

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part

Appeal Number: 2179241

Decision Date: 3/31/2022

Hearing Date: 12/27/2021

Hearing Officer: Patricia Mullen

Record Open to: 04/01/2022

Appearance for Appellant:




Appearance for MassHealth:

Yisell Medina, Taunton 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:	Approved in part; Denied in part	Issue:	Assets
Decision Date:	3/31/2022	Hearing Date:	12/27/2021
MassHealth's Rep.:	Yisell Medina, Taunton MEC	Appellant's Rep.:	
Hearing Location:	Taunton 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 November 23, 2021, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant's assets exceed the limit for MassHealth. (see 130 CMR 520.016 and Exhibit 1). The appellant filed this appeal in a timely manner on December 8, 2021. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). The record was left open until January 27, 2022 to give the appellant and MassHealth the opportunity to determine a final asset amount: the record open period was then later extended a few times until the final record open date of April 1, 2022, to give the appellant the opportunity to submit additional information. (Exhibit 7).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth Standard for long term care residents.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.016, in determining that the appellant's assets exceed the limit for MassHealth Standard.

Summary of Evidence

The appellant was represented telephonically by her attorney at the hearing. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton. By notice dated November 23, 2021, MassHealth denied the appellant's application for MassHealth based on the determination of assets as follows:

Bank accounts:	\$50,001.60
Real estate value:	.50
Cash:	\$ 9,500.00
Security:	\$97,892.09
<hr/>	
Total:	\$157,394.19

(Exhibit 1).

The notice lists the MassHealth asset limit as \$2,000.00 and determines an excess asset amount of \$155,394.19. (Exhibit 1).

In a packet submitted in preparation for the hearing, the MassHealth representative wrote that the date of application was February 1, 2019 and the appellant was seeking a May 14, 2018 MassHealth start date. (Exhibit 6, p. 2). The MassHealth representative attached a list of the breakdown of countable assets:

- Bank Account One: \$1,781.68 as of March 10, 2019, divided by 2 is \$890.84.
- Bank Account Two: \$14.83 as of March 10, 2019, divided by 2 is \$7.42.
- Bank Account Three: \$49,103.34 as of March 8, 2019.
- Individual Retirement Account (IRA) One: \$31,545.17 as of February 28, 2019.
- IRA Two: \$132,693.83 as of May 31, 2018.
- Cash on Hand: \$9,500.00 on August 12, 2018. MassHealth testified this was from the sale of a vehicle.

(Exhibit 6, p. 5). The MassHealth representative explained that the system divided joint assets, namely the bank accounts and IRA Two, in half when issuing the notice resulting in total assets of \$157,394.19. (Exhibit 6, p. 5). The MassHealth representative stated that the appellant's spouse has passed away and thus the total assets of \$224,638.85, are countable to the appellant. (Exhibit 6, p.

5). The hearing officer questioned why joint assets held by the appellant with her spouse were originally split in half as such assets would be countable in full and the spouse would be allowed a spousal share under the MassHealth regulations. The MassHealth representative stated that there is an issue in the MassHealth system that ran the case as a community benefit and cut the assets in half.

The MassHealth representative stated that she spoke with Atty. O'Rourke from MassHealth Legal, and MassHealth is honoring an application date of May 23, 2018. No reason was given as to why this earlier application date controls. The appellant's attorney stated that he submitted additional documentation to MassHealth a couple of weeks prior to the hearing. The MassHealth representative testified that the appellant's attorney submitted a packet of documents with updated statements prior to the hearing, but the MassHealth representative was not able to review the packet prior to the hearing. The MassHealth representative stated that she browsed the updated documents and the appellant still has excess assets, although she could not give an exact amount of countable assets. The MassHealth representative noted that the appellant's attorney and MassHealth attorney tried to get a continuance of the appeal hearing to have time to review the appellant's case file and documentation submitted by the appellant, and work out a final asset amount. The appellant's attorney stated that some assets were spent on the appellant and her deceased spouse.

The appellant's attorney stated that the Superior Court determined trust assets were not countable, but certain other assets not held in the trust were countable. No trust assets are listed on the denial notice on appeal. (Exhibit 1). The Superior Court decision was not submitted at the hearing. The appellant's attorney stated that he has been working with the MassHealth attorney to determine the countable assets and spend down. The appellant's attorney stated that a funeral contract was set up, but nothing has been paid to the appellant's nursing facility. The MassHealth representative noted that the November, 23, 2021 MassHealth asset denial notice was issued after the Superior Court determination.

The appellant's attorney asked that the record be kept open to give MassHealth the opportunity to review the documentation submitted and for the appellant's attorney and MassHealth attorney to determine a final asset amount. The record was left open until January 27, 2022 to give the appellant and MassHealth the opportunity to determine a final asset amount. (Exhibit 7).

In an email dated January 26, 2022, the hearing officer asked if a final asset determination had been made and the appellant's attorney responded that he had not received anything further from MassHealth with regard to the assets or spenddown and noted that he was amenable to keeping the record open. (Exhibit 8). By email dated January 27, 2022, the MassHealth representative submitted a list of assets identical to the list submitted at hearing, except for Bank Account One, which had a new balance of \$1,170.59 as of November 11, 2021, and IRA Two which had a balance of \$66,346.92¹. (Exhibit 12). The appellant's attorney responded that he was scheduled to speak with the MassHealth representative the following day and believed that most of the issues were resolvable. (Exhibit 13). The appellant's attorney noted further that the appellant does not dispute

¹ This amount is exactly half of the previously reported balance of \$132,693.83 and no new balance date was given, thus it is not clear if this amount was the result of another system error. (Exhibit 12).

that Bank Accounts One and Two, IRA One, and cash on hand all need to be spent down. (Exhibit 14). The appellant's attorney argued that IRA Two is held in a non-countable trust and thus should not be counted. (Exhibit 14). The appellant's attorney noted that he would look into Bank Account Three. (Exhibit 14, p. 1).

By email dated January 31, 2022, the MassHealth representative requested the record be reopened and extended to give her the opportunity to obtain the case file from storage and review it. (Exhibit 15). The record open period was extended to February 11, 2022 to give the MassHealth representative the opportunity to review the case file and all documentation submitted by the appellant prior to the hearing. (Exhibit 16). In an email dated February 2, 2022, the hearing officer asked the MassHealth attorneys cc'd on the email if either was involved with the 30A appeal regarding the trust issue and requested either one advise as to the countability of the trust holding IRA Two. By email dated February 2, 2022, the MassHealth attorney responded that the MassHealth attorney originally involved in this case was on leave and noted he would speak with the MassHealth representative and respond. (Exhibit 17, p. 2). By email on the same date, the MassHealth attorney asked that the record open period be extended to February 25, 2022 to give MassHealth time to obtain and review the case file. (Exhibit 17, p. 1). By email dated February 2, 2022, the hearing officer extended the record open period to February 25, 2022; the hearing officer noted a particular interest in the dispute regarding the countability of the IRA held in trust. (Exhibit 17)

By email dated February 25, 2022, the MassHealth representative responded with a list of updated countable assets. (Exhibit 20)

- Bank Account One: \$657.26 as of January 10, 2022.
- Bank Account Two: \$14.83 as of November 11, 2021.
- Bank Account Three: \$49,103.34 as of March 10, 2019.
- IRA One: \$26,645.13² as of December 31, 2021.
- IRA Two: \$132,693.83 as of May 31, 2018.
- IRA Three \$157,875.65 as of October 31, 2021.

The MassHealth representative argued that there was no evidence showing a change in account number for IRA One and noted that MassHealth would have to count it as two separate IRAs. (Exhibit 20, p. 4). A review of documentation submitted to MassHealth prior to the hearing shows that the account number for IRA One changed in January, 2020. (Exhibit 24, p. 5). Further, the appellant's attorney submitted documentation from the Senior Registered Client Associate at the financial firm holding the IRA, confirming the change of the account number for IRA One in 2020. (Exhibit 18, p. 2).

² The MassHealth representative reported the amount to be \$29,645.13 but this appears to be a typo. (See exhibit 22).

The MassHealth representative stated that the appellant's attorney noted that the account number for IRA Two changed. (Exhibit 20, p. 4). The MassHealth representative argued that there was no evidence showing a change in account number for IRA Two (Exhibit 20, p. 4). IRA Two was held in the name of the appellant's deceased spouse and had a balance of \$132,693.83 as of May 31, 2018. (Exhibit 17, p. 4, exhibit 32, p. 4). The MassHealth representative stated that IRA Two was in the appellant's spouse's name in May, 2018. (Exhibit 20, p. 4, exhibit 32, p. 4). IRA Two was in the deceased spouse's name and had a balance of \$0.00 as of January 31, 2019. (Exhibit 32, p. 12). The only documentation in the record for IRA Two are the statements dated May 31, 2018 and January 31, 2019. (Exhibit 32). The MassHealth representative noted that documentation for another IRA, under a different account number, (hereinafter "IRA Three") shows a balance of \$157,875.65 as of October 31, 2021 and the IRA statements list a trust as holding this IRA. (Exhibit 20, p. 4, exhibit 32, p. 17). The MassHealth representative stated that no evidence was submitted to support that IRA Two changed into IRA Three. (Exhibit 20, p. 4, exhibit 32).

The MassHealth representative noted that the appellant's attorney submitted evidence that the cash on hand from the sale of the automobile was spent down to the nursing facility and therefore the cash in the amount of \$9,500.00 was no longer counted. (Exhibit 20. Pp. 4-5).

By email dated February 25, 2022, the appellant's attorney noted that he would submit the documentation showing the change in account number for IRA Two and when it became a trust asset. (Exhibit 20, p. 3). By email dated February 25, 2022, MassHealth's attorney wrote that MassHealth has been "very patient and clear about the missing information and it still hasn't surfaced." (Exhibit 20, p. 3). By email dated February 27, 2022, the hearing officer requested a clear, final list of countable assets from MassHealth. (Exhibit 20, p. 2). By email dated February 28, 2022, the appellant's attorney noted that as of the hearing date, he provided all requested information to MassHealth and the delay here was due to the fact that MassHealth had to get the appellant's file out of storage and review it. (Exhibit 20, p. 1). The record open period was extended to March 4, 2022 to give the MassHealth representative time to submit a clear, final list of countable assets. (Exhibit 21, p. 3). By email dated March 4, 2022, the MassHealth representative noted that MassHealth did not have documentation to show the account number for IRA Two had changed to the account number for IRA Three³. (Exhibit 21, p. 2).

By email dated March 4, 2022, the MassHealth representative responded that, based on the information MassHealth had, the appellant's countable assets total \$164,911.09. (Exhibit 21, p. 1). The MassHealth representative included a list of the assets. (Exhibit 22). Assets were determined as follows:

- Bank Account One: \$657.26 as of January 10, 2022.
- Bank Account Two: \$14.83 as of November 11, 2021.
- Bank Account Three: \$49,103.34 as of March 10, 2019; closed on February 17, 2022; not countable because owned by deceased spouse and another.

³ As noted above, documentation showing the change in account numbers for IRA One had been submitted by the appellant's attorney prior to the hearing.

- IRA One: \$31,545.17 as of February 28, 2019; \$26,645.13 as of December 31, 2021 under different account number.
- IRA Two: \$132,693.83 as of May 31, 2018.
- IRA Three: \$157,875.65 as of October 31, 2021.

The MassHealth representative continued to argue that because there was no documentation of the change of the account number for IRA One, then the new asset amount for IRA One would be considered an additional asset in the amount of \$26,645.13. (Exhibit 21, p. 1). Documentation in the record shows the change in account number for IRA One. (Exhibit 24, p. 5; exhibit 18, p. 2).

The MassHealth representative noted that because no documentation was submitted to support that the account number for IRA Two had changed to the account number for IRA Three, the balance of \$157,875.65 in IRA Three would be added as an additional asset. (Exhibit 21, p. 1; exhibit 22). The MassHealth representative asked the hearing officer to advise how to proceed. (Exhibit 21, p. 1).

By email dated March 4, 2022, the appellant's attorney noted he had been working with the MassHealth attorney who was currently on leave and based on the MassHealth attorney's last email to him, MassHealth had determined assets as noted in the notice on appeal, thus he was confused by the MassHealth representative's new assessment of assets. (Exhibit 23, p. 3). The appellant's attorney reiterated, as noted in previous emails, that he did not dispute that Bank Accounts One and Two, and IRA One were all countable, resulting in countable assets of \$30,306.26 to be paid to the nursing facility. (Exhibit 23, p. 4). The appellant's attorney again noted that the trust was found to be non-countable by the Superior Court and thus IRA Two is not countable. (Exhibit 23, p. 4).

By email dated March 6, 2022, the hearing officer noted that she reviewed all emails and documentation submitted by both parties and attempted to narrow the issues in dispute. (Exhibit 23). The hearing officer attached the documentation submitted by the appellant's attorney to support that the account number for IRA One changed and it was in fact one IRA in the amount of \$26,645.13. (Exhibit 23, p. 2). The hearing officer noted that the issue left in dispute involves IRA Two and IRA Three. (Exhibit 23). The hearing officer pointed out that the May 2018 statement for IRA Two shows a balance of \$132,693.83; the next statement for IRA Two is dated January, 2019 and shows a balance of \$0. (Exhibit 23, p. 2). The only statement for IRA Three, which is held by trust, is dated October, 2021, and shows a balance of \$157,875.00. (Exhibit 23, p. 2). The hearing officer asked MassHealth why IRA Three is countable if it is held in a non-countable trust. (Exhibit 23, p. 2). The hearing officer noted there may be a transfer issue, but such was premature at that point. (Exhibit 23, p. 2). The hearing officer asked the appellant's attorney to submit documentation to show if there is a connection between IRA Two and IRA Three. (Exhibit 23, p. 2). The record was reopened and extended to March 14, 2022 for the requested information. (Exhibit 23, p. 2).

By email dated March 6, 2022, MassHealth's attorney stated that it appears the accounts were not in the name of the trust at the time of notice and appeal. (Exhibit 23, pp. 1-2). The MassHealth

attorney goes on to state “there are gaps in information-including the questions you have outlined for [appellant’s attorney]...[t]hus is the information we have repeatedly asked for even though we suspect it doesn’t exist.” (Exhibit 23, p. 2). The hearing officer responded and again questioned why assets in a trust are being counted, especially in light of the fact that trust assets were not listed on the asset denial notice on appeal. (Exhibits 1, 23, p. 1).

By email dated March 7, 2022, the appellant’s attorney wrote that IRA Two account number changed in July, 2019 when the account moved to the current financial firm, referring to an email from the financial advisor submitted earlier (Exhibit 26, p. 2). The hearing officer pointed out that the email from the Senior Registered Client Associate at the financial firm holding the IRAs only addressed IRA One and in fact the client associate noted that there was no record for IRA Two’s account number. (Exhibit 26, p. 1). The appellant’s attorney submitted a July 22, 2019 general announcement from the financial firm noting it had selected a new clearing partner. (Exhibit 26, p. 7). No documentation was submitted showing a change in account number for IRA Two. (Exhibit 26).

A review of the Board of Hearings Appeals Processing System (APS) shows that MassHealth denied the appellant’s application for MassHealth by notices dated June 17, 2019 and June 19, 2019 based on a finding of excess assets. (Exhibit 29). The appellant appealed the denial notices and a hearing was held for appeal number 1940835 on July 26, 2019. (Exhibit 29). The hearing officer upheld MassHealth’s determination of countable assets and denied the appeal. (Exhibit 29). The list of assets in that appeal are almost identical to the assets in the current appeal, but for trust assets. (Exhibit 29). MassHealth listed the following countable assets in appeal 1940835:

- Bank Account One: \$1,781.68 as of March 10, 2019.
- Bank Account Two: \$14.83 as of March 10, 2019.
- Bank Account Three: \$49,103.34 as of March 10, 2019.
- IRA One: \$31,545.17 as of February 28, 2019.
- IRA Two: \$0.00 as of January 31, 2019; previous statement showed a balance of \$132,693.83 on May 31, 2018⁴.
- Cash on Hand: \$9,500. These were the proceeds from the sale of the appellant’s car on August 18, 2018.
- Trust One: The property contained within this trust was valued at \$297,500 according to 2019 tax records.
- Trust Two: \$563,910.

⁴ The hearing officer for appeal 1940835 noted that MassHealth had been unable to figure out where the balance of \$132,693.83 went and counted it as part of the asset calculation. (Exhibit 29, p. 3).

- Trust Three: \$133,907.94 as of February 28, 2019.

(Exhibit 29).

The hearing officer for appeal 1940835 noted that the appellant's attorney conceded that Trust Three was countable. (Exhibit 29, p. 3). The hearing officer determined that Trust One and Trust Two were countable and denied the appeal. (Exhibits 29, 30, p. 4).

The appellant filed a MGL Ch. 30A appeal for appeal 1940835 to Barnstable Superior Court and the Plaintiff's Motion for Judgment on the Pleadings was allowed by decision dated July 13, 2021; judgment entered July 30, 2021. (Exhibit 30). The Superior Court Judge ordered and adjudged that the decision of the Office of Medicaid is reversed and the matter is remanded to said Office for the allowance of Plaintiff [appellant's name] application for MassHealth benefits. (Exhibit 30). The Superior Court determined that Trust One and Trust Two were not countable. (Exhibit 30).

IRA Three is held by the Irrevocable Trust, which was deemed non-countable by the Superior Court. (Exhibits 28, 30).

In an email to the appellant's attorney dated December 3, 2021, the MassHealth attorney, currently on leave, listed the appellant's countable assets and requested verification that such assets were reduced, as well as an explanation of how the money was spent. (Exhibit 33, p. 20). The assets were identical to the assets listed in appeal number 1940835⁵, except for the trusts. (Exhibits 29, 33, p. 20).

By email dated March 24, 2022, the hearing officer reported that, noting in the record, in appeal decision 1940835, or in the Superior Court decision, addressed the connection between IRA Two and IRA Three. (Exhibit 31, p. 1). The hearing officer noted that there was most likely a disqualifying transfer issue here but in the interest of efficiency, the hearing officer reopened the record and extended it to April 1, 2022 to give the appellant's attorney the opportunity to submit documentation specifically showing that the account number for IRA Two changed to the account number for IRA Three. (Exhibit 31).

The appellant's attorney responded by email dated March 30, 2022 noting that IRA Two was the appellant's deceased husband's IRA when he was alive. (Exhibit 34). The appellant's attorney explained that when the spouse passed away on [REDACTED], the beneficiary of IRA Two was the irrevocable trust and the IRA was transferred to the trust upon his death. (Exhibit 34). The appellant's attorney stated that on November 1, 2018, IRA Two was transferred to the financial company's beneficiaries' account ending in [REDACTED] in two parts, \$51,000.00 in cash and \$83,000.00 in securities. (Exhibit 34). The appellant's attorney stated that in January 2020, account number [REDACTED] changed to the account number listed for IRA Three due to the change in

⁵ Bank Account One: \$1,781; Bank Account Two: \$14.00; Bank Account Three: \$49,103.00; IRA One: \$31,545.00; IRA Two: \$132,693.00; Cash: \$9,500. (Exhibit 33, p. 20).

the financial company's clearing partner⁶. (Exhibit 34). The appellant's attorney submitted the following attachments with the email dated March 30, 2022: a "snapshot" page for IRA Two dated July 31, 2018 showing the account number for IRA Two; a document previously submitted showing the account number for IRA Three with the irrevocable trust named as beneficiary; a document previously submitted showing the financial company's announcement of change in clearing partner; a "snapshot" page for IRA account ending in 3856 dated December 31, 2019 showing the irrevocable trust as beneficiary; and a document previously submitted showing IRA Three had a balance of \$149,384.04 on January 31, 2020. (Exhibit 34). The statement for IRA Two dated January 1, 2019 to January 31, 2019 shows the balance of 35 cents transferred to an account ending in 3856. (Exhibit 32, p. 16).

Findings of Fact

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

1. The appellant's controlling application date is May 23, 2018.
2. MassHealth denied the appellant's application by notices dated June 17, 2019 and June 19, 2019 in which MassHealth determined the following assets were countable to the appellant: Bank Account One: \$1,781.68; Bank Account Two: \$14.83; Bank Account Three: \$49,103.34; IRA One: \$31,545.17; IRA Two: \$0.00 as of January 31, 2019 and \$132,693.83 on May 31, 2018; Cash: \$9,500; Trust One: property valued at \$297,500; Trust Two: \$563,910; Trust Three: \$133,907.94.
3. The appellant appealed the denial notices dated June 17 and June 19, 2019 and a hearing for appeal 1940835 was held on July 26, 2019.
4. The hearing officer for appeal 1940835 noted that the appellant's attorney conceded that Trust Three was countable.
5. The hearing officer determined that Trust One and Trust Two were countable and denied the appeal.
6. The appellant filed a MGL Ch. 30A appeal for appeal 1940835 to Barnstable Superior Court and the Plaintiff's Motion for Judgment on the Pleadings was allowed by decision dated July 13, 2021; judgment entered July 30, 2021.
7. The Superior Court Judge determined that Trust One and Trust Two were not countable and ordered and adjudged that the decision of the Office of Medicaid be reversed and the matter remanded to said Office for the allowance of Plaintiff's [appellant's name] application for MassHealth benefits.

⁶ In the interest of privacy and confidentiality, the account numbers for the IRAs are not included in the decision unless absolutely necessary for clarity. Although the appellant's attorney argues that IRA Two and IRA Three are the same account, the account numbers are different and the different account numbers are identified as IRA Two and IRA Three.

8. In an email to the appellant's attorney dated December 3, 2021, the MassHealth attorney, currently on leave, listed the appellant's countable assets and requested verification that such assets were reduced, as well as an explanation of how the money was spent; the assets were identical to the assets listed in appeal number 1940835, except for the trusts.
9. By notice dated November 23, 2021, MassHealth denied the appellant's application for MassHealth based on excess assets of \$155,394.19.
10. MassHealth listed countable assets as follows:
 - Bank Account One: \$1,781.68 as of March 10, 2019.
 - Bank Account Two: \$14.83 as of March 10, 2019/
 - Bank Account Three: \$49,103.34 as of March 8, 2019.
 - IRA One: \$31,545.17 as of February 28, 2019.
 - IRA Two: \$132,693.83 as of May 31, 2018.
 - Cash on Hand: \$9,500.00 on August 12, 2018.
11. The record was left open until January 27, 2022 to give MassHealth the opportunity to renew additional documents submitted and to give the appellant and MassHealth the opportunity to determine a final asset amount; through a series of emails the record open period was extended to a final record open date of April 1, 2022.
12. The appellant does not dispute that Bank Accounts One and Two, IRA One, and cash on hand are countable.
13. By email dated January 31, 2022, the MassHealth representative requested the record be reopened and extended to give her the opportunity to obtain the case file from storage and review it; the record open period was extended to February 25, 2022 to give the MassHealth representative the opportunity to review the case file and all documentation submitted by the appellant prior to the hearing.
14. By email dated February 25, 2022, the MassHealth representative responded with a list of updated countable assets:
 - Bank Account One: \$657.26 as of January 10, 2022.
 - Bank Account Two: \$14.83 as of November 11, 2021.
 - Bank Account Three: \$49,103.34 as of March 10, 2019.
 - IRA One: \$26,645.13 as of December 31, 2021.

- IRA Two: \$132,693.83 as of May 31, 2018.
 - IRA Three \$157,875.65 as of October 31, 2021.
15. The account number for IRA One changed in January, 2020.
 16. IRA Two was in the appellant's spouse's name and had a balance of \$132,693.83 on May 31, 2018; IRA Two remained in the appellant's spouse's name and had a balance of \$0.00 on January 31, 2019.
 17. IRA Three is held in the non-countable trust and had a balance of \$157,875.65 as of October 31, 2021.
 18. MassHealth determined that cash on hand from the sale of the automobile was spent down to the nursing facility and was no longer counted.
 19. By email dated March 4, 2022, the MassHealth representative responded that, based on the information MassHealth had, the appellant's countable assets total \$164,911.09.
 20. MassHealth no longer counted the balance of \$49,103.34 in Bank Account Three because it was owned by the appellant's deceased spouse and another.

Analysis and Conclusions of Law

There is no dispute that Bank Account One with a balance of \$657.26, Bank Account Two with a balance of \$14.83, and IRA One with a balance of \$26,645.13 are all countable. There is no dispute that Bank Account Three, now closed, with a balance of \$49,103.34 on March 10, 2019, is not countable, and that the cash on hand totaling \$9,500.00 was spent down. Although MassHealth argued there was no documentation to support the change in account number for IRA One, the appellant did submit documentation to support that the account number changed for IRA One. (Exhibits 18, 24). Accordingly, there is no dispute that the appellant has at least \$27,317.22 in countable assets.

I note that in the hearing for appeal 1940835, the appellant did not dispute that the assets totaling \$133,907.94 in Trust Three were countable. MassHealth did not include these assets in the notice on appeal and I make no determination with regard to Trust Three.

IRA Two was in the name of the appellant's spouse and had a balance of \$132,693.83 on May 31, 2018. IRA Two had a balance of \$0 on January 31, 2019. MassHealth argued that there is no documentation as to where the balance of \$132,693.83 went and thus it remains a countable asset. MassHealth is correct in that the appellant did not submit statements for IRA Two for the period June 1, 2018 through December 31, 2018, nor was any documentation submitted to show if or how the assets totaling \$132,693.83 were spent. Because IRA Two had a balance of \$0 on January 31, 2019, it is no longer a countable asset. However, because the appellant has not verified how the balance of \$132,693.83 was spent, MassHealth can consider it to be a disqualifying transfer.

MassHealth cannot issue a disqualifying transfer notice until all countable assets have been spent down.

IRA Three with a balance of \$157,875.65 on October 31, 2021 is held by one of the trusts the Superior Court determined to be non-countable. Such amount is not a countable asset, however MassHealth will need verification of when such assets were distributed into the trust to determine if a disqualifying transfer took place.

The appellant's attorney argued that IRA Two and IRA Three are the same and the account number for IRA Two first changed when the appellant's spouse passed away and a beneficiary account, ending in [REDACTED], was set up by the financial company. The appellant's attorney stated that the account number for IRA Two changed again when the financial company changed its clearing partner. While this may have happened, there are no statements submitted to support this, only a snapshot of a cover sheet dated July 31, 2018 for IRA Two, a snapshot of a cover sheet dated December 31, 2019 for the account ending in [REDACTED], and a statement for IRA Three dated January 1, 2020 to January 31, 2020. (Exhibit 34). No statements were submitted tying all of these accounts together or providing the dates of transfers of funds. The appellant's attorney did not submit any documentation showing that the account number for IRA Two changed to account number [REDACTED] and then to the account number for IRA Three. IRA Two was held in the name of the appellant's deceased spouse, and the IRA account ending in [REDACTED] and IRA Three are held in the name of a trust. No documentation was submitted to support the appellant's attorney's statements that the funds in IRA Two were deposited into the IRA account ending in [REDACTED] in August, 2018. (Exhibit 34). Further, if such transfer took place, it was during the disqualifying transfer look back period.

Based on all the documentation submitted, I determine the appellant has countable assets totaling \$27,317.22. The asset limit for MassHealth Standard for long term care residents is \$2,000.00 and thus the appellant has excess assets totaling \$25,317.22. (130 CMR 520.016(A)). The appeal is denied insofar as the appellant's assets exceed the limit for MassHealth but is approved in that the excess asset amount is reduced to \$25,317.22. The appellant shall have 30 days from the date of this decision to submit proof of spend down of the excess assets to MassHealth.

If the excess assets are spent down within 30 days of this decision, MassHealth shall reopen the appellant's May 23, 2018 application and determine if the appellant made any disqualifying transfers.

Order for MassHealth

Modify the notice dated November 23, 2021 and determine total countable assets of \$27,317.22 and excess assets of \$25,317.22 in accordance with above. The appellant shall have 30 days from the date of this decision to spend down \$25,317.22 and submit proof of such to MassHealth. If the appellant submits proof of spend down of assets to MassHealth within 30 days, MassHealth shall reopen the May 23, 2018 application and process it.

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.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center
MassHealth Legal