

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2178690
<b>Decision Date:</b>	02/02/2022	<b>Hearing Date:</b>	12/24/2021
<b>Hearing Officer:</b>	Christine Therrien		

Appearance for Appellant:




Appearance for MassHealth:

Alfred Peach, Tewksbury



*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>	Denied	<b>Issue:</b>	LTC – start date
<b>Decision Date:</b>	02/02/2022	<b>Hearing Date:</b>	12/24/2021
<b>MassHealth’s Rep.:</b>	Alfred Peach	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center		

## 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 10/21/2021, MassHealth approved the appellant's application for MassHealth Long Term Care (LTC) benefits with a start date of 9/1/2021(130 CMR 520.026 and Exhibit 1). The appellant filed this appeal in a timely manner on 11/17/2021 (130 CMR 610.015(B) and Exhibit 2). Determination of a start date is valid grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth determined a MassHealth start date of 9/1/21.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.006, in determining that the appellant’s LTC benefits start date.

## Summary of Evidence

The MassHealth representative testified that a LTC application was received on 9/20/2021 and approved for MassHealth on 10/21/2021, with a start date of 9/1/2021. The MassHealth representative testified that the requested start date is 7/8/2021. The MassHealth representative testified that the appellant had countable assets on the requested start date, 7/8/21, totaling \$60,764.

The MassHealth representative testified that a valid pooled trust was established on 8/20/2021. The MassHealth representative testified that the initial deposits to the pooled trust were received on 8/23/2021 in the amount of \$46,851.58. The MassHealth representative testified that on 9/3/2021 another deposit was made to the pool trust in the amount of \$9,636.49. The MassHealth representative testified that MassHealth considers the \$9,636.49 available to the appellant to pay for her care until 9/3/2021.

The appellant's representative testified that MassHealth determined the asset reduction date of 9/3/2021 when the last deposit was cleared into the pooled trust. The appellant's representative testified that the transfer of \$9,636.49 was initiated on 8/17/21 when a check was written out to the appellant from the appellant's brokerage account (Exhibit 4, p. 3). The appellant's representative testified that the appellant's POA received the brokerage account check on 8/25/21, but since it was a paper check he did not have access to the funds until it was deposited into the pooled trust. The appellant's representative testified that the funds were inaccessible and therefore should not be counted as an asset. The appellant's submissions states that the check for \$9,636.49 was written out to the appellant and endorsed to the trust (Exhibit 4, p. 12).

## Findings of Fact

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

1. A LTC application was received on 9/20/2021 and approved for MassHealth on 10/21/2021, with a start date of 9/1/2021.
2. The requested start date is 7/8/2021.
3. The appellant had countable assets on the requested start date, 7/8/21, totaling \$60,764.
4. A valid pooled trust was established on 8/20/2021.
5. The initial deposits to the pooled trust were received on 8/23/2021 in the amount of \$46,851.58.
6. On 9/3/2021 another deposit was made to the pool trust in the amount of \$9,636.49.
7. MassHealth considers the \$9,636.49 available to the appellant to pay for her care until 9/3/2021.
8. The transfer of \$9,636.49 was initiated on 8/17/21 and the check was received by the appellant's POA on 8/25/21. A check was written out to the appellant from the appellant's brokerage account (Exhibit 4, pp. 3-4).
9. The check for \$9,636.49 was written out to the appellant and endorsed to the trust (Exhibit 4, p. 12).

## Analysis and Conclusions of Law

For an individual applying for LTC benefits, MassHealth has an asset limit of \$2,000 (130 CMR 520.003). If an otherwise eligible applicant's assets exceed the limit for MassHealth Standard, they may become eligible "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;"<sup>1</sup> or "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" (130 CMR 520.004(A)(1)). This allows an applicant to become asset eligible retroactively, as long as they can show that they incurred medical expenses in the past that exceed their assets.<sup>2</sup> This regulation does not require that the assets be reduced on the incurred medical expenses, but MassHealth will only start paying long-term-care benefits as of the date "the medical bills equal to the amount of excess assets"<sup>3</sup> (130 CMR 520.004(B)).

### 130 CMR 520.004: Date of Eligibility

#### (A) Criteria.

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<sup>1</sup> (D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law. (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3). (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse. (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child. (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded. (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled; (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or (d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility. (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

<sup>2</sup> Otherwise, assets may only be reduced retroactively by funding funeral arrangements (130 CMR 520.008(F)(3)).

<sup>3</sup> MassHealth also does not count funeral or burial arrangements as assets, and the creation of these arrangements is allowed retroactive effect back to "the first day of the third month before the application" if the applicant makes the arrangements "within 60 days after the date that the applicant or member was notified of his or her right to do so..." (130 CMR 520.008(F)(3)).

(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.

(emphasis added)

Based upon these regulations, MassHealth was correct to approve benefits as of the date when the appellant's excess assets were spent down, 9/3/21. The appellant's brokerage fund issued the check for \$9,636.49 on 8/17/21. The check was received by the POA on 8/25/21, at which time he endorsed it to the pooled trust. The appellant's representative argues that the funds were inaccessible until they were deposited into the pooled trust. MassHealth regulations regarding inaccessibility are as follows:

130 CMR 520.006: Inaccessible Assets

(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.

(emphasis added).

The appellant had legal access to the funds in her brokerage account. Further, the appellant's POA could have deposited the check or endorsed the check over to the nursing facility the same way it was endorsed to the pooled trust. The appellant's circumstances do not fall under the regulations for inaccessible assets outlined in 130 CMR 520.006. Therefore, this 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.

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Christine Therrien  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Tewksbury MassHealth Enrollment Center. [REDACTED]  
[REDACTED]