

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	APPROVED	<b>Appeal Number:</b>	2153762
<b>Decision Date:</b>	9/28/2021	<b>Hearing Date:</b>	07/07/2021
<b>Hearing Officer:</b>	Christopher Taffe	<b>Record Open to:</b>	09/17/2021

**Appearances for Appellant:**



**Appearance for MassHealth:**

Patricia Lemke, Springfield MEC  
(by phone at hearing)



*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


<b>Appeal Decision:</b>	APPROVED	<b>Issue:</b>	LTC – Verifications – Non-Cooperative Spouse
<b>Decision Date:</b>	9/28/2021	<b>Hearing Date:</b>	07/07/2021
<b>MassHealth's Rep.:</b>	P. Lemke	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center		

## 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 April 13, 2021, MassHealth denied Appellant's application for MassHealth Standard Long-Term Care (LTC) benefits due to the failure to timely produce verifications. See 130 CMR 515.008; Exhibit 1. An appeal was timely filed on Appellant's behalf with the Board of Hearings on May 19, 2021. See Exhibit 1; 130 CMR 610.015(B). Because the filing raised questions of authority, on May 26, 2021, the Board of Hearings dismissed the appeal without prejudice. See 130 CMR 610.035; Exhibit 2. Appellant's appeal representative vacated the dismissal on June 3, 2021 by providing proper proof of Authorized Representative Designation. Authority. See Exhibit 3.

At the end of the hearing held on July 7, 2021, the record was left open at Appellant's request until August 24, 2021, in part to allow time for a pending Conservatorship action to be heard by the  Probate Court (hereafter "Probate Court"). See 130 CMR 610.081 and Exhibit 6. On or around August 12, 2021, the record open period was further extended until September 17, 2021 to allow Appellant more time to obtain and submit verifications, and for MassHealth to review and respond to such additional papers. See Exhibit 7. The Probate Court officially appointed Atty. Davey as Conservator for the Appellant on August 16, 2021, and he participated in the Record Open period. See Exhibits 8 and 9.

Challenging a MassHealth denial of an application for assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

## **Action Taken by MassHealth**

MassHealth denied Appellant's application for Standard Long-Term Care benefits due to the failure to produce verifications.

## **Issue**

Has Appellant produced enough verifications and, if not, have sufficient alternate actions been taken to allow the application to proceed?

## **Summary of Evidence**

Appellant is a married [REDACTED] individual who was admitted to a skilled nursing facility on [REDACTED]. She has resided there on a long-term and continuous basis since October. An application for LTC benefits was filed on Appellant's behalf on February 26, 2021. Appellant is currently seeking LTC benefits with a retroactive start date of February 5, 2021. Appellant's husband lives in the community.

On March 4, 2021, MassHealth sent a VC-1 or request for verifications. When verifications were not produced, the application was denied on April 13, 2021, leading to this appeal.

The outstanding verifications at the time of denial consisted of (1) nursing facility information, including information on the Personal Needs Allowance; the SC-1 form regarding admission to the facility, and the nursing facility screening; (2) a completed Long-Term Care Supplement; (3) bank account information from 1/1/2020 to the present as well as information on any life insurance asset the Appellant and her husband may have;<sup>1</sup> and (4) income information from the husband/community spouse.

As of the hearing date, all the verification have since been provided to MassHealth with the exception of the bank account and life insurance assets for the married couple.

The initial Appeal Representative is from the nursing facility. She had authority to file the appeal because she completed Section II of the Authorized Representative Designation form (ARD form) which is for Appellant's who cannot provider written designation. See Exhibits 1 and 3. Per a medical form dated November 24, 2020 in Exhibit 1, Appellant has had her health care proxy invoked due to permanent incapacity related to dementia. The Appellant has no holder of power of attorney but she does have a niece who is her health care proxy. The Appeal Representative

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<sup>1</sup> The question on the application was not answered as to whether the couple had life insurance.

explained that on March 1, 2021 a petition for Conservatorship was filed with the appropriate Probate Court but it was still pending at the time of the appeal filing. The Appeal Representative explained that this was done because the Appellant's community spouse was not cooperating and refused to participate with the nursing facility and had effectively abandoned his wife. The nursing facility had reached out to Appellant's niece, but the niece could neither get involved nor assist with the issue due to the family dynamic with her uncle and the niece's lack of legal standing as just a health care proxy. The Appeal Representative described the Appellant's spouse as extremely unpleasant and testified that the term "curmudgeon" may be a charitable description. For these reasons, the Conservatorship action began in March 2021 and had a contested hearing scheduled, three weeks after the hearing date, in the last week of July 2021. A Record Open was requested to allow the Court to designate a Conservator who in theory could help with the verification process.

During the Record Open period the Conservator appeared and was able on September 16, 2021 to produce bank statements for one [REDACTED] account ending in [REDACTED] for the time period from December 7, 2019 through August 7, 2021 for one joint account between Appellant and her husband. See Exhibit 9. The bank account was a joint bank account, but the Conservator described it as the primary account. The Conservator stated this was the only account of Appellant's of which he was aware and that he believed it was Appellant's only account because it receives her income from SSA (~ \$525/month) and has been relatively untouched since her nursing facility admission. The Conservator stated he believed Appellant's spouse had his own separate accounts. During the Record Open period, the MassHealth Representative wrote that the account ending in [REDACTED] was the only asset MassHealth was aware of, and that this was based on review of the application and the state's asset match system. See id.

As to his dealings with the spouse, the Conservator submitted a sworn affidavit, summarized as follows:

After being appointed on July 30, 2021, the Conservator received an unsolicited voicemail the following week from the Appellant's spouse. The husband sounded agitated, angry, and cursed frequently on the voicemail. The call was made because the husband received notice from the Probate Court of the Conservator's appointment, and he did not want to receive any more mail from the nursing home and that the Conservator was "*not to call him, among other [expletive] requests*". The original Health Care proxy [the niece] has been harassed and threatened by the Appellant's spouse, which, combined with the spouse's refusal to care for his spouse, has led to appointment of a friend of Appellant as the alternate health care proxy. The spouse has verbally abused the staff and social workers of the nursing facility. The spouse has also refused to let Elder Services go into the marital home to assess whether Appellant could return home. Appellant's spouse has refused to produce any information needed to support his wife's application. This behavior played a role in the Probate Court's decision to appoint a third-party Conservator for the Appellant in this matter, even when her spouse existed in the community.

See Affidavit in Exhibit 9.

The Conservator also prepared and submitted a written Assignment of Spousal Support Rights dated September 1, 2021, in which he assigned any and all spousal support rights of Appellant to EOHHS. See Exhibit 9.

## Findings of Fact

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

1. Appellant is a married [REDACTED] individual who was admitted to a skilled nursing facility on [REDACTED]. (Testimony and Exhibit 5)
2. Appellant is currently seeking LTC benefits with a retroactive start date of February 5, 2021 and applied for benefits on February 26, 2021. (Testimony and Exhibit 5)
3. The application was denied on April 13, 2021 for failure to timely produce all requested verifications. (Testimony and Exhibit 1)
4. As of the hearing date, all verifications were produced except for
  - a. bank account information from 1/1/2020 to the present for the couple;
  - b. information on any life insurance asset the Appellant and her husband may have; and
  - c. income information from the husband/community spouse.(Testimony and Exhibit 5)
5. MassHealth was not aware of any life insurance asset for the couple, but asked for it due to an incomplete answer on the application. (Testimony and Exhibit 5)
  - a. Neither the Conservator nor the MassHealth asset verification system have any indication that there is any life insurance for the couple. (Testimony and Exhibits 5, 8, and 9)
6. Despite having a husband living in the community, a Massachusetts Probate Court has appointed a Conservator for Appellant. (Testimony and Exhibit 8)
7. The Conservator is aware of one bank account for Appellant, and has produced bank statements for the time period from 1/1/2020 through 8/7/2019. (Exhibit 9)
8. Appellant's husband is not cooperating with his wife's application process for LTC benefits. He has left an unsolicited voicemail with curses for the Conservator, has harassed and made the Appellant's niece uncomfortable, has verbally abused employees of the nursing facility, and has refused to let an Elder Services group into the marital home. (Testimony and Exhibit 9)
9. The Conservator has prepared and submitted to MassHealth a written Assignment of Spousal Support Rights dated September 1, 2021, in which he assigned any and all spousal support rights of Appellant to EOHHS. (Exhibit 9)

## Analysis and Conclusions of Law

Under 130 CMR 515.008(A), an applicant or member seeking MassHealth LTC benefits must cooperate with MassHealth in providing information necessary to establish and maintain eligibility. After receiving an application, MassHealth requests all corroborative information necessary to determine eligibility. The notice advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information. If the requested information is received within 30 days of the date of the request, the application is considered complete. If it is not received within that time frame, MassHealth benefits may be denied. See 130 CMR 516.001(B) and (C).

At issue in this appeal is MassHealth's denial of Appellant's application for failure to provide all requested verifications within the prescribed time frame. There is no dispute that Appellant did not in fact provide all verifications by the regulatory deadline, that such missing information had not been provided by the time of the hearing, and that some items remain outstanding as of the close of record. In this appeal, the majority if not all verifications that have not yet been provided belong to Appellant's spouse who is in the community.

Through her Conservator, Appellant contends that she has complied with all aspects of the verification request that pertain to her own asset information, and that the only outstanding verifications are those under the exclusive control of her spouse, who appears unwilling to cooperate in the application process. It is argued that, as a result, MassHealth may not deny Appellant's application for verifications pursuant to 130 CMR 517.011. That regulation reads in its entirety as follows:

**517.011: Assignment of Rights to Spousal Support**

***An institutionalized spouse, whose community spouse refuses to cooperate or whose whereabouts is unknown, will not be ineligible due to***

***(A) assets determined to be available for the cost of care in accordance with 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; or***

***(B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met:***

***(1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse;***

***(2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or***

***(3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.***

**(Bolded emphasis added.)**

In this case, we have a community spouse who is clearly not cooperating as detailed in the affidavit submitted by the Conservator which is consistent with the testimony given on the hearing day by the Appeal Representative who works at the nursing facility. The only assets or resources in question that need to be addressed appear to be those within control of the non-cooperating and hostile husband.<sup>2</sup> The Conservator has also executed an assignment of spousal support rights to EOHHS.

Under these circumstances, I conclude that the failure to produce information concerning assets cannot be a basis for ineligibility per 130 CMR 517.011(B).<sup>3</sup> This appeal is therefore APPROVED.

## **Order for MassHealth**

Rescind the April 13, 2021 denial notice for verifications. Re-determine eligibility for Appellant based on the information and verifications received by the close of the hearing date. As and if appropriate, MassHealth may treat Appellant as an applicant who is a single person with no Spousal Income Allowance or Spousal Asset Allowance until and unless the community spouse cooperates to the satisfaction of the agency. Any such eligibility redetermination notice or Notice of Implementation should be sent to the Appellant's Conservator.

In reliance on the assigned spousal support rights, the MassHealth agency may also take other action as is appropriate and just against the Community Spouse.

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<sup>2</sup> If there are other assets discovered subsequently, such as a life insurance or additional bank account discovered in Appellant's name, it is noted that the Conservator has a legal obligation to account for it in appropriate manner to both the Probate Court and the MassHealth agency.

<sup>3</sup> I do not believe there is a specific form for Assignment of Spousal Support used by the MassHealth agency. But if there is a specific form needed, or if the Assignment needs to be rewritten (for "the MassHealth agency" specifically, as opposed to the more general assignment to "EOHHS"), then the agency may request and obtain any more proper paperwork needed from the Conservator.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact the Appeals Coordinator at the Springfield 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.

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Christopher Taffe  
Hearing Officer  
Board of Hearings

cc: Dori Mathieu, Appeals Coordinator @ Springfield MEC

[REDACTED]