not acted upon it within 45 days of the request, the appellant may immediately proceed to judicial review of the BOH's decision under M.G.L. c. 30A.

(3) Good cause for a rehearing of a hearing officer decision exists if the Medicaid director determines that the appellant has satisfactorily demonstrated that the appellant's BOH decision is directly inconsistent with a previous BOH decision or binding appellate precedent concerning the same trust language or law. To establish good cause for a rehearing to be ordered by the Medicaid director, the appellant must:

(a) attach a copy of the BOH decision the appellant is challenging;
(b) attach copies of the inconsistent prior decisions from the BOH or the appellant court or both;
(c) identify and explain the inconsistencies between the decisions and the identicality of facts and law; and
(d) provide any prior BOH decisions that are consistent with the treatment provided to appellant on the identical facts and law.

(4) Any rehearing of a long-term care eligibility decision will be confined to the specific consistency issues identified in the rehearing request. The hearing officer or the BOH Director conducting the rehearing will issue a decision that contains:
(a) a statement of the issues involved in the hearing;
(b) a summary of evidence;
(c) findings of fact on all relevant factual matters;
(d) rulings of law on all relevant legal issues, with citations to supporting regulations or other law;
(e) conclusions drawn from the findings of fact and rulings of law if appropriate; and
(f) an order for appropriate action.

610.092: Judicial Review

(A) If the appellant is dissatisfied with the final decision of the hearing officer, he or she may exercise the further right of judicial review in accordance with M.G.L. c.30A. The right to such judicial review is also available to a nursing facility regarding a final decision in a hearing instituted under 130 CMR 610.032(C).

(B) A party seeking judicial review must file a complaint with the Superior Court in the county where that party lives or has its principal place of business, or in Suffolk County, within 30 days after receipt of the fair hearing decision.

(C) If the appellant timely requests a rehearing or remand, in accordance with 130 CMR 610.091, then the decision following the rehearing or remand, or the denial of the request for the rehearing or remand, is the MassHealth agency's final action and the appellant has 30 days from the final action to file a complaint for judicial review.

(D) The MassHealth agency must notify the appellant and his or her appeal representative of the appellant’s right to seek judicial review and of the time limits for seeking such review.

610.093: Access to the Record

The record of the fair hearing is provided to the appellant within the appropriate time limits after filing a complaint for judicial review. BOH provides access to the record of the hearing in accordance with 130 CMR 610.074. Such access may be accomplished by allowing the appellant to examine all the documentary evidence and to listen to the recording, or to review the hearing with the stenographer, if applicable and appropriate.

REGULATORY AUTHORITY

130 CMR 610.000: M.G.L. c. 118E, §§ 7 and 12