

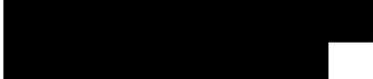
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2177990
Decision Date:	01/26/2022	Hearing Date:	12/17/2021
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

Jennifer Moreno, Springfield



*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:	Approved	Issue:	LTC – start date
Decision Date:	01/26/2022	Hearing Date:	12/17/2021
MassHealth’s Rep.:	Jennifer Moreno	Appellant’s Rep.:	██████████
Hearing Location:	Springfield (remote)	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

By notice dated September 20, 2021, MassHealth approved Appellant for MassHealth Standard long term care benefits effective July 22, 2021. Exhibit 1. Appellant filed this appeal in a timely manner on October 20, 2021. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing was initially scheduled for November 22, 2021 but rescheduled at Appellant’s attorney’s request due to a court conflict. Exhibit 6.

Action Taken by MassHealth

MassHealth approved Appellant for MassHealth Standard long term care benefits effective July 22, 2021.

Issue

The appeal issue is whether MassHealth was correct in determining the start date of long-term care coverage.

Summary of Evidence

A MassHealth eligibility representative appeared by telephone and testified as follows. MassHealth received Appellant’s application for long term care benefits on January 19, 2021. Appellant requested that coverage begin on February 14, 2021. Ultimately, MassHealth received all

verifications and approved long term care coverage to begin on July 22, 2021. Exhibit 1.

MassHealth determined that Appellant's countable assets exceeded MassHealth's limit until July 22, 2021, when a bank account owned by Appellant's estranged spouse was confirmed to be closed. Exhibit 4 at 4. Despite being separated from her spouse for approximately 30 years, Appellant's name appeared on her spouse's checking and savings account. MassHealth argued that because Appellant had legal access to the accounts, the assets contained therein were available to her and thus countable. However, MassHealth testified that Appellant had verified that she did not own the funds, as she had not made any withdrawals or deposits from or into the account. MassHealth did not consider the closing of the account a disqualifying transfer against Appellant for this reason.

Appellant's attorney and representative submitted a brief and exhibits in advance of hearing, Exhibit 5. A summary of documents and testimony follows. Appellant and her spouse have been estranged for over 30 years, and the estranged spouse was reluctant to cooperate and close the accounts, which would be burdensome for an elderly person. However, the estranged spouse eventually closed both accounts which listed Appellant as an owner, as confirmed by the July letter. Appellant's attorney argued that Appellant should not be penalized by the estranged spouse dragging his feet in closing the accounts and/or the bank's delay in sending the July letter. Appellant's attorney argued that she submitted sufficient evidence to show that Appellant had neither access nor ownership of the accounts.

Findings of Fact

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

1. On January 19, 2021, MassHealth received Appellant's application for long term care benefits. Appellant requested February 14, 2021 as the coverage start date.
2. On September 20, 2021, MassHealth approved Appellant's application effective July 22, 2021. Exhibit 1.
3. Appellant filed a timely appeal on October 20, 2021. Exhibit 2.
4. Appellant's personal bank account was reduced under MassHealth's \$2,000 limit on February 18, 2021.
5. Appellant was listed on her spouse's checking and savings account. A letter dated July 22, 2021 verified Appellant's removal from the accounts. Exhibit 4 at 4.
6. Appellant and her spouse are estranged for over 30 years.
7. MassHealth conceded that Appellant does not have a community spouse for purposes of MassHealth eligibility and conceded that Appellant was not the owner of the assets contained in her spouse's bank accounts.

Analysis and Conclusions of Law

The total value of countable assets owned by or available to an individual applying for MassHealth Standard for long term care assistance may not exceed \$2,000.00. 130 CMR 520.003(A)(1). Per 130 CMR 520.004, the amount of an applicant's total countable assets affects the start date for MassHealth long term care benefits:

(A) Criteria.

(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.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility

(1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: *Date of Application*; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

Bank accounts are countable assets as set forth in 130 CMR 520.007(B) (emphasis added):

(B) Bank Accounts.

(1) Definition. Bank accounts are defined as deposits in a bank, savings and loan institution, credit union, or other financial institution. Bank accounts may be in the form of savings, checking, or trust accounts, term certificates, or other types of accounts.

(2) Determination of Ownership and Accessibility. The MassHealth agency considers funds in a bank account **available only to the extent that the applicant or member has both ownership of and access to such funds. The MassHealth agency determines the ownership of and access to the funds in accordance with 130 CMR 520.005 and 520.006.**

(3) Verification of Account Balances. The MassHealth agency requires verification of the current balance of each account at application, during eligibility review, and at times of reported change.

(a) Noninstitutionalized individuals excluding the individuals described at 130 CMR 519.007(B): *Home- and Community-Based Services Waiver-Frail Elder* must verify the amount on deposit by bank books or bank statements that show the bank balance within 45 days of the date of application or the date that the eligibility review is received in a MassHealth Enrollment Center or outreach site.

(b) Nursing-facility residents as described at 130 CMR 515.001: *Definition of Terms* must verify the amount on deposit by bank books or bank statements that show the current balance and account activity during the look-back period.

MassHealth's determination of ownership of bank accounts is set forth in 130 CMR 520.005(C) (emphasis added):

(C) Joint Bank Accounts.

(1) Bank accounts are defined at 130 CMR 520.007(B)(1).

(2) When the applicant or member is a joint owner of a bank account, the entire amount on deposit is considered **available** to the applicant or member, except when assessing assets in accordance with 130 CMR 520.016.

(3) If the applicant or member claims partial ownership of the funds in the joint account, he or she must verify the amount **owned** by each joint depositor. When such a partial ownership is verified, **the countable value of the assets is attributed to each owner in proportion to the ownership interest.**

(4) The applicant or member may transfer the funds owned by him or her into an account that accurately reflects his or her ownership interest. The MassHealth agency does not consider such a transfer of assets to make oneself eligible for MassHealth if the transfer is completed within 30 days after written notification by the MassHealth agency of this requirement, except in the case of a community spouse as described at 130 CMR 520.016 who is allowed 90 days to make the transfer.

In this case, Appellant's name appeared as an owner of two bank accounts held jointly with her estranged spouse. MassHealth, relying on 130 CMR 520.005(C)(2), determined that because the

assets held in the two joint accounts was available to Appellant, they were her countable assets until her name was removed from the account as verified in the July 22, 2021 letter.¹ However, as stated in 130 CMR 520.007(B)(2), the funds are only available, and therefore countable, if Appellant has “both ownership of and access to such funds” in accordance with 130 CMR 520.005.

Here, pursuant to 130 CMR 520.005(C)(3), Appellant claims, and verified to MassHealth’s satisfaction, that she does not own the funds contained in the two accounts. Under this regulation, Appellant’s countable assets are to be determined in proportion to her ownership interest in those funds. As Appellant has verified to MassHealth’s satisfaction that she has zero ownership interest in the funds, the countable value of the assets attributable to Appellant is zero. The undisputed evidence demonstrates that Appellant did not have ownership of the funds as required by 130 CMR 520.007(B)(2) for MassHealth to count these assets.

MassHealth testified that but for the assets in the two joint accounts, Appellant was asset eligible as of February 18, 2021. As the countable value of the assets in the two joint accounts attributable to Appellant is zero, Appellant has demonstrated that she is entitled to an eligibility start date of February 18, 2021. Accordingly, this appeal is approved.

Order for MassHealth

Amend the approval start date to February 18, 2021.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

¹ The exception contained in 130 CMR 520.005(C)(2) refers to 130 CMR 520.016, which “describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.” In this matter, MassHealth did not consider the estranged spouse a community spouse for purposes of Appellant’s eligibility under 130 CMR 520.016.

