

Office of Medicaid BOARD OF HEARINGS

Appellant Names and Address:



Appeal Decision: Approved

Appeal Number: 2201686

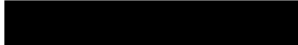
Decision Date: 6/2/2022

Hearing Date: 04/04/2022

Hearing Officer: Marc Tonaszuck

Record Open to: 05/18/2022

Appearance for Appellants:



Appearance for MassHealth:

Jared Krok, Springfield Intake 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:	Approved	Issue:	Long Term Care
Decision Date:	6/2/2022	Hearing Date:	04/04/2022
MassHealth's Rep.:	Jared Krok	Appellants' 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.

Jurisdiction

Through a notice dated 02/14/2022, MassHealth informed R.M.¹, Appellant Husband, that it denied his application for Long Term Care (LTC) benefits because he has more countable assets than MassHealth benefits allow (130 CMR 520.003, 520.004; Exhibit 1A). On 03/07/2022, a timely appeal was filed on Appellant Husband's behalf by his power of attorney.² On the request for fair hearing Appellant Husband listed Maana Hickson, Esq. as his appeal representative (130 CMR 610.015(B); Exhibit 2A).

Through a notice dated 02/14/2022, MassHealth informed G.M., Appellant Wife, that it denied her application for LTC benefits because she has more countable assets than MassHealth benefits allow (130 CMR 520.003, 520.004; Exhibit 1B). On 03/07/2022, a timely appeal was filed on Appellant Wife's behalf by her power of attorney³. On the request for fair hearing Appellant Wife listed Maana Hickson, Esq. as her appeal representative (130 CMR 610.015(B); Exhibit 2B).

The two appeals were consolidated due to common issues of fact and law (130 CMR 610.073). A hearing was held on 04/04/2022 after which the record was held open on the parties' requests until 05/18/2022.

¹ Initials used for privacy.

² See Exhibit 4A.

³ See Exhibit 4B.

Action Taken by MassHealth

MassHealth denied the Appellants' applications for MassHealth LTC Benefits because MassHealth determined that assets held in trust are countable to the Appellants for MassHealth eligibility purposes and that their total assets exceed the MassHealth eligibility limit.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulations and law to accurate facts when it denied the Appellants' applications for MassHealth LTC Benefits upon determining that assets held in trust are countable to the Appellants for MassHealth eligibility purposes and whether MassHealth correctly determined that the Appellants' total assets exceed the MassHealth eligibility asset limit.

Summary of Evidence

The MassHealth representative from the MassHealth Enrollment Center ("MEC") submitted a hearing packet in advance of the fair hearing (Exhibits 5A and 5B). During the record open period, Appellants' counsel submitted a Memorandum in Support of Their Eligibility for Benefits (Exhibits 6 and 7). Although MassHealth requested an opportunity to submit a post-hearing memorandum, no submission was made by MassHealth during the record open period.

The following summary of evidence consists of testimony at hearing, MassHealth's submission at hearing, and Appellants' Post-Hearing submission.

Appellant Wife was admitted to a skilled nursing facility in Spring 2021. She applied for MassHealth LTC Benefits on 12/30/2021 seeking a benefit start date of 10/25/2021. Appellant Husband was admitted to the skilled nursing facility in Spring 2021. He applied for MassHealth LTC Benefits on 12/30/2021 seeking a benefit start date of 11/01/2021.

In processing the application, MassHealth determined that the Appellant Husband had a bank account with a balance of \$1,950.00 and Appellant Wife had a bank account with a balance of \$462.96. In both cases MassHealth also counted the corpus of a trust, valued at \$450,065.64. The appellants' applications were denied due to excess assets. According to the denial letter, the excess assets were over the \$2,000.00 limit for each of the Appellants.

On 04/19/2012, the Appellants established the "[Appellant] Family Irrevocable Trust" (the "Trust"), appointing their two daughters as the Trustees of the Trust. The Trust was

funded, and the undisputed value of the property held in the Trust is \$450,065.64. The Trust is irrevocable. Appellants are income beneficiaries of the Trust.

The MassHealth representative explained that the Appellants are entitled to the income of the trust according to Article 3.01 of the Trust; however, the decision to count the assets of the Trust was based upon Article 9.11 of the Trust, which states, in relevant part

Our Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on either of our lives, the life of any beneficiary, or on the life of any person in whom any beneficiary has an insurable interest. It is our intent that life insurance policies be considered proper investments of trust principal.

Our Trustee may purchase disability, medical, liability, long term health care and other insurance on behalf of and for the benefit of any beneficiary. Our Trustee may purchase annuities and similar investments for any beneficiary.

Our Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy. Our Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company, issuing the policy or from another source. Our Trustee may assign the policy as security for the loan.

Our Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

Our Trustee may elect any paid-up insurance or extended term insurance nonforfeiture option contained in a policy.

Our Trustee shall have the power to sell any policy at its fair market value to anyone having an insurable interest in the policies including the insured.

Our Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing the policy. Upon termination of the trust, our Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

The provisions of this Article shall supersede the principles of general trust with respect to our Trustee's duties and obligations relating to any life insurance policies owned or acquired by our trust.

The MassHealth representative argues that the trust principal is countable because the Trustee(s) may purchase a financial product that benefits the Appellants and therefore the entire Trust principal is countable in an eligibility determination.

The record was left open for Appellant's counsel to respond and submit a memorandum in support of the Appellant's position that the Trust principal is not countable because it cannot be accessed to benefit the Appellants.

In Appellant's memorandum, Counsel cites to Article 3.01 of the Trust, which reads in part

No Trustee shall have any right, power, privilege, or authority to invade or distribute principal of the trust to or for either of our benefit.

Also, in response to MassHealth's argument concerning the Trustee Powers in Article 9.00, Counsel cites to Article 9.23(b), which reads in part

No Distributions in Discharge of Certain Legal Obligations

Our Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of our Trustee including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove our Trustee, including that person's obligation of support.

Counsel argues that case law supports that the language of the Trust prohibits the Appellant's from accessing any part of the Trust principal and therefore it is not countable in a MassHealth eligibility determination.

Findings of Fact

The record shows, and I so find:

1. Appellant Wife was admitted to a skilled nursing facility in Spring 2021. She applied for MassHealth LTC Benefits on 12/30/2021 seeking a benefit start date of 10/25/2021.
2. Appellant Husband was admitted to the skilled nursing facility in Spring 2021. He applied for MassHealth LTC Benefits on 12/30/2021, seeking a benefit start date of 11/01/2021.
3. The appellants' applications were denied due to excess assets over the \$2000.00 limit for each of the Appellants.

4. MassHealth counted the Appellant Husband's assets to total \$452,015.75, comprised of \$1,950.08 in a bank account and \$450,065.54 assets held in trust (Exhibit 1A).
5. MassHealth counted the Appellant Wife's assets to total \$450,528.60, comprised of \$462.96 in a bank account and \$450,065.54 assets held in trust (Exhibit 1A).
6. On 04/19/2012, the Appellants established the "[Appellant] Family Irrevocable Trust" (the "Trust"), appointing their two daughters as the Trustees of the Trust. The Trust was funded, and the undisputed value of the property held in the Trust is \$450,065.64.
7. According to Article 1.07 of the Trust, "[w]hile either of us is living, we are the beneficiaries of trust income, and our descendants are the beneficiaries of trust principal."
8. According to Article 3.01(b) of the Trust, "[n]o Trustee shall have any right, power, privilege, or authority to invade or distribute principal of the trust to or for either of our benefit."
9. Article 9.11 of the Trust states the following

Our Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on either of our lives, the life of any beneficiary, or on the life of any person in whom any beneficiary has an insurable interest. It is our intent that life insurance policies be considered proper investments of trust principal.

Our Trustee may purchase disability, medical, liability, long term health care and other insurance on behalf of and for the benefit of any beneficiary. Our Trustee may purchase annuities and similar investments for any beneficiary.

Our Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy. Our Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company, issuing the policy or from another source. Our Trustee may assign the policy as security for the loan.

Our Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

Our Trustee may elect any paid-up insurance or extended term insurance

nonforfeiture option contained in a policy.

Our Trustee shall have the power to sell any policy at its fair market value to anyone having an insurable interest in the policies including the insured.

Our Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing the policy. Upon termination of the trust, our Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

The provisions of this Article shall supersede the principles of general trust with respect to our Trustee's duties and obligations relating to any life insurance policies owned or acquired by our trust.

10. Article 9.23(b) of the Trust states the following

No Distributions in Discharge of Certain Legal Obligations

Our Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of our Trustee including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove our Trustee, including that person's obligation of support.

Analysis and Conclusions of Law

MassHealth regulation 130 CMR 520.023(C)(1), Irrevocable Trusts, states

(a) Any portion of the principal or income from the principal (such as interest) of an irrevocable trust that could be paid under any circumstances to or for the benefit of the individual is a countable asset.

(b) Payments from the income or from the principal of an irrevocable trust made to or for the benefit of the individual are countable income.

(c) Payments from the income or from the principal of an irrevocable trust made to another and not to or for the benefit of the nursing-facility resident are considered transfers of resources for less than fair-market value and are treated in accordance with the transfer rules at 130 CMR 520.019(G).

(d) The home or former home of a nursing-facility resident or spouse held in an irrevocable trust that is available according to the terms of the trust is a countable

asset. Where the home or former home is an asset of the trust, it is not subject to the exemptions of 130 CMR 520.007(G)(2) or 520.007(G)(8).

(2) Portion Not Payable. Any portion of the principal or income from the principal (such as interest) of an irrevocable trust that could not be paid under any circumstances to or for the benefit of the nursing-facility resident will be considered a transfer for less than fair-market value and treated in accordance with the transfer rules at 130 CMR 520.019(G).

The Appellants applied for MassHealth on 12/30/2021, having been admitted to the skilled nursing facilities in the Spring of 2021. MassHealth denied their applications due their countable assets exceeding the \$2,000.00 limit. The respective bank accounts are less than \$2,000.00. Consequently, the sole asset in dispute was a trust with undisputed holdings of \$450,065.64. The Appellants as donors established the irrevocable family trust on 04/19/2012.

As more than five years has elapsed between the creation of the trust and the application date, it cannot be considered to be a disqualifying transfer as it is beyond the look-back period. No other transfers were raised at hearing. Therefore, there is no issue of disqualifying transfers for this appeal.⁴

There is no dispute that the trust is irrevocable. Similarly, there is no issue of countable income. The parties agree that income from the Trust is available to the appellants. The fact that the Appellants are entitled to income from the trust has no bearing on the issue of the accessibility of principal.

Herein, the pertinent question is whether the principal of the Trust is available to the Appellants under any circumstance, and if so, to what extent? The answer is found in the simple language of the Trust's articles. The appellants' daughters were named as trustees. According to Article 3.01(b) of the Trust, "[n]o Trustee shall have any right, power, privilege, or authority to invade or distribute principal of the trust to or for either of our benefit." MassHealth has identified no other clause in the Trust which addresses circumstances in which the appellant or the trustee could distribute principal to the appellant. Clearly then, by the explicit terms of the trust, there is no way for the Appellants to access the principal for themselves or for the trustee(s) to distribute principal to them.

MassHealth in its justification for counting the trust's assets cites Article 9.11 of the Trust, which states, in relevant part "[o]ur Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on either of our lives, the life of any beneficiary, or on the life of any person in whom any beneficiary has an insurable interest."

⁴ 130 CMR 520.019(B)2: For transfers of resources occurring on or after February 8, 2006, the look-back period extends back in time for 60 months from the time the applicant both was a nursing home resident and had applied for MassHealth.

I agree with the appellant that it is incorrect to equate access to the principal to availability as it pertains to the property in the trust. Also, the broad powers of the trustee do not include the distribution of principal to the appellant as donor. Such an action, by the clear terms of the Trust, would be a clear breach of their fiduciary duty. While it is true that the trustee has the authority to purchase insurance or an annuity for the appellant, this only makes the income from such an instrument available to her. By the terms of the Trust, any and all assets purchased by the trust would be owned by the Trust and not the Appellants.

In conclusion, the assets of the trust are unavailable to the Appellants as they do not have authority to revoke the instrument or distribute assets to themselves. Likewise, the trustee(s) have no authority to distribute principal to them only, as principal can only go to their children. Accordingly, based upon the above cited regulations, none of these assets should have been counted in either of the Appellants' eligibility determinations.

The appeal is therefore approved.

Order for MassHealth

Rescind denial notices dated 02/14/2022. Re-determine appellant's eligibility for MassHealth exempting trust assets.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

Appellants' Attorney: [REDACTED]

Appellants' Power of Attorney: [REDACTED]

