

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2177975
Decision Date:	12/08/2021	Hearing Date:	11/19/2021
Hearing Officer:	Thomas J. Goode	Record Open to:	12/3/2021

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Jonathan Gonzalez, Chelsea 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	Issue:	Eligibility
Decision Date:	12/08/2021	Hearing Date:	11/19/2021
MassHealth's Rep.:	Jonathan Gonzalez	Appellant's Rep.:	Pro se
Hearing Location:	Chelsea MassHealth Enrollment Center Room 2	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 September 21, 2021, MassHealth denied Appellant's application for MassHealth benefits because MassHealth determined that assets exceed program guidelines (130 CMR 519.005, 520.003, 520.007 and Exhibit 1). Appellant filed this appeal in a timely manner on October 19, 2021 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). A hearing was held on November 19, 2021. The hearing record remained open until December 3, 2021 to allow Appellant to submit additional verification of the cash surrender value of a life insurance policy which was timely received (Exhibits 5-7).

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth benefits because MassHealth determined that assets exceed program guidelines.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.005, 520.003, 520.007, in determining that Appellant's assets exceed program limits for MassHealth coverage.

Summary of Evidence

The MassHealth representative testified by telephone that Appellant lives in the community as a household size of one person over 65 years of age. Appellant receives \$1,401.50 Social Security income. On September 21, 2021, MassHealth issued notice informing Appellant that he was not MassHealth eligible due to a life insurance policy with a cash value of \$275,065.21 (Exhibit 1). The MassHealth representative testified that the policy information submitted with Appellant's application shows a total accumulated policy value of \$275,065.21, which MassHealth used to calculate the policy value (Exhibit 4, p. 2). Appellant is eligible for Health Safety Net effective June 1, 2021; however, because assets exceed \$2,000, MassHealth determined that Appellant is ineligible for MassHealth.

Appellant challenged the valuation of the life insurance policy and argued that the accumulated value is not the same as the cash value. He explained that he has owned the whole-life insurance policy at issue since the 1980s and borrowed against the policy. Appellant submitted documentation showing that the cash surrender value of the policy is \$13,833.24; the amount available for loan is \$0; and the taxable income of the policy if surrendered is \$171,928.76 (Exhibit 6, p. 8). Appellant explained that he is unable to access the cash value of the policy as a loan and surrendering the policy would result in a taxable event based on taxable income of \$171,928.76 which would result in his bankruptcy. Appellant argued that the cash value of the policy is inaccessible under 130 CMR 520.007 because the evidence shows that the policy is loan-encumbered and is effectively assigned to the life insurance company as security against the policy loan, and upon his death, his children will receive the death benefit minus the loan repayment. Therefore, Appellant argues that he is eligible for MassHealth Standard coverage.

After reviewing the material submitted during the hearing record open period, MassHealth valued the life insurance policy at \$13,833.24, and upgraded Appellant's coverage to MassHealth Senior Buy-In effective June 1, 2021 to correspond to the determination of eligibility for Health Safety Net (Exhibits 7, 9).

Findings of Fact

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

1. Appellant lives in the community in household of one person over 65 years of age.
2. Appellant receives \$1,401.50 Social Security income.
3. 100% of the federal poverty level for a household size of 1 is \$1,074.
4. Appellant owns a life insurance policy with a cash surrender value of \$13,833.24.
5. The amount available to loan against the life insurance policy is \$0.

6. The taxable income of the life insurance policy if surrendered is \$171,928.76.

Analysis and Conclusions of Law

Regulation 130 CMR 519.005 states:

(A) Eligibility Requirements. Except as provided in 130 CMR 519.005(C)¹, noninstitutionalized individuals 65 years of age and older may establish eligibility for MassHealth Standard coverage provided they meet the following requirements:

- (1) the countable-income amount, as defined in 130 CMR 520.009: *Countable-Income Amount*, of the individual or couple is less than or equal to 100% of the federal poverty level; and
- (2) the countable assets of an individual are \$2,000 or less, and those of a married couple living together are \$3,000 or less.²

The cash surrender value of a life-insurance policy is a countable asset under 130 CMR 520.007(E)(1) which provides the following definition:

The cash-surrender value of a life-insurance policy is the amount of money, if any, that the issuing company has agreed to pay the owner of the policy upon its cancellation. An individual may adjust the cash-surrender value of life insurance to meet the asset limit. The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset during the adjustment period.

Regulation 130 CMR 520.006: Inaccessible Assets follows:

(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.

The documentation submitted by Appellant during the hearing record-open period shows that the cash surrender value of the policy at issue is \$13,833.24; the amount available for loan is \$0; and the taxable income of the policy if surrendered is \$171,928.76 (Exhibit 6, p. 8). There is no evidence that Appellant does not have legal access to the cash surrender value of the policy even though it may be untenable to access the cash value from a taxation perspective as Appellant asserts. Further,

¹ 519.005(C) applies only to parents and caretaker relatives of children younger than 19 years of age.

² See also 130 CMR 520.003.

there is no evidence that the life insurance policy has been assigned to the issuing company for adjustment. Considering the evidence only within the context of the MassHealth regulations shows that regardless of Appellant's inability to take any additional loans, Appellant would receive the cash value of \$13,833.24 by surrendering the policy, tax considerations notwithstanding. Therefore, MassHealth correctly counted the \$13,833.24 cash value in determining Appellant's MassHealth eligibility. As countable assets exceed \$2,000, Appellant is not eligible for MassHealth Standard coverage.³

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA 02150

³ The September 21, 2021 notice denied Appellant's MassHealth application due only to the valuation of the cash value of a life-insurance policy; however, Appellant's \$1,401.50 income also exceeds the \$1,074 federal poverty guideline for MassHealth Standard. It also appears that Appellant is eligible for Senior Buy-In as his countable assets are less than or equal to the amount of allowable assets for Buy-in programs as identified by the Centers for Medicare and Medicaid Services in the *Federal Register* and made available on MassHealth's website (Exhibit 8). MassHealth issued a new notice dated December 1, 2021 to which appeal rights attach (Exhibit 9).