

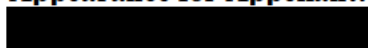
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2179379
<b>Decision Date:</b>	01/24/2022	<b>Hearing Date:</b>	1/6/2022
<b>Hearing Officer:</b>	Cynthia Kopka		

**Appearance for Appellant:**



**Appearance for MassHealth:**  
Kristin McMahon, 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>	Approved	<b>Issue:</b>	LTC eligibility – assets
<b>Decision Date:</b>	01/24/2022	<b>Hearing Date:</b>	1/6/2022
<b>MassHealth’s Rep.:</b>	Kristin McMahon	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury (remote)	<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

By notice dated November 15, 2021, MassHealth denied Appellant’s long term care application because Appellant had more countable assets than MassHealth benefits allow. Exhibit 1. Appellant filed this appeal in a timely manner on December 14, 2021. Exhibit 2. 130 CMR 610.015(B). Challenging the denial of assistance is a valid basis for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth denied Appellant’s long term care application because Appellant had more countable assets than MassHealth benefits allow.

## Issue

The appeal issue is whether MassHealth was correct in determining that Appellant’s countable assets exceeded MassHealth’s limit.

## Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. MassHealth received Appellant’s application for long term care benefits on September 28, 2021. Appellant requested September 13, 2021 as a coverage start date. MassHealth issued information requests on October 4,

2021 and October 7, 2021. Appellant submitted all requested verifications.

On November 15, 2021, MassHealth denied Appellant's application for excess assets. Exhibit 1. MassHealth counted assets contained in Appellant's checking account and her personal needs account. As of October 7, 2021, Appellant had \$6,072.70 in her checking account. Exhibit 4 at 17. From this total, MassHealth deducted a stimulus payment of \$1,400 and Appellant's monthly income of \$1,244, leaving a balance of \$3,428.70. With \$230.00 in her PNA account, Appellant's assets exceeded MassHealth's limit by \$1,658.70.

As part of verification, Appellant submitted proof that of the \$1,244 monthly Veterans Affairs (VA) benefit she receives, \$466 is aid and attendance. Exhibit 4 at 36. MassHealth acknowledged that the aid and attendance benefit is not countable income or a countable asset. However, the remaining \$778 is countable. MassHealth argued that because the aid and attendance is not deposited in its own separate account and is instead deposited in the same account as the countable income, the whole account is a countable asset once the funds roll over. If the VA deposited the aid and attendance into a separate account from the remaining countable income, MassHealth would not consider the aid and attendance a countable asset.

Appellant's representative appeared by phone and testified as follows. Appellant adhered to the requirements of 130 CMR 520.008(G) by maintaining a separately identifiable account for her VA pension benefit. Appellant's representative argued that the VA will not separate the aid and attendance deposit from the remaining pension. Appellant argued that the entire balance of the checking account should be considered not countable, as one year of accumulated aid and attendance benefits would total \$5,592, which exceeds the entire value of the account.

Records show that the account is a custodial account, in which only the VA pension is deposited monthly. Exhibit 5. The records provided show that between January 2021 and September 2021, Appellant received \$4,194 in aid and attendance benefits. *See id.* at 1-18.

## **Findings of Fact**

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

1. On September 28, 2021, MassHealth received Appellant's application for long term care benefits. Appellant requested September 13, 2021 as the coverage start date.
2. On November 15, 2021, MassHealth denied the application for excess assets, determining that Appellant had \$230.00 in her PNA account and \$3,428.70 in countable assets in her checking account. Exhibit 1.
3. As of October 7, 2021, Appellant had \$6,072.70 in her checking account. From this total, MassHealth deducted a stimulus payment of \$1,400 and Appellant's monthly income of \$1,244, leaving a countable balance of \$3,428.70. Exhibit 4 at 17.

4. Appellant's monthly VA pension benefit of \$1,244 includes \$466 of aid and attendance benefits. *Id.* at 36.
5. Appellant's monthly VA pension is directly deposited into her checking account, a custodial account.
6. Between January 2021 and September 2021, Appellant received \$4,194 in aid and attendance benefits. Exhibit 5 at 1-18.

## 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.

Noncountable assets are those assets exempt from consideration when determining the value of assets. 130 CMR 520.008. Under 130 CMR 520.008(G),

Veterans' payments for aid and attendance, unreimbursed medical expenses, housebound benefits, and enhanced benefits retained after the month of receipt, provided these payments are separately identifiable, are considered noncountable assets. Appreciated value and earned interest are also noncountable.

Here, MassHealth asserted that it would only consider Appellant's aid and attendance benefits noncountable if it was deposited into a separate account. Without that, MassHealth argued the aid and attendance benefits are not separately identifiable from the assets that have accumulated from countable income. Appellant argued that the aid and attendance benefits are identifiable as part of the monthly pension deposited into the custodial account each month. Appellant also argued that practically, the VA will not issue two deposits to separate the aid and attendance benefits from the remaining pension amount.

Here, the VA pension is the only deposit into the custodial checking account and aid and attendance benefits have been identified and verified. The regulation does not require a separate account for the noncountable aid and attendance benefits retained after the month of receipt; it simply requires that the payments are separately identifiable. The words "separate account" are not found in the regulation. 130 CMR 520.008(G). A fair reading of the regulation does not suggest that separately identifiable aid and attendance benefits become countable simply by being deposited into the same account as countable income or assets.

MassHealth's calculation that Appellant had \$3,428.70 in countable assets in her checking account was in error, as Appellant had accumulated at least \$4,194.00 in non-countable aid and attendance benefits between January 2021 and September 2021 in that account.<sup>1</sup> Therefore, as of October 7, 2021, Appellant's countable assets were \$0.<sup>2</sup> As Appellant's countable assets do not exceed MassHealth's \$2,000 limit, this appeal is approved.

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<sup>1</sup> In addition to the 2021 aid and attendance benefits, Appellant also presumably received aid and attendance benefits as part of the \$1,228 monthly VA pension paid to her in 2020. *See* Exhibit 5 at 19-32. This decision only refers to the 2021 payments because the 2021 VA statement verifying the amount allocated as aid and attendance is part of this hearing record. The aid and attendance portion of Appellant's 2020 monthly income would similarly be noncountable as an asset under 130 CMR 520.008(G).

<sup>2</sup> As of the requested start date of September 13, 2021, Appellant's accumulated aid and attendance benefits for 2021 alone would be \$3,728.

## **Order for MassHealth**

Redetermine Appellant's eligibility as of the requested start date without counting aid and attendance benefits that have accumulated in the checking account.

### **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

[REDACTED]