

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied & Dismissed	Appeal Numbers:	2155332 & 2177047
Decision Date:	10/22/2021	Hearing Date:	10/06/2021
Hearing Officer:	Alexandra Shube	Record Open to:	10/07/2021

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:


Via telephone:

Jennifer Moreno, Springfield MEC



*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

Appeal Decision:	Denied & Dismissed	Issue:	LTC Eligibility; Trust
Decision Date:	10/22/2021	Hearing Date:	10/06/2021
MassHealth's Rep.:	Jennifer Moreno	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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 June 23, 2021, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that the appellant held countable trust assets in excess of the allowable asset limit (see 130 CMR 520.003; 130 CMR 520.004; and Exhibit 1a). The appellant filed this appeal #2155332 in a timely manner on July 15, 2021 (see 130 CMR 610.015(B) and Exhibit 2a). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Through a notice dated August 31, 2021, MassHealth notified the appellant that it had been told of the death of the appellant (Exhibit 1b). The appellant filed this appeal #2177047 in a timely manner on September 9, 2021; however, at hearing, the representative of the estate did not dispute this notice. For these reasons, the appeal as to the August 31 notice regarding the death of the appellant is dismissed.

The record in this appeal was held open until October 7, 2021.

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth long-term care benefits due to a determination that she had assets in excess of the allowable limit.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant was ineligible for MassHealth benefits because she retained assets, held in an irrevocable trust, in excess of the allowable asset limit.

Summary of Evidence

MassHealth was represented at hearing via telephone by an eligibility worker who testified as follows: the appellant was a single individual over the age of 65 and a resident of nursing facility. On April 20, 2021, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of April 17, 2021. On June 23, 2021, MassHealth denied the application after it determined that the appellant was over the allowable asset limit due to an irrevocable trust. The appellant's assets totaled \$101,583, comprised of a checking account with \$1,046 and a trust with \$100,537. This put the appellant \$99,583 over the allowable asset limit of \$2,000.

The MassHealth representative explained that the Trust was countable under Article 1 of the Trust which allowed for income and trust principal to be paid to or for the benefit of the appellant. The relevant Trust provisions are as follows:

ARTICLE 1:

During the lifetime of the said Beneficiaries¹, the Trustee may pay to or apply for the benefit so much of the net income or principal/gains hereof together with such amount or amounts as the Trustee may in his sole discretion determine advisable for the comfort, maintenance, support, and happiness of the Beneficiaries, even to the point of reducing or gradually distributing the entire trust property if it appears to him appropriate to do so. The income generated from the Trust assets herein may be paid to [Appellant] for her natural lifetime, within the discretion of the Trustee. At such time as she has deceased, the remaining assets herein shall pass to [Appellant's son] in their entirety. In the event that [Appellant's son] has predeceased [Appellant], the assets of this Trust shall then pass to [Appellant's grandchildren], in equal shares. In the event that any of the aforesaid beneficiaries shall predecease the other, then their share shall pass to their then surviving issue and, if no issue, to the surviving beneficiaries herein...

ARTICLE 2:

2.1 Any payment of principal or income shall be free from the interference and control of creditors and from all marital control and shall not be anticipated by way of assignment, whether voluntary or by process of law, and each such payment shall be so protected until its actual receipt by the appropriate recipient as authorized

¹ The Schedule of Beneficiaries attached to the Trust shows that the appellant is the primary beneficiary and upon her death, her son is the next beneficiary.

hereunder.

2.2 When any payment of principal or income is due or is to be paid in the discretion of the Trustee to any minor, the Trustee is authorized to make such payment, regardless of the amount, in her sole discretion, directly to such minor, to a parent of such minor for the benefit of such minor, or, if not prohibited by law, to a custodian for such minor under a Uniform Transfers to Minors Act or comparable act of any jurisdiction.

The MassHealth representative stated that there were four distributions totaling \$20,732 from Trust principal that went to the appellant's granddaughter for her wedding.

The appellant was represented at hearing via telephone by her son, the personal representative of the estate. He testified that the appellant's house was sold, and the money was put into an investment account in the Trust. The appellant passed away on [REDACTED]. He stated that pursuant to the language of the Trust, he, as the Trustee, had sole discretion to distribute Trust assets to the appellant. At no time was Trust principal distributed to the appellant. She only ever received income from the Trust. The four distributions from Trust principal went to the appellant's granddaughter to help with her wedding, as permissible by the Trust. He explained that both he and the appellant have experienced health issues, but he and his wife cared for the appellant at their home for years before she entered the nursing facility and requested state assistance.

Neither party disagreed with the notice date August 31, 2021 stating that MassHealth had been informed of the death of the appellant. Parties agreed that the appeal could be dismissed as to that issue and the only issue remaining on appeal was whether the Trust was countable.

The record was initially held open until December 8, 2021 for information on the representative of the estate. That information was received on October 7, 2021 and the record closed.

Findings of Fact

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

1. On April 20, 2021, MassHealth received an application for long-term care on behalf of the appellant (Testimony and Exhibit 5a).
2. On June 23, 2021, MassHealth denied the application after it determined that the appellant was over the allowable asset limit due to an irrevocable trust (Testimony and Exhibit 1a).
3. On July 15, 2021, the appellant timely appealed the June 23 notice (Exhibit 2a).
4. The appellant's assets totaled \$101,583, comprised of a checking account with \$1,046 and a trust with \$100,537, putting the appellant \$99,583 over the allowable asset limit (Testimony and Exhibit 5a).

5. The appellant died on [REDACTED] (Testimony).
6. On August 31, 2021, MassHealth issued a notice stating it had been told of the death of the appellant (Testimony and Exhibit 1b).
7. The appellant timely appealed that notice on September 9, 2021 (Exhibit 2b).
8. Parties did not dispute the death of the appellant (Testimony).
9. The appellant was the primary beneficiary of the Trust (Exhibit 5a).
10. The relevant portions of the Trust instrument are as follows:

ARTICLE 1:

During the lifetime of the said Beneficiaries, the Trustee may pay to or apply for the benefit so much of the net income or principal/gains hereof together with such amount or amounts as the Trustee may in his sole discretion determine advisable for the comfort, maintenance, support, and happiness of the Beneficiaries, even to the point of reducing or gradually distributing the entire trust property if it appears to him appropriate to do so. The income generated from the Trust assets herein may be paid to [Appellant] for her natural lifetime, within the discretion of the Trustee. At such time as she has deceased, the remaining assets herein shall pass to [Appellant's son] in their entirety. In the event that [Appellant's son] has predeceased [Appellant], the assets of this Trust shall then pass to [Appellant's grandchildren], in equal shares. In the event that any of the aforesaid beneficiaries shall predecease the other, then their share shall pass to their then surviving issue and, if no issue, to the surviving beneficiaries herein...

ARTICLE 2:

2.1 Any payment of principal or income shall be free from the interference and control of creditors and from all marital control and shall not be anticipated by way of assignment, whether voluntary or by process of law, and each such payment shall be so protected until its actual receipt by the appropriate recipient as authorized hereunder.

2.2 When any payment of principal or income is due or is to be paid in the discretion of the Trustee to any minor, the Trustee is authorized to make such payment, regardless of the amount, in her sole discretion, directly to such minor, to a parent of such minor for the benefit of such minor, or, if not prohibited by law, to a custodian for such minor under a Uniform Transfers to Minors Act or comparable act of any jurisdiction.

(Exhibit 5a).

Analysis and Conclusions of Law

The representative of the estate does not dispute the August 31, 2021 notice regarding the death of the appellant. For this reason, the appeal is dismissed as to that issue.

At issue is whether MassHealth correctly determined that the appellant is ineligible for MassHealth benefits because she retained Trust assets in excess of the allowable asset limit. In order to be approved for MassHealth benefits, the total value of countable assets or resources owned by or available to the applicant may not exceed \$2,000. See 130 CMR 520.003(A)(1). Generally, resources held in a trust are considered available if under “any circumstances” described in the terms of the trust, any of the resources can be made available to the individual. See 130 CMR 520.023. With respect to Medicaid eligibility determinations involving irrevocable trusts created on or after August 11, 1993, federal law at 42 U.S.C. § 1396p(d)(3)(B) states:

(i) if there are ***any circumstances under which payment from the trust could be made to or for the benefit of the individual***, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made ***shall be considered resources available to the individual***, and payments from that portion of the corpus or income—

(I) to or for the benefit of the individual, shall be considered income of the individual,...

42 U.S.C. §1396p(d)(3)(B) (emphasis added).

Pursuant to the corresponding MassHealth regulation, the amount of an irrevocable trust countable to an applicant is determined as follows:

(a) Any portion of the principal or income from the principal (such as interest) of an irrevocable trust ***that could be paid under any circumstances to or for the benefit of the individual is a countable asset***.

(b) Payments from the income or from the principal of an irrevocable trust made to or for the benefit of the individual are countable income.

.....

130 CMR 520.023(C) (emphasis added).

In its denial notice, MassHealth counted the Trust valued at \$100,537 as available to the appellant. Based on the federal Medicaid statute and MassHealth regulation cited above, the pertinent question is whether any portion of Trust principal could “under any circumstances” be paid to or for the benefit of the appellant. Under the “any circumstances” test, if the grantor gives the trustee any “leeway to respond to emergency and unexpected circumstances,” the total amount available to be paid to address such circumstances is counted as fully available to the grantor, even if the trust provisions otherwise limit the trustee’s discretion to pay for long-term care.” Daley v. Secretary of Executive Office of Health and Humans Services, 477 Mass. 188, 193-194

(citing Cohen v. Commissioner of the Div. of Med. Assistance, 423 Mass. 399, 418-19 (1996)). A “clause may not be read in isolation; rather, it must be construed and qualified in light of the trust instrument as a whole.” Doherty v. Director of the Office of Medicaid, 74 Mass. App. Ct. 439, 441 (2009). Accordingly, the whole trust instrument must be reviewed.

MassHealth stated that Article 1, which allowed the Trustee to pay income from the Trust to the appellant, made the trust countable. This argument, however, stretches the meaning of the “any circumstances” test and disregards the SJC’s clear ruling in Daley, that income and principal are to be treated differently. The Daley Court held that “[t]he ‘any circumstances test’ is qualified by an important caveat: if the amounts that may be paid to the Medicaid applicant come only from the income of the trust, those income payments do not render the principal of the trust available as an asset; rather they are treated as income that may affect the amount of Medicaid benefits to be received but not the applicant’s eligibility for such benefits.” Daley at 194. Actual payments of income from the Trust – which would appropriately be considered income to the appellant – are addressed in 130 CMR 520.023(C)(1)(b) and 42 USC §1396p(d)(3)(B)(i)(I). Accordingly, this part of Article 1 does not create a circumstance where principal could be paid to or used for the appellant’s benefit.

MassHealth also argued that Article 1 of the Trust allowed for Trust principal to be paid to or for the benefit of the appellant, making the Trust countable. While the appellant’s testimony was credible and no Trust principal was distributed to the appellant, the language of the Trust clearly allows for distributions from Trust principal to the appellant, the primary beneficiary, at the discretion of the Trustee. Article 1 states:

During the lifetime of the said Beneficiaries, the Trustee may pay to or apply for the benefit so much of the net income or principal/gains hereof together with such amount or amounts as the Trustee may in his sole discretion determine advisable for the comfort, maintenance, support, and happiness of the Beneficiaries, even to the point of reducing or gradually distributing the entire trust property if it appears to him appropriate to do so.

Article 2 also makes clear that payments can be made from principal, stating in Article 2.1: “**Any payment of principal** or income shall be free from the interference and control of creditors...” Based on the plain language of the Trust, the Trustee has the ability, or “leeway”, to distribute not just a portion of Trust principal, but the entire Trust corpus to the appellant.

For these reasons, MassHealth is correct, and the entirety of the Trust is countable. The 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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104