

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2201460
Decision Date:	5/10/2022	Hearing Date:	03/25/2022
Hearing Officer:	Scott Bernard	Record Open to:	05/02/2022

Appearance for Appellant:



Appearance for MassHealth:

Jamie Silva (Taunton MEC) *via* telephone



*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:	Long Term Care (LTC) Assets
Decision Date:	5/10/2022	Hearing Date:	03/25/2022
MassHealth's Rep.:	Jamie Silva	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center		

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 January 26, 2022, MassHealth denied the appellant's application for MassHealth LTC benefits because MassHealth determined that she had more countable assets than MassHealth benefits allow. (See 130 CMR 520.003; 520.004 and Exhibit (Ex. 1 (p. 6)). The appellant filed this appeal in a timely manner on February 25, 2022. (See 130 CMR 610.015(B) and Ex. 1, p. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

At the conclusion of the hearing, the appellant's representative requested time to submit certain documentation into the hearing record and agreed to do so by April 25, 2022. (Ex. 5). The appellant's representative did not submit any documentation on April 25, 2022. On April 29, 2022, the appellant's representative's firm submitted incorrect documentation. (Ex. 6; Ex.7). On May 2, 2022, the MassHealth representative emailed the hearing officer and the appellant's representative stating that she had not received the requested documentation at which time the record closed. (Ex. 8).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth LTC benefits because she had more countable assets than MassHealth benefits allow.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003 and 520.004, in

determining that the appellant's countable assets exceeded the asset limit.

Summary of Evidence

The appellant is an individual over the age of 65 who was admitted to the nursing facility in the middle of 2021. (Ex. 4, p. 4). On October 8, 2021, the appellant applied for LTC benefits seeking a coverage start date of July 4, 2021. (Ex. 4, pp. 2, 3). As part of the eligibility process, MassHealth received a letter dated December 14, 2021 from the appellant's life insurance company indicating that she had a whole life insurance policy with a total cash surrender value of \$4,654.34. (Ex. 4, p. 7). Based on this, MassHealth determined that the appellant had countable assets exceeding the MassHealth asset limit of \$2,000. (Ex. 1, pp. 6-9; Ex. 4, pp. 8-10). The MassHealth representative stated that the appellant's Health Care Proxy (HCP) was trying to get a conservator in place because the life insurance company will not allow her to act on the appellant's behalf without one. The appellant's representative confirmed that the appellant is not able to act on her own behalf on this matter, and the life insurance company will not permit the HCP to reduce this asset without being the appellant's conservator. The appellant's representative requested the record remain open to allow HCP to get a conservatorship in place and to spenddown the assets. Pursuant to Record Open form, the appellant's representative agreed to submit the following on or before April 25, 2022:

1. Verification that the appellant has spent her assets below the countable asset limit; or
2. Verification that the HCP has filed for conservatorship.¹ (Ex. 5).

The record open form sent to the appellant's representative and the MassHealth representative stated the following with regarding extensions:

If you need more time to make your submission, you may request an extension. All such requests must be made IN WRITING, to the appropriate Hearing Officer at the Board of Hearings at the address above. The request must be received **prior to the original date that the submission was due** (capitalized emphasis in the original; bolded emphasis added). (Ex. 5).

No information was submitted to the hearing officer on April 25, 2022. On April 29, 2022, a person at the appellant's representative's firm emailed a copy of a Medical Certificate Guardianship or Conservatorship but did not indicate that an application for Guardianship/Conservatorship had been submitted to and docketed by the Probate and Family Court. (Ex. 6; Ex. 7). The appellant's representative emailed the hearing officer and the individual at her office stating "[t]his isn't the conservatorship, it's the documentation signed by the doctor that the resident needs a conservator, isn't it?" (Ex. 7, p. 1). No further information was received from the appellant's representative. On May 2, 2022, the MassHealth emailed the hearing officer and the appellant's representative stating that she had not received any verifications from the appellant as of that morning. (Ex. 8).

¹ At this point, the hearing officer also informed the appellant's representative that "[o]nce I receive a copy of this verification, I will provide further instruction on what documentation I will need to further extend the record open on an ongoing basis until a conservatorship is established."

Findings of Fact

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

1. The appellant is an individual over the age of 65 who was admitted to the nursing in the middle of 2021. (Ex. 4, p. 4).
2. On October 8, 2021, the appellant applied for LTC benefits seeking a coverage start date of July 4, 2021. (Ex. 4, pp. 2, 3).
3. As part of the eligibility process, MassHealth received a letter dated December 14, 2021 from the appellant's life insurance company indicating that she had a whole life insurance policy with a total cash surrender value of \$4,654.34. (Ex. 4, p. 7).
4. Based on this, MassHealth determined that the appellant had countable assets exceeding the MassHealth asset limit of \$2,000. (Ex. 1, pp. 6-9; Ex. 4, pp. 8-10).
5. The life insurance company will not allow the appellant's HCP to access the asset to spend it down below the asset limit without having the authority of a conservator. (Testimony of the MassHealth representative; Testimony of the appellant's representative).
6. The appellant's representative requested the record remain open to allow HCP to get a conservatorship in place and to spend down the assets and agreed to submit the following on or before April 25, 2022, and pursuant to the Record Open form, the appellant's representative agreed to submit the following on or about April 25, 2022:
 1. Verification that the appellant has spent her assets below the countable asset limit; or
 2. Verification that the HCP has filed for conservatorship. (Ex. 5).
7. The record open form sent to the appellant's representative and the MassHealth representative stated the following with regarding extensions:

If you need more time to make your submission, you may request an extension. All such requests must be made IN WRITING, to the appropriate Hearing Officer at the Board of Hearings at the address above. The request must be received **prior to the original date that the submission was due** (capitalized emphasis in the original; bolded emphasis added). (Ex. 5).
8. No information was submitted to the hearing officer on April 25, 2022. (Hearing Record).
9. On April 29, 2022, a person at the appellant's representative's firm emailed a copy of a Medical Certificate Guardianship or Conservatorship but did not indicate that an application for Guardianship/Conservatorship had been submitted to and docketed by the Probate and Family Court. (Ex. 6; Ex. 7).

10. The appellant's representative emailed the hearing officer and the individual at her office stating "[t]his isn't the conservatorship, it's the documentation signed by the doctor that the resident needs a conservator, isn't it?" (Ex. 7, p. 1).
11. No further information was received from the appellant's representative. (Hearing Record).
12. On May 2, 2022, the MassHealth representative emailed the hearing officer and the appellant's representative stating that she had not received any verifications from the appellant as of that morning. (Ex. 8)

Analysis and Conclusions of Law

The total value of countable assets owned by or available to individuals applying MassHealth LTC benefits may not exceed \$2,000 for that individual. (130 CMR 520.003(A)(1); 520.016(A)). An applicant whose countable assets exceed the asset limit may be eligible for MassHealth either as of the date the applicant reduces their excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents² or as of the date 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.^{3,4} (130 CMR 520.004(A)(1)).

The record shows by a preponderance of the evidence that the appellant is over the asset limit. MassHealth submitted evidence showing that the appellant had a life insurance policy with a cash surrender value of \$4,654.34, which is \$2,654.34 over the asset limit. As of the date of the hearing, the appellant continued to be over that asset limit by that same amount.

The appellant's representative requested that the hearing record remain open in order to allow the appellant's HCP to get a conservatorship in place and spend down the value of the asset. The appellant's representative indicated that the life insurance company will not permit appellant's HCP to spend this sum down without the authority of a conservatorship in place. For that reason, and in accordance with 130 CMR 610.065(A)(2-7),(B)(4, 6-8, 10-11) and 610.072, the hearing officer left the hearing record open until April 25, 2022 to submit either proof of the spend-down or proof that the HCP had filed for conservatorship. The record open documentation the hearing officer sent to both parties also contained instruction on how to request an extension of the record open. The record shows that no information was submitted on or before April 25, 2022. Although there was communication with the appellant's representative and her firm on April 29, 2022, this communication did not result in completion of one of the two record open requirements. As of this date, the appellant remains over the asset limit.

For the above stated reasons, the appeal is DENIED.

² See 130 CMR 520.019(F).

³ See 130 CMR 520.004(C).

⁴ In addition, the applicant must be otherwise eligible for MassHealth. (130 CMR 520.004(A)(2)).

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

[REDACTED]