

ABCs of Seeking Judicial Review of a MassHealth Board of Hearings Decision

December 2021

1. Initial filing deadlines

a. Final administrative decision

The decision of the MassHealth Board of Hearings is a final administrative decision absent a request for rehearing. 130 CMR § 610.085.

b. Request for rehearing.

An appellant may make a request for rehearing to the Medicaid Director for “good cause” shown. The request must be received by the Medicaid Director (currently Amanda Cassel Kraft, Assistant Secretary for MassHealth) within 14 days of the date of the Hearing Officer’s decision. A request for rehearing stays the time for appeal until the request is denied or until a superseding rehearing decision is issued. 130 CMR § 610.091; G.L. c. 118E, § 47. If benefits are being paid pending appeal, they will continue pending a request for rehearing. 130 CMR § 610.036. When a client was unrepresented at the hearing, a rehearing request is a particularly useful way to raise legal errors, supplement the factual record, and obtain more time to assess the merits of an appeal.¹ Beyond the federal requirement for “reasonable promptness”, there is currently no deadline for MassHealth to respond to a request for rehearing; however, MassHealth recently agreed to promulgate a reasonable timeline for responding to rehearing requests pursuant to the settlement of a Superior Court action challenging delays.²

c. Complaint for judicial review

A person aggrieved by a final decision of the MassHealth Board of Hearings may file a complaint for judicial review in the Superior Court, also known as a “30A” complaint. G.L. c. 118E § 48, G.L. c. 30A, § 14; 130 CMR 610.092. The complaint must be filed within 30 days after receipt of the final decision of the agency or the denial of a timely request for rehearing. G.L. c. 30A, § 14. Superior Court Standing Order I-96 lays out the

¹ An appellant or his/her representative is entitled to examine the record at the Board of Hearings and listen to or obtain a copy of the tape recording of the hearing, at a modest price. 130 CMR § 610.074.

² More information about the settlement, including the final settlement agreement, can be found at MassLegalServices.com at <https://www.masslegalservices.org/content/settlement-eohhs-regarding-treatment-trusts-and-administrative-appeal-timelines>

process for actions for judicial review, and is necessary reading for advocates bringing 30A cases.³

d. Continued benefits pending appeal

If the final agency decision is upholding the termination of benefits, filing a complaint for judicial review does *not* stay the decision. However, the agency or the reviewing court may order a stay “upon such terms as it considers proper.” G.L. c. 30A, § 14(3). Thus, the plaintiff may seek injunctive relief if there is irreparable injury and a reasonable likelihood of success on the merits. See, Mass. R. Civ. Pro. 65. At least one advocate reports that the court refused to hear her motion for temporary relief but did issue an expedited schedule for deciding the case on the merits.

2. Preparing the complaint for judicial review

a. Parties

The defendant in a complaint for judicial review of a fair hearing decision is the state agency. The Executive Office of Health and Human Services (EOHHS) is the “single state agency” with overall responsibility for administering MassHealth. G.L. c. 118E, § 1; c. 6A, § 16. See, 42 CFR § 431.10 (single state agency). For most purposes EOHHS acts through the Office of Medicaid. This has created some confusion about how to name the MassHealth agency. Most people either name the Executive Office of Health and Human Services Office of Medicaid as if it were one agency or separately name the EOHHS and the Office of Medicaid.

If adding federal claims under 42 U.S.C. § 1983 (and attorneys’ fees under § 1988) to the G.L.c. 30A claim, the complaint must name individual agency heads in their official capacities. Currently, the Secretary of EOHHS is Marylou Sudders, and the Medicaid Director and Assistant Secretary for MassHealth is Amanda Cassel Kraft, both with offices at One Ashburton Place, 11th Floor, Boston, MA 02108.

The plaintiff in a complaint for judicial review of a fair hearing decision is the MassHealth member or applicant aggrieved by the MassHealth Board of Hearings’ final decision. Often, the plaintiff may be a minor, or an incompetent or incapacitated person. Mass. R. Civ. Pro. 17(b) provides that such a person’s representative, such as a guardian or conservator, may sue on their behalf. The named plaintiff, however, must be the minor, incompetent or incapacitated person. Mass. R. Civ. Pro. 17(a). For example, the party may be named as “[Name of minor, incompetent or incapacitated person] brought on her behalf by her legal guardian [Name of legal guardian]”.

b. Claims and relief under c. 30A

³ Superior Court Standing Order 1-96: Processing and Hearing of Complaints for Judicial Review of Administrative Agency Proceedings. <https://www.mass.gov/superior-court-rules/superior-court-standing-order-1-96-processing-and-hearing-of-complaints-for>

The complaint for judicial review typically consists of the caption, a brief introduction, identification of the parties, a brief statement of facts, the claims, and the request for relief. G.L. c. 30A § 14 (7) identifies seven ways that the agency’s decision may have prejudiced the substantial rights of the plaintiff. If the court determines that the agency prejudiced the plaintiff in any of those seven ways, then it may affirm, remand, set aside or modify the agency decision, or compel action unlawfully withheld or unreasonably delayed. Several examples of complaints for judicial review are posted on the website at www.masslegalservices.org.

c. Added claims

Additional claims, such as claims for declaratory and injunctive relief, or federal claims, may be added to the 30A claim. The expedited procedures in Superior Court Standing Order 1-96 apply to 30A claims “whether joined with a claim for declaratory relief under G.L. c. 231A or any other claim.” For example, where a MassHealth regulation violates the Medicaid statute, the plaintiff may want to file an added claim under 42 U.S.C. § 1983. However, be warned that Standing Order I-96 may not allow for adequate discovery and development of the factual record needed to support a 1983 claim.

d. Involuntary discharge from a long term care facility⁴

If the matter on appeal involves a disputed involuntary discharge from a nursing home, the facility and the resident each have the right to seek judicial review of an adverse decision. 130 CMR § 610.092. In nursing facility discharge cases, the facility resident and the facility may be necessary parties. Residents who seek judicial review may want to add a claim under consumer protection laws. G.L. c. 93A and 940 CMR 3.00 et seq. Where an added 93A claim seeks to preserve the plaintiff’s stay in the nursing home, as opposed to only seeking damages, the facility must be named properly and plaintiff must serve a 93A demand letter stating the relief sought. G.L. c. 93A § 9. Plaintiff may need to seek a temporary restraining order or preliminary injunction to preserve their right to remain in the facility.

3. Filing the complaint

In response to the COVID-19 pandemic, the Court has instituted some temporary procedural changes through a number of Standing Orders. Check here to find the most up-to-date Standing Order on court operations during the pandemic: <https://www.mass.gov/resource/court-system-response-to-covid-19>

a. Venue

⁴ Thanks to John Ford at Northeast Legal Aid for contributing this paragraph.

The complaint for judicial review may be filed in the Superior Court in the county where the plaintiff lives (or has a business) or in Suffolk County Superior Court. G.L. c. 30A, § 14(1).

b. Filing fees/fee waiver

The fee for filing a complaint in Superior Court is currently \$275.⁵ It may be waived on the grounds of indigency. G.L. c. 261, § 27A-27G. There is a court form for this purpose entitled “Affidavit of Indigency”. A copy of the form may be obtained from any Superior Court and is posted on <https://www.mass.gov/lists/court-forms-for-indigency>.⁶ The state court’s website also links to an online “Affidavit of Indigency Guide and File Program” that will guide plaintiffs through completing and filing the form online: <https://apps.suffolklitlab.org/run/indigency/#/1>. A separate Affidavit will be needed for each named plaintiff.

If the plaintiff is an incompetent or incapacitated person and they are unable to sign the Affidavit of Indigency on their own, a representative with legal authority to sign on their behalf may sign it. When filing this Affidavit of Indigency, it is good practice to bring a copy of the legal document, such as guardianship papers, that authorizes the representative to act on the plaintiff’s behalf, so that the clerk of judge can confirm the validity of the signature.

Individuals who affirm that they receive public assistance, including MassHealth, or whose income is less than 125% of the federal poverty level are deemed indigent and need not fill out the separate Supplemental Affidavit that seeks detailed income and expense information. The Clerk of Court may grant a fee waiver that is complete on its face and seeking only normal fees and costs. Normal fees and costs include filing fees, the cost for the summons and costs of service. If the fee waiver is questionable or seeking extra fees and costs, it may have to go before a judge. Advocates report that in some courts individuals who have to fill out the supplemental affidavit are routinely sent before the judge.

c. Cover sheet

A civil action cover sheet must be signed by counsel and filed with the complaint. Superior Court Standing Order 1-83. The form may be obtained from the Superior Court. It is also available online <https://www.mass.gov/lists/superior-court-forms>. Among other things, the form requires the attorney to certify that he or she has informed the plaintiff about Rule 5 of the SJC Uniform Rules on Dispute Resolution (SJC Rule 1:18). A complaint for judicial review, referred to on the civil action cover sheet as an “appeal from an administrative agency under G.L. c. 30A”, is “category E02” and on the X-track for accelerated processing. (See the civil action cover sheet instructions, located on page 2 of the civil action cover sheet)

⁵ The Superior Court filing fees are posted at: <https://www.mass.gov/info-details/superior-court-filing-fees>

⁶ Beware that after downloading and saving the court’s fillable form, you may lose your ability to continue making changes to the form, depending on your software.

d. Docket number

Once filed, the clerk’s office will stamp the papers with the docket number. This docket number should appear on all papers subsequently served or filed with the court.

e. E-Filing

All Massachusetts Superior Courts now accept electronic filing (e-filing) for most civil actions, including complaints for judicial review. To use e-filing, the filer must be first register for an account with www.efilema.com. See the following detailed guide on how to e-file at the Superior Court: <https://www.mass.gov/doc/guide-on-how-to-efile-at-the-superior-court-0/download>.

Note that when filing a complaint at the same time as an Affidavit of Indigency, the filing may need to be done in person so that the clerk or judge can review the Affidavit of Indigency and order fees waived before the complaint is filed. Otherwise, the electronic filing system may require you to pay the full filing fees before completing the filing. It is recommended that you call the court clerk before filing to confirm whether or not there is a way to electronically file the Affidavit of Indigency and the Complaint at the same time, without paying a fee.

4. Serving the summons and complaint

a. Summons

Plaintiff’s counsel must obtain and fill out an original summons available from the court. Mass.R.Civ.Proc. 4. Typically, summonses are obtained at the time of filing. Make sure that you are given one summons for each named defendant.

b. Service

Service on a state agency may be accomplished by mailing a copy of the summons, complaint and cover sheet to the Boston office of the Attorney General and to the office of the defendant state agency by certified or registered mail. Mass. R. Civ. Pro. 4(d) (3). When mailing by certified or registered mail, the plaintiff should ask for a return receipt and should keep the mailing receipt listing the tracking numbers. Some advocates also serve a request for a transcript along with the complaint (see below under “Obtaining a transcript.”)

c. Return of service

The plaintiff must file the original summons with a return of service showing that service was completed within 90 days of filing the complaint. The return should be by affidavit and include the signed return receipt or other proof of delivery. Mass.R.Civ. Pro. 4 (f). Court clerks often refer to the signed return receipt as the “green card”, which is the

green-colored card that the USPS returns to the plaintiff after the recipient signs it, acknowledging receipt.⁷ Failure to file a return of service within 90 days risks a dismissal of the complaint on that technicality.

5. The record

a. Assembling and filing the record

Pursuant to Standing Order 1-96, the state agency is responsible for filing the original or a certified copy of the record “by way of answer” within 90 days after service of the Complaint. The record consists of either the entire proceedings or, if the parties agree, a portion of the entire proceedings or statement of the case. G.L. c. 30A § 14 (4). The Board of Hearings rule describes the record as all documents submitted during the hearing, identified and admitted as exhibits and a tape recording or transcript of the hearing. However, for purposes of judicial review, appellants will have to follow the court procedure described in the next section to have the recordings or transcripts included in the record.130 CMR § 610.074.

b. Obtaining a transcript

Pursuant to Standing Order 1-96, after the complaint is served, the agency is required to notify all parties of the procedure for acquiring a transcript. If the appellant’s claims were that the agency decision was not supported by substantial evidence, was arbitrary or capricious, or was an abuse of discretion a transcript of the proceedings will be needed by both parties to support or defend such claims. A request for a transcript must be made to the agency within 30 days after service of the Complaint. It is common practice to serve the request with the Complaint. G.L. c. 30A, § 11 (6) provides that the agency may require payment of the costs of the transcript before making it available. Advocates report that it is the practice of the Office of Medicaid to prepare a transcript without demanding advance payment if the plaintiff has received a fee waiver from the Court.

c. Facts not in the record

Judicial review is confined to the administrative record. However, if the administrative record is incomplete, the Court may permit corrections or additions to the record “when deemed desirable.” G.L. c. 30A, § 14 (4). Under Standing Order 1-96, motions for leave to present additional evidence pursuant to G.L. c. 30A, §§ 14 (5) or (6) must be served not later than 20 days after service of the record by the agency. Such motions are to be filed in accordance with Superior Court Rule 9A. Section 14 (5) allows testimony regarding irregularities in agency proceedings, which are not shown in the record, to be taken in court. Section 14 (6) provides that the court may order the agency to consider

⁷ Sometimes, the return receipt (i.e. green card) is not returned to the plaintiff, even though the USPS tracking number shows that the mail was delivered. When this happens, counsel should confirm with the court clerk the best way to address this. Advocates report that filing an affidavit explaining that the return receipt was never returned to the sender, but the USPS tracking number shows that it was delivered, has been accepted as adequate return of service.

additional evidence not in the record, if it is material and there was good cause not to have presented it earlier. The agency may modify its decision on the basis of the new evidence, and file its modified decision with the court. Advocates report that the agency will sometimes agree to a remand when the record is obviously incomplete.

The pleadings do not need to be confined to the contents of the record if the plaintiffs have grounds to present additional evidence. When drafting the complaint, advocates may plead relevant facts not in the record if they have grounds to add to the record. To ensure that those facts are not excluded from the court's judicial review, the plaintiff must file the necessary motions to add to the record as set out in the Standing Order.

6. Judgment on the pleadings

After the complaint is filed, the court will issue a scheduling order with filing deadlines. Under Standing Order 1-96, a claim for judicial review shall be resolved through a motion for judgment on the pleadings pursuant to Mass.R.Civ.P. 12(c) and Superior Court Rule 9A. The plaintiff's motion shall be served within 30 days of service of the record, and the defendant's response within 30 days of service of the plaintiff's papers. The plaintiff is responsible for filing the combined papers. A hearing on the motion will be scheduled unless oral argument is waived. Filing deadlines may be extended by leave of court. Several examples of 30A briefs are posted at masslegalservices.org.

7. 30A Rule 12(c) motion hearing

Counsel must be prepared for a hearing where the Court is fully prepared and familiar with the pleadings, or where the Court has not had the opportunity to review the papers. Counsel should consider offering to submit a proposed judgment.

Please address any questions, comments, additions or corrections to this outline, as well as copies of 30A complaints, briefs, and decisions for posting in the health section of masslegalservices.org to Vicky Pulos, vpulos@mlri.org, or Kate Symmonds, ksymmonds@mlri.org.