

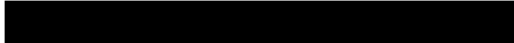
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2154685
Decision Date:	9/14/2021	Hearing Date:	07/21/2021
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:



Appearances for MassHealth:

Alfred Peach, 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:	9/14/2021	Hearing Date:	07/21/2021
MassHealth's Rep.:	Alfred Peach, Tewksbury MEC	Appellant's Rep.:	
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 April 29, 2021, MassHealth approved appellant's application for MassHealth benefits with an eligibility start date of March 26, 2021 (Exhibit 1). Appellant filed a timely appeal on June 22, 2021 (Exhibit 1). A determination of an eligibility start date is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved appellant's application for MassHealth benefits with an eligibility start date of March 26, 2021. MassHealth later adjusted the start date to March 23, 2021.

Issue

The issue on appeal is whether appellant is entitled to an earlier eligibility start date.

Summary of Evidence

A MassHealth eligibility worker appeared at the hearing telephonically and testified as follows: The appellant is a resident of a nursing facility. A MassHealth long-term care application was filed on her behalf on February 25, 2021, seeking coverage as of February 1, 2021. The application was denied on April 14, 2021, for missing verifications, and was subsequently re-logged on April 23, 2021 (which is the controlling application date). On April 29, 2021, MassHealth approved the application with an effective date of March 26, 2021.

The MassHealth representative testified that the appellant became financially eligible for long-term care benefits by transferring funds into a pooled trust. The pooled trust was established on February 5, 2021, and the initial deposit of \$1,637.10 was made on that date. Thereafter, between February 8 and March 26, 2021, the appellant made a series of deposits from different accounts to spend down her assets. MassHealth originally determined that the deposit that brought the appellant's assets below \$2,000 was made on March 26, 2021, and set that as the coverage effective date. However, the MassHealth representative testified that upon review, MassHealth would adjust the start date to March 23, 2021; this was the date the assisted living facility where the appellant formerly lived transferred funds it had been holding for the appellant into his pooled trust account.

The appellant was represented by a Medicaid consultant, who appeared telephonically. She testified that the appellant had paid a security deposit of \$2,963.18 to the assisted living facility, which the facility saved for "anticipated care." The ALF returned the funds to the appellant because she was not there for a minimum of 30 days. The ALF wrote a check to the appellant dated February 18, 2021, and the funds were deposited into the pooled trust on March 23, 2021. She argued that the return of the funds constituted a "lump sum payment" which MassHealth must exempt from countability for nine months from receipt. The appellant's representative argued that the assets were reduced as of February 16, 2021, and that this should be the coverage effective date.

The MassHealth representative responded that the return of funds from the ALF does not meet the definition of a lump-sum payment under MassHealth regulations at 130 CMR 520.009. He argued that these funds were available to the appellant and should be considered countable here.

Findings of Fact

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

1. Appellant is a resident of a nursing facility. She formerly lived in an assisted living facility.
2. On February 5, 2021, a pooled trust account was set up on the appellant's behalf. A check for an initial deposit of \$1,637.10 was written on that date. Thereafter, the appellant made a series of deposits from different accounts to spend down her assets.

3. On February 18, 2021, the assisted living facility where the appellant had previously lived wrote a check for \$2,963.18 to the appellant to return funds not spent on her care.
4. On February 25, 2021, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage as of February 1, 2021.
5. On March 23, 2021, the funds received back from the assisted living facility were deposited into the pooled trust account.
6. On April 14, 2021, MassHealth denied the application for missing verifications. The application was re-logged on April 23, 2021, which is the controlling application date.
7. On April 29, 2021, MassHealth approved the application with an effective date of March 26, 2021.
8. On June 22, 2021, the appellant filed a timely appeal of the notice, challenging the start date.
9. At hearing on July 21, 2021, MassHealth indicated that it had adjusted the start date of to March 23, 2021, to match the date on which the assisted living funds had been deposited into the pooled trust account.

Analysis and Conclusions of Law

Under 130 CMR 520.004(A)(1), an applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth (a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or (b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

The issue on appeal is the start date of the appellant's long-term care coverage. The date of coverage relates to when her assets were spent down below the \$2,000 regulatory limit; in this case, the issue is when her assets were transferred to a pooled trust, which effectuated the final asset spend-down. MassHealth determined that the assets were spent down as of March 23, 2021, which is when the funds received back from the appellant's former assisted living facility were deposited into the pooled trust account. The appellant argues that she was below assets earlier because the return of the ALF funds constituted a "lump-sum payment" that MassHealth must exempt from countability for nine months from the time of receipt.

Under 130 CMR 520.009(E), a lump-sum payment is a one-time-only payment that represents

either windfall payments such as inheritances or legacies, or the accumulation of recurring countable income such as retroactive unemployment compensation or federal veterans' retirement benefits. Generally, lump-sum payments are counted as unearned income in the calendar month received and as an asset in subsequent months, except as provided in 130 CMR 520.009(E)(1):

(1) Exceptions. The following lump-sum payments are noncountable: (a) a retroactive RSDI and/or SSI benefit payment, subject to the provisions of 130 CMR 520.007(H)(1); (b) proceeds reserved for the replacement or repair of an asset that is lost, damaged, or stolen and any interest earned on such proceeds are exempt from consideration as assets for nine calendar months after the month of receipt and may be exempt for an additional nine calendar months where good cause exists; (c) proceeds from the sale of a home used as the principal place of residence provided the proceeds are used to purchase another home to be used as the principal place of residence. Such proceeds are exempt from considerations as assets for three calendar months after the month of receipt; (d) proceeds from the sale of real estate other than a home subject to the provisions of 130 CMR 520.007(G); and (e) proceeds from the sale of nonexempt vehicles subject to the provisions of 130 CMR 520.007(F).

The appellant suggests that the ALF payment falls under part (b) above. However, she does not explain how these funds – which the facility had simply been holding in the appellant's account in anticipation of using them for her future care – are tied to an asset that was “lost, damaged, or stolen.” More fundamentally, it is not clear that this payment even falls under the definition of a “lump-sum payment,” as it is not a windfall payment (such as an inheritance), and there is no evidence that it resulted from the accumulation of recurring countable income. For these reasons, it is not exempted from countability under the any of the terms of 130 CMR 520.009(E).

MassHealth correctly determined that the appellant's earliest possible start date is the date on which she reduced her assets below the regulatory limits. See 130 CMR 520.004. The appellant has not provided any persuasive evidence that this date is any earlier than March 23, 2021. As such, this appeal is denied.

Order for MassHealth

None.

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

