

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2179700
Decision Date:	01/26/2022	Hearing Date:	01/19/2022
Hearing Officer:	Christopher Jones		

Appearance for Appellant:




Appearance for MassHealth:

Meghan Adie - Tewksbury Ongoing



*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	Issue:	PACE – Incomplete Application
Decision Date:	01/26/2022	Hearing Date:	01/19/2022
MassHealth’s Rep.:	Meghan Adie – Tewksbury Ongoing	Appellant’s Rep.:	
Hearing Location:	Tewksbury – 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 2, 2021, MassHealth denied the appellant’s application for MassHealth Standard through the Program of All-Inclusive Care for the Elderly waiver (“PACE waiver”) because the agency received an incomplete application. Exhibit 2; 130 CMR 515.008(A); 516.001(A)(1)(a).¹ The appellant filed this appeal in a timely manner on March 13, 2014. Exhibit 2; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied the appellant’s application as incomplete because the appellant’s spouse refused to verify their income and assets.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001(A), in determining that the appellant’s application for MassHealth benefits was incomplete without their spouse’s income and asset information.

¹ The denial notice erroneously cited 130 CMR 516.001(E). There is no such regulation.

Summary of Evidence

On or around December 2, 2021, the appellant applied for MassHealth Standard through the Program of All-Inclusive Care for the Elderly waiver (“PACE waiver”). Her application identified that she had no assets of her own and only \$744 per month in social security benefits. Her application indicated that her husband refuses to provide financial information in accordance with 130 CMR 517.011 and 130 CMR 519.007(C)(2). MassHealth denied this application through its December 2 notice because it deemed the application to be incomplete. On December 21, 2021, MassHealth issued a second denial notice for failing to verify information, and it referenced two revocable trusts in the applicant and her spouse’s names.

At the hearing, MassHealth clarified that this second MassHealth notice was no longer in dispute, as it appears the appellant’s primary residence has been removed from trust and transferred into the name of the applicant’s spouse alone. Furthermore, it was ultimately agreed that any notice on verifications or assets is premature as MassHealth’s position is that it has yet to receive a complete application until it has received one with the spouse’s financial information disclosed. MassHealth’s representative did note that the agency’s asset verification system identified seven bank accounts in the applicant’s name, albeit many were jointly owned.

The appellant’s representative submitted a memorandum into the record and argued that the applicant’s spouse should not be required to verify his financial information. The appellant’s argument is that pursuant to 130 CMR 519.007(C), PACE program financial eligibility only “counts the income and assets of ... the applicant or member regardless of his or her marital status.” Therefore, because the applicant’s spouse’s financial resources will not be counted, they need not be verified. Furthermore, 130 CMR 517.011 states that “[a]n institutionalized spouse, whose community spouse refuses to cooperate or whose whereabouts is unknown, will not be ineligible due to” the community spouse’s assets or their inability to provide information regarding the community spouse’s assets when the institutionalized spouse “lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority.”² The appellant’s representative also indicated that she had reached out twice to MassHealth to try and get more information about the nature of the denial, but never heard back.

Submitted with the appellant’s hearing exhibit was an affidavit from the applicant’s spouse. This affidavit avers that the applicant does not have any assets. It reiterates the applicant’s spouse’s intent to not supply information regarding his assets or income pursuant to 130 CMR 517.011. A second application was submitted at some point, but the spouse continued to refuse to answer questions on this application, so it was subject to the same denial as the first application.

² The applicant’s mental impairment was not discussed during the hearing. In fact, she signed the request for a hearing that authorized Attorney McNair to appear as her appeal representative. It is unclear if the appellant is attempting to argue that the applicant is incompetent to provide financial information about her spouse while still competent authorize someone to represent her at an administrative proceeding.

MassHealth's representative argued that regulations cited by the appellant are inapplicable because, while the PACE program does not count spousal assets, nothing in that regulation says they need not be verified. Further, she argued that the refusal to cooperate regulation only applied to "institutionalized" individuals and could not be relied upon in community-based applications, even where the benefit is for those who would otherwise be institutionalized. MassHealth argued that regulations at 130 CMR 515.008(A) and 130 CMR 516.001(A)(1)(a) require spousal cooperation on applications. She further argued that this exception was not intended for situations like this one where the applicant and her spouse continue to live together and file joint tax returns.

The appellant's representative argued that MassHealth was misinterpreting the intent of these rules. She argued that, where the regulations explicitly exclude the spouse's assets and income from being counted, there is no reason to believe those resources would need to be verified. In response, it was pointed out that MassHealth uses spousal resource verifications to identify potential resources available to the applicant. MassHealth pointed to the fact that its asset verification system identified seven undisclosed bank accounts that had the appellant's name on them as a potential example of how spousal disclosure may lead to additional resources.

The parties agreed that this decision should issue solely on the question of whether a PACE applicant's spouse needed to verify their assets and income on an application when those resources are not countable, and whether an applicant for community-based benefits could refuse to provide spousal resource information under 130 CMR 517.011.

Findings of Fact

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

1. The applicant applied for MassHealth Standard through the PACE waiver on or around December 2, 2021. The submitted application did not answer any questions regarding spousal assets or income. Testimony by both parties; Exhibit 4.
2. MassHealth denied the application on December 2, 2021, deeming it to be an incomplete application that could not be processed. Exhibit 2.
3. The applicant's spouse has indicated that they refuse to cooperate pursuant to 130 CMR 517.011. Further, they feel disclosure of non-countable resources, per 130 CMR 519.007(C), are not required by the regulations. Testimony by appellant's representative; Exhibit 4.
4. There is no assignment of rights to spousal support in the record, nor is there a medical verification that the applicant is incompetent. See Exhibit 4.

Analysis and Conclusions of Law

The Programs of All-Inclusive Care for the Elderly is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living

in the community. 130 CMR 519.007(C)(1). The program features a comprehensive service delivery system and integrated Medicare and Medicaid financing. State Medicaid agencies may participate in the PACE program by allowing individuals who would be institutionalized to qualify for Medicaid eligibility and have Medicaid cover part of their PACE premium. See “Centers for Medicare and Medicaid Services, Programs of All-Inclusive Care for the Elderly (PACE) Manual,” CMS Pub. 100-11 [“PACE Manual”], Ch. 1, §§ 10, 30.1 (Rev. 2, June 9, 2011) (available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019036> (last visited January 20, 2022)).

While state Medicaid agencies often administer the PACE programs, enrollment “in a PACE program is not restricted to an individual who is either a Medicare beneficiary or Medicaid recipient.” PACE Manual, Ch. 4, § 30.3; see also PACE, A Guide to the Program of All-inclusive Care for Elderly MassHealth Members, [“PACE Guide”] p. 4 (Mar. 2015) (available at <https://www.mass.gov/files/documents/2016/07/wc/lte-guide-to-program-of-all-inclusive-care.pdf> (last visited January 20, 2022)). MassHealth “administers the program in Massachusetts as the Elder Service Plan (ESP),” and also allows for “MassHealth Standard coverage for individuals who would be institutionalized if they were not receiving home- and community-based services.” 130 CMR 519.007, (C)(1)(b).

MassHealth eligibility requires that applicants establish financial and categorical eligibility. Individuals who require institutional levels of care qualify for coverage by completing a Senior Application and cooperate with the MassHealth agency by submitting corroborative information. See 130 CMR 516.001(B); see also 515.008(A) (“The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility.”). Once a complete application is received, MassHealth “will determine the coverage type providing the most comprehensive medical benefits for which the applicant is eligible.” 130 CMR 516.001(C). The instructions on the senior application indicate that a spouse’s financial information should be provided “for your spouse who lives with you or anyone included on your federal income tax return, if you file one.” SACA-2-0721, p. 6. MassHealth’s position is that the regulations requiring a complete application and cooperation, combined with the requirement to disclose spousal resources on the application, is the basis for its denial for an incomplete application.

The appellant’s representative argued that there is no specific regulation that explicitly requires disclosure of spousal resources. Furthermore, there is no functional reason to disclose spousal resources for a PACE applicant because in “determining PACE eligibility, the MassHealth agency counts the income and assets of only the applicant or member regardless of his or her marital status.” 130 CMR 519.007(C)(2).

While there is logic to the appellant’s position, it is ultimately an attempt to skip steps in the MassHealth eligibility process. The first step in applying for MassHealth eligibility is to complete an application, which allows the agency to determine the most comprehensive coverage for which the applicant may be eligible.³ 130 CMR 516.001(C). While there is no specific regulation that

³ This is a distinct process from the act of enrolling in a PACE. See PACE Manual, Ch. 4, § 30.3 (“Eligibility to enroll in a PACE program is not restricted to an individual who is either a Medicare beneficiary or Medicaid recipient.”); PACE

explicitly requires a spouse's resources be disclosed on an application, the regulation cited by the appellant does not explicitly exempt disclosure of spousal resources during the application process. MassHealth is restricted to "counting" spousal assets. This is not a prohibition on requesting their disclosure or verification.

It is also clear from the circumstances surrounding this appeal that this is not an entirely frivolous pursuit. To be eligible for MassHealth Standard through the PACE waiver, an applicant must "have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: *Asset Reduction...*" 130 CMR 519.007(C)(2)(f). Here, the applicant clearly had an ownership interest in a variety of marital or other accounts at some point. MassHealth's asset verification system identified seven accounts on which the applicant was listed as an owner. This system is robust, but it is not comprehensive. It is possible that the applicant's name had been removed from all these accounts by January 11, 2022, when her spouse averred under the pains and penalties of perjury that the applicant had no assets. It is also possible that, in a household that has operated jointly for years, some accounts have been overlooked. MassHealth is obliged to confirm the applicant's assets are under \$2,000, and it may review spousal resources to do so.

The appellant's final argument is that 130 CMR 517.011 allows the applicant's spouse to refuse to participate.

517.011: Assignment of Rights to Spousal Support

An institutionalized spouse, whose community spouse refuses to cooperate or whose whereabouts is unknown, will not be ineligible due to

(A) assets determined to be available for the cost of care in accordance with 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; or

(B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met:

- (1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse;
- (2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or
- (3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.

Guide, p. 4. If the applicant wishes to have MassHealth coverage to assist her in paying for the PACE, the first step is to complete an application.

MassHealth's representative argued that this regulation only applies to "institutionalized" applicants. "Institutionalization" is defined to be the "placement of an individual in one or more medical institutions, where placement lasts or is expected to last for a continuous period of at least 30 days." This is distinct from definition of "community resident," who is "a person who lives in a noninstitutional setting in the community." See 130 CMR 515.001. The appellant's representative responded that waiver applicants should be able to avail themselves of this regulation because they would be institutionalized if not eligible for the waiver program.⁴

MassHealth's position is more persuasive. While the appellant is correct that the applicant is clinically eligible for institutionalization, she would need to disclose significantly more financial information if she were to pursue MassHealth coverage institutionalized individuals. MassHealth would seek all accounts to which the applicant had an interest going back five years from the date of the application. See 130 CMR 520.019(B). Even if the applicant were incompetent to assign her rights to spousal support, she would not be exempt from verifying her own accounts. This potentially would require a conservator to be appointed to access financial documents if the applicant's spouse continued to refuse to cooperate. If this historical review of resources disclosed any resources being transferred to the non-cooperating spouse, they would be treated as a disqualifying transfer of resources.

For these reasons, MassHealth is correct that the appellant has yet to submit a completed application in the absence of the spouse's financial disclosures. This appeal is DENIED. In her memorandum, the appellant's representative requested additional time to supply missing information. Because there is no retroactive eligibility for waiver programs, there is no reason to order the denied application remain active. See 130 CMR 516.006(A)(2). A new, complete application should be submitted.

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.

⁴ It must also be noted that the appellant has not submitted required documentation to trigger 130 CMR 519.011. The appellant's memorandum argues that the applicant "lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority." However, no competent medical opinion as to the applicant's inability to assign her rights is in the record. Furthermore, the applicant authorized the appeal representative to appear at the hearing. If the applicant is truly incompetent to assign her right to spousal support, she would also be incompetent to authorize the appeal representative, and this matter would need to be dismissed for lack of authority to proceed.

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: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367
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