

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2177531
<b>Decision Date:</b>	11/26/2021	<b>Hearing Date:</b>	10/20/2021
<b>Hearing Officer:</b>	Radha Tilva	<b>Record Open:</b>	11/24/2021

**Appearance for Appellant:**



**Appearance for MassHealth:**

Ana Costa, Taunton MEC Rep. (hearing)  
Jamie Silva, Taunton MEC Rep. (post-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 - assets
<b>Decision Date:</b>	11/26/2021	<b>Hearing Date:</b>	10/20/2021
<b>MassHealth's Rep.:</b>	Ana Costa	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<b>Aid Pending:</b>	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 September 1, 2021, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that appellant has more assets than MassHealth benefits allows (Exhibit 1). The appellant filed this appeal in a timely manner on October 1, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

At hearing the record was left open at first until October 29, 2021 for the appellant to submit a memorandum along with supporting documentation. The record was again re-opened twice for further clarification of appellant's financial account as it was not adequately explained at hearing and no supporting documentation was provided. The hearing record closed on November 24, 2021. It should be noted that any delays due to issuing of this decision are due to serious illness in the hearing officer's family (130 CMR 610.015(D)).

## Action Taken by MassHealth

MassHealth denied appellant's application for MassHealth long-term care benefits because MassHealth determined that appellant has more assets than MassHealth benefits allows.

## Issue

The appeal issue is whether MassHealth was correct in determining that appellant is ineligible for MassHealth long-term care benefits because she has more assets than MassHealth benefits allows.

## Summary of Evidence

The MassHealth representative applied for MassHealth long-term care benefits on May 6, 2021 seeking an eligibility start date of February 1, 2021. On May 14, 2021 MassHealth sent a request for verifications. The verifications were not submitted and a denial issued. Eventually, the verifications were submitted and MassHealth protected the application date of May 6, 2021. The MassHealth representative testified, however, that as of the requested date, the applicant was over assets and there were no transactions to satisfy a Haley calculation. The representative further explained that appellant had \$9,443.70 in a bank account on February 28, 2021 and a financial account had \$45,889.65 on that same date. The total assets thus were \$55,333.34 subtracted by the allowed \$2,000.00 which resulted in the applicant being over the asset limit by \$53,333.34 on the requested date.

The appellant was represented by a Medicaid Specialist who appeared by telephone. The Medicaid Specialist stated that Medicare was paid from December 2020 to February 2021. When she came off her Medicare stay the appellant's nephew, her former health care proxy, tried to set up a plan for discharge with the nursing facility, but was told that the facility would not speak with him as a new health care proxy was put in place. The facility filed for Conservatorship on April 2, 2021 as a nurse at the facility deemed her incompetent. The nephew hired an attorney and petitioned the conservatorship with the court, several hearings took place and the court recommended a physician do a full evaluation of her. She was deemed competent on June 10, 2021 and released from the nursing facility a few days later.

The appellant's representative explained that appellant did have \$9,399.90 in her bank account when she was admitted in December 2020. The representative also confirmed that appellant's financial account which held stock had \$45,889.65. The appellant's representative stated, however, that her current bank statements had less than \$800.00 in the account. During the record open period the appellant's representative stated, in her memorandum, that appellant also had stocks in the amount of \$25,436.23 that were not cashed until June 2, 2021.<sup>1</sup> The appellant stated that the courts released her from the facility in June 2021 and she did not have all the funds available until she was evaluated and found competent. The appellant's representative explained that the funds were all spent for her court case that the nursing facility filed. If she still had the funds and did not

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<sup>1</sup> The hearing officer reopened the record to inquire about the discrepancy between the \$45,889.65 balance and \$25,436.23 that was cashed June 2, 2021. In addition, the hearing officer wanted a copy of the financial account with \$45,889.65 showing that it was depleted. This account was provided November 24, 2021 and showed that appellant had a zero balance in her statement dated June 1, 2021 to June 30, 2021 (Exhibit 11, p. 24).

have to use them to prove her competency she could have paid the nursing facility for the care. The appellant's representative included the bank statements in her packet along with correspondence and statements from the attorney's that handled the appellant's conservatorship case. Along with the bank statements the appellant's representative also provided checks and invoices that were used to pay for her legal expenses on her conservatorship case totaling \$53,338.00. The funds were all spent after appellant entered the nursing facility (see Exhibit 7). A bank statement from August 26, 2021 through September 27, 2021 was submitted during the record open period and showed a current balance of \$898.68. In addition, financial statements which held stock for appellant were also provided and showed a zero balance in the June 2021 statement (Exhibit 11).

The MassHealth representative responded during the record open period and stated that the over asset denial notice would still stand as the applicant was over assets on the requested date (Exhibit 8). In addition, the MassHealth representative noted that the applicant did not spend down on allowable expenses or anything that could be used in a Haley calculation (Exhibit 8). Moreover, MassHealth could not issue a transfer penalty since the assets were spent long after the requested start date (Exhibit 8).

## **Findings of Fact**

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

1. The MassHealth representative applied for MassHealth long-term care benefits on May 6, 2021 seeking an eligibility start date of February 1, 2021.
2. On May 14, 2021 MassHealth sent a request for verifications. The verifications were not submitted and a denial issued. Eventually, the verifications were submitted and MassHealth protected the application date of May 6, 2021.
3. Appellant had \$9,443.70 in a bank account on February 28, 2021 and a financial account had \$45,889.65 on that same date. The total assets thus were \$55,333.34 subtracted by the allowed \$2,000.00 which resulted in the applicant being over the asset limit by \$53,333.34 on the requested date.
4. Medicare paid for appellant's stay from December 2020 to February 2021.
5. Appellant's nephew, her former health care proxy, tried to set up a plan for discharge with the nursing facility, but was told that the facility would not speak with him as a new health care proxy was put in place.
6. The facility filed for Conservatorship on April 2, 2021 as a nurse at the facility deemed her incompetent.
7. The nephew hired an attorney and petitioned the Conservatorship; the appellant was deemed competent on June 10, 2021 and released from the nursing facility a few days later.

8. The assets in appellant's accounts were spent down by the time of the hearing to below \$2,000.00.

## **Analysis and Conclusions of Law**

Pursuant to 130 CMR 520.003 the total value of countable assets owned by or available to individuals applying for MassHealth Standard may not exceed \$2,000.00. An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resources provisions for nursing-facility residents at 130 CMR 520.019(F) or as of the date 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. Thus, unless the applicant reduces their assets through medical expenses, the applicant becomes eligible for LTC service "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 ... ." 130 CMR 520.004(A)(1)(A).

Appellant contends that the assets were inaccessible in February 2021 under 130 CMR 520.006, however, an inaccessible asset is an asset to which the applicant or member has no legal access. In February 2021, when the applicant was seeking coverage, she did have access to her funds. The checks provided by the appellant show that she was writing checks to a law firm in May 2021. Moreover, the conservatorship filing did not occur until April 2, 2021. Thus, the assets cannot be considered inaccessible.

While it is undisputed that appellant was over assets February 2021 when she was seeking coverage the appellant did spend down her assets by the time the hearing was scheduled on October 20, 2021. The MassHealth representative argues that as the appellant was over assets at the time she was seeking coverage she cannot be eligible for MassHealth benefits, however, 130 CMR 520.004(A)(1)(A) permits eligibility pending the date the applicant reduces excess assets. While MassHealth contends that the transfers cannot be considered disqualifying as the assets were spent after appellant was admitted to the nursing facility, nothing in the regulations supports that. Based on the analysis above, this matter is APPROVED.

## **Order for MassHealth**

Rescind notice dated September 1, 2021 and approve appellant for MassHealth long-term care benefits based on the analysis above.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your 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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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

[REDACTED]