

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Remand	Appeal Number:	2179685
Decision Date:	02/03/2022	Hearing Date:	01/11/2022
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



Appearance for MassHealth:

Joshua Bailey, Springfield Ongoing Unit



*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:	Remand	Issue:	Long Term Care
Decision Date:	02/03/2022	Hearing Date:	01/11/2022
MassHealth's Rep.:	Joshua Bailey	Appellant's Rep.:	[REDACTED]
Hearing Location:	Springfield MassHealth Enrollment Center		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction¹

Through a notice dated 11/23/2021, MassHealth informed the appellant that she is not eligible for MassHealth Long Term Care (LTC) benefits because she has more countable assets than MassHealth regulations allow (130 CMR 520.002; 520.004; Exhibit 1). A timely appeal was filed on the appellant's behalf on 12/20/2021 (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth LTC Benefits because MassHealth determined that assets held in Trust and in a burial account are countable to appellant and total assets exceed eligibility limits.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulations to accurate facts when it denied the appellant's application for MassHealth LTC Benefits upon determining that assets are countable to the appellant and exceed the eligibility limit.

Summary of Evidence

The MassHealth representative testified that the appellant, an unmarried woman, is a resident of a skilled nursing facility. She was receiving MassHealth long term care, (LTC) benefits, having previously established her eligibility. The MassHealth representative testified that the instant denial notice was issued because of an eligibility review that was recently conducted.

According to the notice, the appellant's assets exceed the \$2,000.00 limit for a single individual. As a result, the denial notice was issued by MassHealth. The MassHealth representative testified that the worker who processed the eligibility review did so incorrectly. The bank account listed on the denial notice with a balance of \$1,501.36 should not have been counted, since it is a burial account, which is not countable in an eligibility determination. Further, the amount \$5,286.29 listed as "trust," also should not have been counted, because MassHealth determined the trust is not countable.

The MassHealth representative testified that he reviewed the case and has determined that the appellant's assets are within the guidelines and that the appellant was determined to be eligible with no lapse of coverage. He informed the appellant's attorney that a notice was generated and mailed.

Appellant's attorney appeared at the fair hearing and testified telephonically that he agreed with MassHealth's determination to the extent that it addressed the appellant's assets. He stated he would withdraw the appeal when he received the approval notice from MassHealth.

On 01/18/2022, the appellant's attorney sent an email to the hearing officer and to the MassHealth representative. In the email, he states he received the notice from MassHealth; however, he disputed the income amounts that MassHealth counted when calculating the appellant's monthly patient paid amount (PPA). As a result, he requested that the MassHealth representative contact him to clarify the income

MassHealth counted or to recalculate the PPA by reducing it by the disputed income amount.

Findings of Facts

By a preponderance of the evidence, I find the following:

1. The appellant, a single individual, is a resident of a skilled nursing facility. She was determined to be eligible for and was receiving MassHealth long term care (LTC) benefits.
2. After a recent eligibility review, MassHealth issued a denial notice on 11/23/2021, making a determination that the appellant had countable income of \$6,788.65 (Exhibit 1).
3. At the fair hearing that took place on 01/11/2022, MassHealth informed the appellant's representative that the assets were incorrectly calculated. The appellant's countable assets were within the eligibility guidelines. MassHealth issued a new notice informing the appellant that she was determined to be eligible for MassHealth LTC benefits with no lapse of coverage (Testimony).
4. Based on the information provided by the MassHealth representative at the fair hearing, the appellant's attorney agreed to withdraw the appeal when he received the corrected notice (Testimony).
5. The appellant's attorney received the corrected notice from MassHealth and on 01/18/2021, he informed the MassHealth representative and the hearing officer that he believes the appellant's income was incorrectly calculated (Exhibit 4).

Analysis and Conclusions of Law

Regulations at 130 CMR 520.003 address the asset limit for long term care benefits as follows:

(A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits:

(1) for an individual — \$2,000; and

(2) for a couple living together in the community where there is financial responsibility according to 130 CMR 520.002(A)(1) — \$3,000.

MassHealth issued a notice to the appellant informing her that it counted her assets in a manner that made her ineligible for MassHealth LTC benefits. MassHealth incorrectly counted her burial account and trust principal (both non-countable in a MassHealth

eligibility determination) and determined her assets exceed the \$2,000.00 limit. At the fair hearing, the MassHealth representative testified that he reviewed the appellant's eligibility and her countable assets are within the countable asset limit and she was eligible for MassHealth LTC benefits with no lapse of coverage. The MassHealth representative testified that a new corrected notice was forthcoming; however, no notice was provided to the hearing officer.²

This matter will be remanded to MassHealth to provide the appellant with a corrected notice while preserving the 07/01/2021 application date. MassHealth will include appeal rights, in the event the appellant disputes the income calculation or any other determination made by MassHealth through that notice.

This appeal is therefore remanded.

Order for MassHealth

Rescind the 11/23/2021 denial. Preserve the 07/01/2021 application date. If not already issued, notify the appellant of her LTC eligibility, including how MassHealth calculated her countable income. Include appeal rights.

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.

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.

² The appellant's attorney raised the issue of countable assets in his request for a fair hearing and at the fair hearing. It was not until the appellant's attorney received the corrected notice from MassHealth that he addressed the issue of the income amount. Although this issue could have been addressed at the fair hearing, it was not raised by either party. As such, the appellant will have full appeal rights attached to the corrected notice and if she prevails, MassHealth is ordered to make any adjustments retroactive to eligibility determined by the 07/01/2021 application date referenced on the 11/23/2021 denial notice.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

