

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2200021
Decision Date:	4/04/2022	Hearing Date:	01/28/2022
Hearing Officer:	Susan Burgess-Cox	Record Open to:	02/18/2022

Appearance for Appellant:



Appearance for MassHealth:

Elizabeth Landry



*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:	Eligibility
Decision Date:	4/04/2022	Hearing Date:	01/28/2022
MassHealth's Rep.:	Elizabeth Landry	Appellant's Rep.:	
Hearing Location:	All Parties Appeared by Telephone		

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 27, 2021, MassHealth denied the appellant's application for long-term care benefits due to having more countable assets than MassHealth benefits allow. (130 CMR 520.000; Exhibit 1). The appellant filed an appeal in a timely manner on January 3, 2022 naming the individual who appeared at hearing as an appeal representative. (130 CMR 610.015(B); Exhibit 2). A hearing was scheduled for January 28, 2022. (Exhibit 3). At the request of the appellant's representative, the record was held open until February 18, 2022. (Exhibit 5). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant has more countable assets than MassHealth benefits allow.

Issue

Whether MassHealth was correct in determining that the appellant has more countable assets than MassHealth benefits allow.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 4.

MassHealth received an application for long-term care in October 2021 seeking coverage for a date in September 2021. The appellant was on MassHealth while in the community and submitted an application for conversion to long-term care in October 2021 seeking coverage as of a date in September 2021. MassHealth requested bank statements from October 2021 forward as part of the eligibility process. A bank statement from October 2021 showed a balance of \$3,578.48. This balance placed the appellant over the allowable asset limit of \$2,000 by \$1,578.48 as stated on the notice.

The appellant's representative acknowledged that the appellant's assets exceeded the program limits. The appellant's representative noted that an attorney was contacted regarding the filing of a petition for the appointment of a conservator. The representative did not have any evidence to verify this action on the day of the hearing. The record was held open to provide the appellant's representative the opportunity to provide any additional evidence related to the matter at issue. (Exhibit 5).

During the record open period, the appellant's representative sent a copy of a petition for a conservatorship signed by the petitioner one week after the hearing. (Exhibit 6). No evidence of filing the petition was presented to MassHealth or the Board of Hearings other than messages stating a delay caused by the courts in entering the petition. The MassHealth representative reviewed the submission noting that while MassHealth could possibly utilize the filing of such a petition in determining eligibility in considering the accessibility of assets to the appellant, the agency could not accept the document alone as evidence of possible inaccessibility. As of the issuance of this decision, no evidence of acceptance or entry of the petition was presented to the Board of Hearings.

Findings of Fact

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

1. MassHealth received an application for long-term care in October 2021 seeking coverage for a date in September 2021.
2. The appellant was on MassHealth while in the community and the

application submitted was for a conversion to long-term care coverage.

3. MassHealth requested bank statements from October 2021 forward as part of the eligibility process.
4. A bank statement from October 2021 showed a balance of \$3,578.48.
5. The appellant is over the allowable asset limit of \$2,000 by \$1,578.48.
6. The appellant signed a request for hearing form naming the party present at hearing as the appeal representative.
7. As of the date of the hearing in late January 2022, the appellant had not spent down her assets.
8. Individuals assisting the appellant with the application for long-term care began to feel the need to file a petition to appoint a conservator.
9. No action had been taken to file a petition for a conservatorship as of the date of the hearing.
10. A petition for conservatorship was signed one week after the hearing.
11. No evidence of the acceptance and entry of the petition was presented during the course of the record open period.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Countable assets are all assets that must be included in the determination of eligibility. (130 CMR 520.007). Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these

assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. (130 CMR 520.007). Assets owned exclusively by an applicant or member and the spouse are counted in their entirety when determining eligibility for MassHealth. (130 CMR 520.005(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 \$2,000 for an individual. (130 CMR 520.003(A)(1)). At the time of the decision, the appellant's assets exceeded this limit. During the course of the appeal process, the appellant failed to demonstrate that the asset amount determined by MassHealth was not correct or that the assets were spent down.

Pursuant to 130 CMR 520.006, an inaccessible asset is an asset to which the applicant or member has no legal access. MassHealth does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006. Inaccessible assets include, but are not limited to:

- (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and
- (2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment. (130 CMR 520.006 (A)).

While the appellant's representative noted some possible issues with the appellant's state of mind, she did not demonstrate that the assets were inaccessible to the appellant. Instead, the appellant was able to file a request for hearing, naming the individual at hearing as an appeal representative, no action was taken to sign a petition for conservatorship until after the hearing date and no evidence of the acceptance and entry of such a petition was presented during the record open period.

If the appointment of a conservator was necessary, the appellant's representative had ample opportunity to begin the process before and during the application and hearing process. Evidence presented during the course of the appeal did not demonstrate that proactive steps were taken to spend down the assets during the application process. Instead, more effective actions were taken after the denial issued by MassHealth and the scheduling of the hearing with what appeared to be an expectation that additional time would be provided after the hearing date. These actions included speaking to an attorney about filing a petition for conservatorship and then action to sign such a petition one week after the hearing date. It is not clear why these actions

were not taken during the application process, the 30-day period allowed by MassHealth to spend down the assets or prior to the hearing date.

The fair hearing process is an administrative, adjudicatory proceeding where dissatisfied applicants, members, and nursing facility residents upon written request, obtain an administrative determination of the appropriateness of certain actions or inactions by the MassHealth agency. (130 CMR 610.012(A)(1)). The hearing process is designed to secure and protect the interests of both the appellant and, as appropriate, the MassHealth agency or its personnel and to ensure equitable treatment for all involved. (130 CMR 610.012(B)). The hearing process is not an extension of the application process.

MassHealth acted within its discretion to deny the appellant's application for long-term care coverage. (130 CMR 520.001(C)). The decision made by MassHealth was correct.

This appeal is denied.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616