

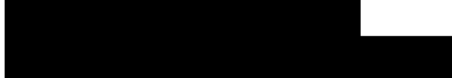
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2133061
Decision Date:	9/24/2021	Hearing Date:	05/10/2021
Hearing Officer:	Rebecca Brochstein	Record Closed:	08/19/2021

Appearances for Appellant:




Appearances for MassHealth:

Kim McAvinchey, Tewksbury MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Long-term care eligibility
Decision Date:	9/24/2021	Hearing Date:	05/10/2021
MassHealth's Rep.:	Kim McAvinchey, Tewksbury MEC	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated March 24, 2021, MassHealth denied the appellant's request for long-term care coverage due to excess assets (Exhibit 1). The appellant filed a timely appeal on April 23, 2021(130 CMR 610.015(B); Exhibit 2). Denial of coverage is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's long-term care application due to excess assets.

Issue

The issue in this appeal is whether the appellant's assets exceed MassHealth regulatory limits.

Summary of Evidence

A representative from the Tewksbury MassHealth Enrollment Center appeared telephonically and testified as follows: The appellant has been a resident of a nursing facility for several years. A MassHealth long-term care application was filed on his behalf on February 19, 2020, seeking coverage as of December 4, 2019. On March 24, 2021, MassHealth denied the application due to excess assets. The MassHealth representative testified that all of the appellant's assets have been reduced with the exception of a [REDACTED] annuity with a cash value of \$25,502.69. She stated that the Commonwealth is the primary beneficiary of the annuity but that it has a cash value and is not annuitized, so it is countable to the appellant for MassHealth purposes.

The appellant was represented by his conservator and a Medicaid consultant. They testified that [REDACTED] is requesting additional language in the court appointment before it will allow the conservator to surrender the annuity on the appellant's behalf. They will not accept the probate court's standard permanent conservatorship documents. The conservator stated that they are trying to work with the court to see if it is possible to add the necessary language but that the probate court "does not seem too inclined" to do this. The conservator stated that the appellant was previously approved for MassHealth long-term care coverage in spite of this annuity (which lists the Commonwealth as primary beneficiary) and remained active until his coverage was terminated on an eligibility review in December 2019. In response, the MassHealth representative acknowledged that the appellant had been approved previously, but stated that this was an error.

The appellant's conservator argued that MassHealth should consider the [REDACTED] account to be an inaccessible asset given the company's ongoing refusal to allow her, as the appellant's permanent conservator, to surrender it so she can spend down the proceeds. In the alternative, she requested additional time to continue to seek access to the funds. The record was held open for four days after hearing for the MassHealth representative to consult with her manager regarding the agency's position on the account's inaccessibility. On May 12, 2021, the MassHealth representative wrote as follows:

Based on the regulations at 130 CMR 520.006, MassHealth considers the appellant's Transamerica annuity to be an accessible asset, as the appellant, through his conservator, has legal access to the cash value.

It is understood that [REDACTED] has delayed [appellant's] access to these funds. As the appellant is legally entitled to the funds and his representative faxed legal documents to [REDACTED] on 5/3/21, MassHealth is requesting that the Hearing Officer consider the appellant's original request for a Record Open period.

An inaccessible asset is an asset to which the applicant or member has no legal access.
130 CMR 520.006(A)

The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled. 130 CMR 520.006(C).

Thereafter, the appellant's representatives requested additional time for the conservator to continue her attempts to liquidate and spend down the proceeds from the [REDACTED] annuity account. The record-open period was extended for this purpose, and as Transamerica reportedly requested additional documentation, further extensions were granted. On August 12, 2021, the conservator submitted an affidavit that detailed her efforts to surrender the [REDACTED] policy:

1. My name is [REDACTED] and my mailing address is [redacted].
2. I was appointed temporary conservator of [appellant] on or about September 28, 2020, by the Middlesex Probate and Family Court sitting in Cambridge, Massachusetts.
3. On or about November 6, 2020, Middlesex Probate and Family Court issued certified Letters of Conservatorship.
4. On or about November 12, 2020, I contacted [REDACTED] and asked how to go about surrendering a policy. I was advised that I needed to be a permanent conservator.
5. Based on my previous experience with some companies, I thought the need for a permanent conservatorship was reasonable.
6. On or about January 26, 2021, I was appointed as permanent conservator of [appellant].
7. Due to the pandemic, I received the certified Letters of Conservatorship on or about February 23, 2021.
8. On or about February 24, 2021, I reached out to [REDACTED] and was unable to get through to any agents.
9. On a number of occasions, I attempted to contact the financial representatives listed on [appellant's] [REDACTED] policy statement.
10. Upon information and belief, the named financial representatives were no longer employed by the listed firm of LPL Financial.
11. On or about March 11, 2021, I received confirmation that [appellant's] account was not being serviced by any of the listed financial representatives.
12. On or about March 18, 2021, I received documentation via fax for how to surrender [appellant's] annuity.
13. On or about April 22, 2021, I received a call from [REDACTED] that I needed to call back the customer service department at 1-800-525-6205.
14. On or about April 22, 2021, I called back [REDACTED] and I was told by the agency that the Legal Department stated that I needed to have documentation from the court giving me "permission to surrender this annuity."
15. When I asked the same agency what that meant, he told me that it was "according to statute."
16. I asked the agent to be transferred to [REDACTED] Legal Department.
17. The agent stated that the Legal Department does not take calls.
18. When I inquired of the agent whether the statute he was referring to was Iowa's statute or Massachusetts', he told me he did not know.
19. On or about April 23, 2021, I called [REDACTED] and asked to be transferred to the Legal Department; my request was denied.
20. On or about April 26, 2021, I received a call from a [REDACTED] agent. She shared that I needed specific language in my court paperwork that allowed me to surrender the policy.

21. When I inquired of the agent why that would be necessary when I have a plenary conservatorship, she informed me that this is a policy of [REDACTED]
22. A week or so later, I followed up with [REDACTED] and asked whether [the appellant], himself, could surrender the annuity.
23. I was told that the name [REDACTED] is now on the account as conservator and that [appellant] is under conservatorship so he does not have authority to do so.
24. On or about May 12, 2021, [another attorney's] office sent a 93A Demand Letter to [REDACTED] regarding its failure to allow me to surrender the account.
25. On or about May 17, 2021, [REDACTED] responded that it will "comply with the request" and allow the surrender to go forward.
26. On or about May 28, 2021, I followed up with [REDACTED] and I was told that the surrender request was still being processed.
27. On or about June 17, 2021, I reached out to [REDACTED] to request an update on where the funds were. I was told that I needed a "Medallion Signature Guarantee" to surrender the account.
28. Having never heard what this request was, I reached out to my colleagues who serve as fiduciaries. Only one colleague mentioned that he has had to get a Medallion before and that it was a tedious process as a fiduciary and I would need to have a good relationship with a bank.
29. On or about June 21, 2021, I had an appointment with one of my personal banks, [REDACTED] and I was told that they would have to check with their legal department about giving a Medallion for a signature of someone who is not the annuitant.
30. [REDACTED] and [REDACTED] called me later that same day to state that they are prohibited from providing Medallions for fiduciaries.
31. Throughout the course of that week, I reached out to my local [REDACTED] where I keep my operating account. I was told that I could not get a Medallion.
32. I reached out to [appellant's] bank, [REDACTED], and I was told that they would only give a Medallion of his signature because I don't have a preexisting relationship with the bank.
33. Throughout the next month, I reached out to multiple branches of [REDACTED] where I have a personal account, and I was told that they would not give a Medallion for a fiduciary.
34. On or about July 9, 2021, I contacted [appellant's] bank, [REDACTED], to see whether they would give me a Medallion in the presence of [appellant]. I was told that they are not able to and that I should contact the Federal Reserve.
35. To date, I have not heard back from the Federal Reserve.
36. To date, I have spoken with a couple of other professional fiduciaries, none of whom have either needed or been successful in obtaining a Medallion.
37. To date, [REDACTED] states that the Medallion is necessary because I put my business address in the surrender form. When I have inquired as to whether I could execute another surrender form with the address of [appellant's] nursing home, I have been told that I cannot.
38. At this stage, I do not believe these funds are accessible and I am asking that they be considered an uncountable asset.
39. As of note, the beneficiary of these funds is the Commonwealth of Massachusetts.

The MassHealth representative forwarded the affidavit to her manager for a response. She thereafter reported as follows, citing to 130 CMR 520.006(C): “MassHealth considers the Transamerica annuity to be a countable asset as the applicant is legally entitled to the cash value as of the date of application and the applicant has a conservator who is representing his interests.” As the matter was not resolved by the parties, the hearing officer took it under advisement.

Findings of Fact

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

1. The appellant has been a resident of a long-term care facility for several years. He was previously approved for MassHealth long-term care benefits.
2. After an eligibility redetermination in late 2019, the appellant’s benefits were terminated.
3. On February 19, 2020, a new MassHealth long-term care application was filed on the appellant’s behalf, seeking coverage as of December 4, 2019.
4. On March 24, 2021, MassHealth denied the application due to excess assets.
5. The appellant’s total assets have been reduced below \$2,000, with the exception of a [REDACTED] annuity with a cash value of \$25,502.69.
6. The appellant has a court-appointed conservator.
7. The annuity company has not accepted the standard court appointment as evidence of the conservator’s authority to surrender the annuity on behalf of the appellant and asked the conservator to obtain specific authority from the court.
8. The annuity company has alternatively informed the conservator that it will allow the surrender upon presentation of a “Medallion Signature Guarantee” from a bank. The conservator contacted several local banks as well as the Federal Reserve but so far has been unable to secure a Medallion.

Analysis and Conclusions of Law

Under 130 CMR 520.003(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; 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.

In this case, MassHealth denied the appellant’s MassHealth long-term care application because it

determined that his total countable assets exceed the allowable limit of \$2,000 for an individual applicant. The only asset in dispute here is an annuity account with a cash value of over \$25,000.

The appellant does not dispute that this asset properly categorized this as a countable asset but contends that the account is inaccessible. He argues that this is because the annuity company has, so far, declined to recognize his conservator's authority to surrender it on his behalf, and he is therefore unable to spend it down in order to qualify for MassHealth.

Inaccessible assets are governed by 130 CMR 520.006:

(A) Definition. 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.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and (2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled (1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or (2) from the period beginning six months after the date of application or acquisition, whichever is later, if (a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or (b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

There is no question that the conservator has encountered frustrating roadblocks in her efforts to liquidate the annuity account. However, these issues do not constitute a block on the appellant's *legal* access to the asset, as the regulation requires; rather, these are more in the nature of bureaucratic logistical challenges. Further, it is not clear that these impediments are insurmountable. The conservator suggested, for example, that she continues to work with the probate court to determine if the conservatorship decree can be amended to satisfy the annuity company. As it stands, MassHealth correctly determined that the asset is not legally inaccessible to the appellant, and therefore that it is countable for eligibility purposes.

For the forgoing reasons, this appeal is denied. The appellant will have 30 days from the date of

this decision to verify that the excess assets have been spent down while preserving the application date.

Order for MassHealth

If the appellant verifies that the excess assets have been spent down within 30 days of this decision, redetermine the appellant's eligibility while preserving the application date.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Tewksbury MEC

