

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Approved in part	Appeal Number:	2179443
Decision Date:	2/17/2022	Hearing Date:	01/06/2022
Hearing Officer:	Christopher Jones	Record Open to:	02/04/2022

Appearance for Appellant:




Appearance for MassHealth:
Kat Towle - Springfield Intake



*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 in part; Approved in part	Issue:	LTC - Assets
Decision Date:	2/17/2022	Hearing Date:	01/06/2022
MassHealth's Rep.:	Kat Towle	Appellant's Rep.:	
Hearing Location:	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

Through a notice dated December 6, 2021, MassHealth denied the appellant's application for long-term-care benefits the appellant owned assets in excess of the maximum asset limit. Exhibit 2; 130 CMR 520.003-520.004. The appellant filed this appeal in a timely manner on December 13, 2021. Exhibit 3; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

The record was left open following the hearing until February 4, 2022 for the appellant to submit additional documentation and arguments.

Action Taken by MassHealth

MassHealth denied the appellant's application because he had \$41,623.57 in countable assets.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, in determining that the appellant had assets in excess of the asset limit.

Summary of Evidence

The appellant applied for long-term-care benefits on July 6, 2021 seeking coverage as of July 9, 2021. This application was denied for missing verifications, but that matter was resolved during a prior fair hearing. After necessary verifications were submitted, MassHealth issued the excess assets denial notice on December 6, 2021. MassHealth's representative explained that the submitted verifications showed that the appellant had two bank accounts, one with \$7,113 and another with \$1,089 at the time benefits were requested. She also identified two life insurance policies with cash surrender values of \$19,502 and \$13,918.

At the hearing, the appellant's attorney stated that he was just waiting on updated documentation to show that the appellant's assets were reduced. He believed he would have the bank statements within a few days, but that the life insurance policies had been surrendered and it was impossible to guess as how long the insurance company would take to distribute the funds. He argued that the life insurance policies should be deemed inaccessible. He explained that as soon as those funds were received, they would be deposited into a pooled trust, which should also be deemed non-countable.

MassHealth's representative agreed that surrendered life insurance policies are inaccessible. The record was left open until January 21 for the for the appellant to submit the updated bank statements, a copy of the insurance surrender documentation, and for MassHealth to respond. The appellant supplied updated bank statements and an affidavit that the bank account with \$7,113 in it was the appellant's son's. Regarding the insurance policies, the appellant submitted a copy of a letter requesting surrender documentation from May 26, 2021 and an affidavit from the appellant's son and power of attorney that he never received the surrender documentation.

MassHealth responded that the life insurance policies cannot be deemed inaccessible if they have not been surrendered. Otherwise, MassHealth agreed to not count the power-of-attorney's account. Therefore, the appellant would be under assets if not for the life insurance policies. MassHealth's representative offered to issue an updated excess asset notice that would preserve the original application date.

On January 21, the appellant's attorney submitted new requests for the surrender documentation and requested a two-week extension to the record open period for the appellant's power of attorney to receive the surrender documentation. This extension was granted, but it was noted that it did not appear that surrendering the life insurance now would make it inaccessible as of the benefits request date. The appellant's attorney was asked to comment on from when inaccessibility should run. Instead, the appellant's attorney submitted documentation on February 4 that the surrender documentation had been received and submitted on February 3. No additional reasoning or request for additional time was offered.

Findings of Fact

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

1. The appellant applied for long-term-care benefits on July 6, 2021 seeking coverage as of July 9, 2021. Exhibit 4.
2. On December 6, 2021, MassHealth denied the appellant's application for excess assets based upon two bank accounts with \$7,113 and \$1,089 and two life insurance policies with cash surrender values of \$19,502 and \$13,918. Exhibit 4.
3. During the record open period, the appellant submitted evidence that the bank account with \$7,113 was entirely owned by the appellant's son, and that the two life insurance policies had not yet been surrendered. Exhibits 6-7.
4. The appellant surrendered the life insurance policies for adjustment on or around February 3, 2022. Exhibit 8.

Analysis and Conclusions of Law

An individual applying for MassHealth long-term-care benefits must have countable assets below \$2,000. 130 CMR 520.003(A). If an applicant has assets above this threshold, their earliest eligibility start date is either:

(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.

130 CMR 520.004(A)(1).

Bank accounts are "available only to the extent that the applicant or member has both ownership of and access to such funds." 130 CMR 520.007(B)(2). Life insurance policies are counted as of their "cash-surrender value **The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset during the adjustment period.**" 130 CMR 520.007(E)(1) (emphasis added); see also 130 CMR 520.006.

The appellant's countable bank accounts held only \$1,089 as of the date he requested benefits. However, the appellant's life insurance policies were countable at that time. The cash-surrender value of life insurance polies is only inaccessible "during the adjustment period," or after the policy has been assigned for adjustment. The appellant remained over assets until his life insurance policies were surrendered to the life insurance company for adjustment on or around

February 3, 2022. Therefore, the appellant was over assets as of July 9, 2021 by \$32,509 ($\$19,502 + \$13,918 + \$1,089 = \$34,509 - \$2,000$). This appeal must be DENIED, at least in part.

Normally, MassHealth's denial would be upheld outright and appellant would need to file a new application. Because the appellant's assets were reduced during the appeal process, the application will not be denied outright. An applicant can become eligible for benefits if they have incurred medical expenses that exceed their excess assets and they reduce their assets in a timely manner.¹ See 130 CMR 520.004(A)(1)(b). This process is also known as the "Haley" calculation. It is highly likely that the appellant has incurred medical expenses at the nursing facility between July 9, 2021 and February 3, 2022 that exceed \$32,509. Therefore, this appeal is also APPROVED in part, and MassHealth is instructed to redetermine the appellant's eligibility by applying a Haley calculation to their excess assets as of their benefits request date. The agency is welcome to request whatever additional financial verifications it requires to accomplish this task, such as private-pay rates for the nursing facility or other documentation of medical debt incurred.

Order for MassHealth

Redetermine the appellant's eligibility, treating the value of the life insurance policies as inaccessible as of February 3, 2022. If the appellant is under assets, apply the Haley calculation using the value of the life insurance policies.

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.

¹ Here, the appellant filed an appeal within 30 days rather than reducing their assets. Exercising their right to an appeal will not be held against the appellant.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

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