

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]
[REDACTED]
[REDACTED]

Appeal Decision:	Approved; Remanded	Appeal Number:	2101530
Decision Date:	11/29/2021	Hearing Date:	April 20, 2021
Hearing Officer:	Samantha Kurkji	Record Close Date:	June 15, 2021

Appellant Representative:

[REDACTED]
[REDACTED]

Agency Representative:

Ghislaine Karcouche,
Chelsea MEC *via telephone*



The Commonwealth of Massachusetts
AGENCY

APPEAL DECISION

Appeal Decision:	Approved; Remanded	Issue:	Eligibility
Decision Date: 11/29/2021		Hearing Date:	April 20, 2021
Agency Rep.: Ghizlaine Karcouche		Appellant Rep.:	██████████
Hearing Location: Chelsea MassHealth Enrollment Center		Aid Pending:	No

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 February 3, 2021, MassHealth denied the appellant's request for nursing home services, stating she had more countable assets than MassHealth standards allowed, and allowed 30 days to spend down assets. (Ex. 1). The appellant timely appealed on March 1, 2021. (Ex. 2). On March 15, 2021, MassHealth denied the appellant request citing "trust income is countable because the trust is revocable." *See*: 130 CMR 520.023 B or CMR 520.023 B, and included a real estate value of \$ 39,700.00 as part of the appellant's countable assets. (Ex. 3). The

appellant timely appealed the agency's determination on April 2, 2021. (Ex. 4). Eligibility, including but not limited to countable assets, is grounds for appeal. (See: *130 CMR 610.032*).

The record was left open for the appellant until April 20, 2021 and MassHealth had until April 27, 2021 to respond, after consulting with MassHealth Legal. (Exhibit 11.) On April 26, 2021, the record open period was extended for MassHealth until May 4, 2021. (Exhibit 11.) The record open period was again extended for MassHealth until May 6, 2021. (Exhibit 11.) MassHealth Legal was ordered to submit a brief by May 17, 2021 and the appellant was given until May 24, 2021 to respond. (Exhibit 11.) On May 11, 2021, the MassHealth representative reported that MassHealth Legal would not be submitting a brief. (Exhibit 11.) The appellant was given until May 18, 2021, and then May 21, 2021, to respond. (Exhibit 11.) The record open period again was extended for the appellant until June 1, 2021. (Exhibit 11.) MassHealth was given until June 10, 2021 to respond to the appellant's memo. The record open period was extended for MassHealth until June 15, 2021. (Exhibit 11.)

The hearing officer was on a period of medical leave due to a serious illness, which extends the deadline for rendering a hearing decision pursuant to 130 CMR 610.015(D)(4)(b).

Action Taken by Agency

MassHealth denied the appellant benefits for long term care benefits.

Issue

The issue is whether MassHealth was correct in determining the appellant's interest in real property in a revocable trust is a countable asset.

Summary of Evidence

On [REDACTED] the appellant entered the [REDACTED]. (MassHealth representative testimony). The MassHealth representative testified the appellant's initial application did not mention the [REDACTED], and MassHealth learned of the trust from a UMass medical report. (MassHealth representative testimony). The appellant's nursing home completed the application. (appellant representative testimony).

The appellant applied for long-term care benefits on August 12, 2020. (MassHealth representative testimony). On February 3, 2021, MassHealth denied the appellant's request, stating, "the trust principal is countable because is a revocable trust." (Ex. 1). In her appeal, March 1, 2021, the appellant stated, "working to remove house from revocable trust." (Ex. 2.) MassHealth on March 15, 2021 upheld its decision - "The trust principal is countable because the Trust is revocable. 130 CMR 520.023 (B) or 30 CMR 520.023 (B)." (Ex. 3). On April 2, 2021, [REDACTED], filed an appeal on behalf of the appellant.

(Ex. 4). At hearing the MassHealth representative stated the original appeal date of August 12, 2020 is preserved. (MassHealth representative testimony).

The [REDACTED] is a revocable trust, created on October 2, 2014, for the benefit of [REDACTED], 50% interest, and her son, [REDACTED] 50% interest with rights of survivorship. (Ex. 9). The trust holds properties at [REDACTED] and [REDACTED] (appellant representative testimony).

On April 19, 2021, the appellant executed a deed transferring her interest in [REDACTED] from the [REDACTED], individually and 50% remains with [REDACTED]. (Ex.9; appellant representative testimony). In the initial application, the appellant stated her intention to return to her primary residence listed as [REDACTED] (appellant representative testimony).

[REDACTED] resides at [REDACTED] and states it is his primary residence. (Ex. 11; affidavit of [REDACTED] [REDACTED] financed significant improvements to the property and has no other living quarters. (Ex. 11; affidavit of [REDACTED]; appellant representative testimony).

MassHealth did not address the issue specifically in regard to the [REDACTED] property in the [REDACTED]. The record was left open until April 20, 2021 for the appellant to provide additional documentation regarding the transfer of the property and an affidavit from [REDACTED] with respect to his interest in [REDACTED]. MassHealth had until April 27, 2021 to respond, after consulting with MassHealth's Legal Unit. (Exhibit 11.) On April 26, 2021, the record open period was extended for MassHealth until May 4, 2021. (Exhibit 11.) The record open period was again extended for MassHealth until May 6, 2021. (Exhibit 11.) MassHealth Legal was ordered to submit a brief by May 17, 2021 and the appellant was given until May 24, 2021 to respond. (Exhibit 11.) On May 11, 2021, the MassHealth representative reported that MassHealth Legal would not be submitting a brief and that when the [REDACTED] home was taken out of trust in April 2021, [REDACTED] was added to the deed, whereas he has been trustee before, creating an issue of an impermissible transfer of assets. The appellant was given until May 18, 2021, and then May 21, 2021, to respond. (Exhibit 11.) The record open period again was extended for the appellant until June 1, 2021. (Exhibit 11.) She responded that the appellant's interest in the [REDACTED] property (50%) is not countable because she intends to return home and the property is her primary residence. [REDACTED] has held interest in the property since 2014, outside the five-year look-back period for transfers. [REDACTED] was not added in 2021, as MassHealth alleges. The appellant's interest was taken out of trust and put in her name. The property is also inaccessible because [REDACTED] refuses to sell his interest. The [REDACTED] property is also inaccessible for the same reason, and the property is [REDACTED] primary residence and selling would constitute an undue hardship. MassHealth has not issued a denial notice in relation to the [REDACTED] property, but on June 1, 2021, the [REDACTED] property was conveyed from the trust to the appellant and her son as joint tenants. MassHealth was given until June 10, 2021 to respond to the appellant's memo. The

record open period was extended for MassHealth until June 15, 2021. (Exhibit 11.) The MassHealth representative responded that the [REDACTED] property was conveyed by the appellant and her spouse¹ to a trust, with [REDACTED] as a trustee. The property was taken out of trust and given to the appellant and [REDACTED] with rights of survivorship. The MassHealth representative argued that the original deed contained the names of the appellant and her spouse. MassHealth contends that the property must be conveyed to the appellant only. MassHealth made no mention of the [REDACTED] property.

Findings of Fact

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

1. The appellant is an individual over the age of 65 who entered the [REDACTED] on [REDACTED] (Exs. 1 & 2; testimony of MassHealth representative).
2. The appellant applied for MassHealth benefits on August 12, 2020. (testimony of MassHealth representative).
3. On February 3, 2021, MassHealth denied the appellant's request for benefits because the appellant had more countable assets than MassHealth allows, and cited the trust principal as being countable because the trust is revocable. (Ex. 1)
4. The appellant timely appealed the denial and listed the reason for the appeal as "working to remove house from revocable trust." (Ex. 2).
5. On March 15, 2021, MassHealth again denied the appellant's application for benefits for excess countable assets, stating that the principal of the trust is countable to the appellant because "[t]he Trust is revocable." (Ex. 3).
6. The appellant filed a timely appeal on April 2, 2021. (Ex. 4).
7. The appellant's application filed by [REDACTED] was "almost blank." MassHealth learned of the employee's trust interest via a UMass report. (Testimony of MassHealth representative).
8. The appellant is requested a benefit start date of October 21, 2020. (Testimony of MassHealth representative)
9. The original appeal date, August 12, 2020, is preserved. (Testimony of MassHealth representative).

¹ Presumably, the MassHealth representative meant the appellant's son.

10. A hearing was scheduled for March 18, 2021, and later rescheduled because the appellant substituted representatives. (Exs. 5, 6 & 7).
11. The [REDACTED] is a revocable trust created October 2, 2014. (Ex. 9).
12. The appellant is a beneficiary of the [REDACTED], holding 50%. She and her son are trustees.
13. At the time of the appellant's MassHealth application, the trust and the appellant's son held the property located at [REDACTED] as tenants in common. (Ex. 11; Appellant representative testimony)
14. MassHealth counted the entire value of [REDACTED] as being countable to the appellant. (Appellant representative testimony).
15. [REDACTED] is the appellant's primary residence. There is no spouse. (Appellant representative testimony).
16. The appellant filed her application stating her intention was to return home to [REDACTED]. (Appellant representative testimony).
17. On April 20, 2021, the appellant and her son, as co-trustees, executed a deed transferring [REDACTED] from the [REDACTED] individually, and the appellant's son, with joint rights of survivorship. (Ex. 9; Ex. 11; Appellant representative testimony).
18. At the time of the appellant's MassHealth application, the trust and the appellant's son held the property located at [REDACTED] as tenants in common. The appellant conveyed this property to the trust and her son on October 2, 2014.
19. On June 1, 2021, the [REDACTED] property was conveyed from the trust to the appellant and her son as joint tenants.
20. [REDACTED] lives at [REDACTED] and this is his primary residence. (Appellant representative testimony; affidavit of [REDACTED]). (Ex. 11).
21. The [REDACTED] property was never disclosed on the appellant's application, which was completed by the nursing home. (Appellant representative testimony).

Analysis and Conclusions of Law

“130 CMR 520.000 describes the rules governing financial eligibility for MassHealth. [The regulations are] based on financial responsibility, countable income, and countable assets.” (130 CMR 520.001(A)). An applicant qualifies for long term benefits when meeting the requirements outlined.

(A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits:

(1) for an individual - \$ 2,000.00; and

(2) for a couple living together in the community where there is financial responsibility according to 130 CMR 520.002 (A) (1) - \$ 3,000.00.

(B) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Senior Buy-in for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: *MassHealth Senior Buy-in (for Qualified Medicare Beneficiaries (QMB))* or MassHealth Buy-in for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy in for Qualifying individuals (QI), both as and described in 130 CMR 519.011: *MassHealth Buy-in*, may not exceed the amount equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year the allowable asset limits shall be made available on MassHealth’s website.

(130 CMR 520.003(A)-(B)).

An applicant may not have more than \$ 2,000.00 in assets, which are subject to verification. In determining an applicant’s financial status, MassHealth considers all assets open and available to the applicant. Inherent in the calculation are allowances and qualifications.

Pursuant to 130 CMR 520.007, “[c]ountable assets are all assets that must be included in the determination of eligibility.”

(G) Real Estate

(1) Real Estate as a Countable Asset. All real estate owned by the individual and spouse, with the exception of the

principal place or residence as described in CMR 520.008 (A), is a countable asset. The principal place of residence is subject to allowable limits as described in 130 CMR 520.007 (G) (3). Business or nonbusiness property as described in 130 CMR 520.008(D) is a noncountable asset.

(130 CMR 520.007(G)(1)).

(8) Former Home of an Institutionalized Individual. If an applicant or member moves out of his or her home to enter a medical institution, the MassHealth agency considers the former home a countable asset that is subject to 130 CMR 520.007 (G) (2), provided all the following conditions are met...

(c) The applicant or member (and spouse, if any) moves out of his or her home without the intent to return.

(130 CMR 520.007(G)(8).)

Non countable assets are those assets exempt from consideration when determining the value of assets. In addition to the noncountable assets described in 130 CMR 520.006 and 520.007, the following assets are noncountable.

(A) The Home. The home of the applicant or member and the spouse and any land appertaining to the home, as determined by the MassHealth agency, if located in Massachusetts and used as the principal place of residence, are considered noncountable assets, except when the equity interest in the home exceeds the amount described in 130 CMR 520.007(G)(3). The home is subject to the lien rules at 130 CMR 515.012: *Real Estate Liens*. If the home is placed in a trust or in an arrangement similar to a trust, the MassHealth agency will apply the trust rules at 130 CMR 520.021 through 520.024.

(130 CMR 520.008(A)).

“An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.” (130 CMR 520.006(A)).

“The home or former home of a nursing-facility resident or spouse held in a revocable trust is a countable asset. Where the home or former home is an asset of the trust, **it is not subject to the exemptions of 130 CMR 520.007(G)(2) or 520.007(G)(8).**” (130 CMR 520.023(B)(4)) (emphasis added).

As a threshold matter, MassHealth’s argument that [REDACTED] was added to the deeds after the property was taken out of trust is puzzling; the deeds clearly list [REDACTED] as an owner of both properties prior to their removal from trust. The applicant indicated on her initial application an intent to return to her home, [REDACTED]. In 2014, outside of the 60-month lookback period for transfers, this property was conveyed by the appellant to a revocable trust, of which she and her son were beneficiaries, and to her son, as tenants in common. On April 20, 2021, the applicant executed a deed transferring the property from the trust to herself individually and to her son, as joint tenants. Property in a revocable trust is a countable asset pursuant to 130 CMR 520.022(A). During the record open period, the appellant transferred her share from the trust to herself as an individual, rendering the property noncountable under the above regulations. While the current disposition of the [REDACTED] property calls for an approval of the appellant’s appeal, MassHealth may assess whether a disqualifying transfer of assets notice is warranted in this case.

Despite the parties’ arguments regarding the countability of the [REDACTED] property, it does not appear that MassHealth included a determination regarding its countability in the denial notices issued to the appellant. Therefore, the Board of Hearings does not have jurisdiction of this issue. The appeal is remanded to MassHealth for a determination as to the countability of the [REDACTED] property.

Order

Continue to process the appellant’s application in accordance with this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of the 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.

Samantha Kurkly
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett

[REDACTED]