

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2176935
Decision Date:	01/21/2022	Hearing Date:	12/15/2021
Hearing Officer:	Rebecca Brochstein	Record Closed:	01/03/2022

Appearances for Appellant:



Appearances for MassHealth:

Michael Rooney, 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:	01/21/2022	Hearing Date:	12/15/2021
MassHealth's Rep.:	Michael Rooney, 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 August 12, 2021, MassHealth denied the appellant's request for long-term care coverage due to excess assets (Exhibit 1). MassHealth issued a second notice on August 16, 2021, denying community-based benefits due to excess assets (Exhibit 2). The appellant filed a timely appeal on September 10, 2021 (130 CMR 610.015(B); Exhibit 3). The record was held open after hearing for the appellant's representative to provide additional documentation and for MassHealth to review it (Exhibits 7 and 8). 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 was a resident of a nursing facility prior to his death on July 26, 2021. A MassHealth long-term application was filed on his behalf on May 24, 2021, seeking coverage as of April 15, 2021. MassHealth sent a request for information on May 28, 2021, and then denied the application on July 6, 2021, for failure to provide all of those verifications. The appellant filed a timely appeal, and the matter subsequently resolved, protecting the original application date.

On August 12, 2021, MassHealth denied the application due to excess assets. As there was no spouse in the community, the asset limit is \$2,000. Based on documentation provided to MassHealth, the appellant had total assets of \$6,838.64; this consisted of a retirement account containing \$6,837.64 and a bank account that was deemed to have \$1 (after deductions of income and non-countable government stimulus funds). After deducting the \$2,000 the appellant was permitted to keep, the excess assets were set at \$4,838.64. See Exhibit 1.

The appellant's estate was represented by an attorney. She described logistical issues in liquidating the retirement account, starting with having the daughter appointed as his conservator. Even after she was appointed, she was unable to access the account because of a series of requirements imposed by the company. The attorney stated that this company is "notorious" for putting up barriers that make it difficult to access accounts. She stated that the conservator had the legal authority to access the funds but the company made it "impossible" to do so. After the appellant's death, the account became part of his estate because there was no named beneficiary. The attorney stated that the account can be liquidated as an estate asset, but that this has not yet been done because of the appeal. She argued that the account was an inaccessible asset and should therefore not be countable for MassHealth purposes.¹

The record was held open for the appellant's representative to provide additional documentation. On December 22, 2021, she submitted a variety of documents, including copies of online communications between the conservator and the company that held the retirement account, the appellant's death certificate, a printout of an email exchange the attorney had with the MassHealth case worker on a prior appeal, a message showing she had received a call from the Estate Recovery Unit, and the court docket from the conservatorship proceedings. In her cover letter the attorney emphasized that the communications with the company show the conservator wrote on seven separate dates starting on July 14 (and placed numerous telephone calls) to try to gain access to the account. After reviewing the supplemental documentation, the MassHealth worker responded that MassHealth would not reverse its original determination of excess assets, and that there was not sufficient information to determine the assets were inaccessible during the appellant's lifetime. See Exhibit 7.

¹ The attorney stated that MassHealth's Estate Recovery Unit reached out to her about placing a lien on the appellant's property, but that she had not actually received notice of a lien having been placed. The MassHealth representative stated that he did not see any lien in the system.

Findings of Fact

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

1. The appellant was a resident of a nursing facility.
2. On May 24, 2021, a MassHealth long-term care application was filed on the appellant's behalf, seeking coverage as of April 15, 2021.
3. In June 2021, the appellant's daughter was appointed as his conservator.
4. On July 6, 2021, MassHealth denied the application for failure to provide all requested verifications.
5. The appellant filed a timely appeal of the verification denial. The verification issue subsequently resolved, protecting the original application date.
6. On July 26, 2021, the appellant died.
7. On August 12, 2021, MassHealth denied the application for excess assets. MassHealth determined the appellant had assets totaling \$6,838.64, which exceeds the asset limit by \$4,838.64.
8. On September 23, 2021, the Probate and Family Court appointed a personal representative for the appellant's estate.
9. The appellant's primary asset is a retirement account containing \$6,837.64.
10. The appellant's daughter, as conservator, made attempts to liquidate the account during his lifetime but faced logistical roadblocks from the company holding the account.
11. After the appellant's death, the account became an asset of the appellant's estate. It has not yet been liquidated.

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 a retirement account containing \$6,837.64. The appellant's representative contends that the account is inaccessible and therefore is noncountable for MassHealth purposes. She argues that this is because the company made it so burdensome to complete the steps necessary to liquidate the account that it was effectively "impossible" to do so.

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 encountered frustrating obstacles in her efforts to liquidate the retirement 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 logistical challenges. Further, it is not clear that these impediments are insurmountable. There is nothing in the communications from the company that suggests that access to the account was "impossible," as the appellant contends; rather, it appeared to be a matter of jumping through a series of time-consuming bureaucratic hoops. This does not equate to inaccessibility under the MassHealth regulations. 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

