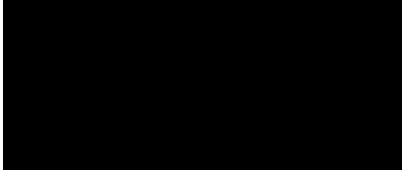


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2202580
Decision Date:	5/24/2022	Hearing Date:	4/20/2022
Hearing Officer:	Cynthia Kopka	Record Open to:	4/29/2022

Appearance for Appellant:



Appearance for MassHealth:

Jamie Lapa, Springfield



*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:	LTC eligibility – transfers
Decision Date:	5/24/2022	Hearing Date:	4/20/2022
MassHealth’s Rep.:	Jamie Lapa	Appellant’s Rep.:	
Hearing Location:	Springfield (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

By notice dated March 29, 2022, MassHealth denied Appellant’s application for MassHealth long term care services for making impermissible transfers of assets, resulting in a period of ineligibility from January 1, 2022 through November 24, 2022. Exhibit 1. Appellant filed this appeal in a timely manner on April 5, 2022. Exhibit 2. 130 CMR 610.015(B). Challenging the denial or scope of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through April 29, 2022 for submission of additional information. Exhibit 7.

Action Taken by MassHealth

MassHealth denied Appellant’s application for MassHealth long term care services for making impermissible transfers of assets, resulting in a period of ineligibility from January 1, 2022 through November 24, 2022.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

Summary of Evidence

MassHealth was represented at hearing by an eligibility specialist, who submitted documents in support of hearing. Exhibit 6. Appellant was represented at hearing by an attorney who submitted a brief in support. Exhibit 5.

On January 18, 2022, MassHealth received Appellant's application for benefits. Appellant admitted to the facility on [REDACTED] and requested a coverage start date of January 1, 2022. On March 29, 2022, MassHealth denied Appellant's application, having found impermissible transfers resulting in a penalty period. Exhibit 1. In 2016, Appellant sold her home ("the property") to family members, retaining a life estate interest ("the life estate interest"). Exhibit 6 at 24. On February 11, 2020, when Appellant was [REDACTED] and unmarried, Appellant sold the life estate interest to her son, and the other remainder holders transferred their interest to the same son. *Id.* at 17. Appellant received \$35,296.00 for the sale.

MassHealth determined that the fair market value of the property at the time of sale was \$549,000, based on the tax assessed value for 2020. *Id.* at 27.¹ To determine the fair market value of the life estate interest, MassHealth followed the value calculation formula in MassHealth Eligibility Operations Memo ("EOM") 20-16, issued August 28, 2020. *Id.* at 12. EOM 20-16 instructs MassHealth to calculate the life estate value using the Social Security Administration (SSA) Life Estate and Remainder Interest Table in Section SI 01140.120 of the Program Operations Manual System (POMS). "The Life Estate factor and Remainder Interest factor to be used depends on the age of the applicant, member, or spouse at the time that the transaction took place or at the time of application. That figure is then multiplied by the value of the property." Per the table, the life estate value for an [REDACTED] at the time of sale was 0.30859. *Id.* at 30.² Multiplying this to \$549,000 MassHealth calculated that the value of the life estate interest at the time of sale was \$169,415.91. As Appellant sold her interest for \$35,296, MassHealth determined that Appellant sold her property for \$134,119 less than fair market value. Using the average daily rate of \$410, MassHealth calculated a period of ineligibility of 328 days, from January 1, 2022 to November 24, 2022. Exhibit 1.

Appellant's attorney argued that Appellant did not transfer her life estate interest for less than fair market value, and therefore no penalty period should be imposed. Appellant's attorney disputed both the valuation of the property as a whole and the calculation of the life estate interest. Regarding the value the property, Appellant's attorney asserted that the fair market value was \$400,000, not \$549,000 as MassHealth determined. Appellant's attorney asserted that the family reduced the computed the sale price of the home due to savings on not having to use realtors for the sale, a savings of approximately 6%. Exhibit 5 at 1. Appellant's attorney also asserted that the \$400,000 sale price reflected the state of disrepair of the property. During the record open period, Appellant submitted a home inspection report of the property dated October 22, 2019. Exhibit 8 at 10-39. The home inspection report lists areas of disrepair, including but not limited to black mold and rodent

¹ The assessor's database breaks down the 2020 tax assessed value of the property, listing the building value at \$168,900, the yard item value at \$4,900, and the land value of \$375,200. *Id.*

² Also found online at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501140120> (last reviewed May 23, 2022).

infestation. *Id.* at 16. Appellant also provided an invoice dated March 5, 2020 for \$3,950 for black mold remediation. *Id.* at 42-45. Appellant's attorney did not offer an appraisal or estimates as to other repairs to be made on the home or the effect of such disrepair on the fair market value of the property.

Appellant also contested MassHealth's calculation of the fair market value of Appellant's life estate interest, arguing that the formula for calculating the value as provided by MassHealth in EOM 20-16 (and earlier EOM 19-12) unreasonably and arbitrarily valued the life estate interest beyond what Appellant could expect to receive in a fair market transaction.

Appellant argued that computing the present value of a life estate interest of a parcel involves an actuarial analysis factoring in both the life expectancy of the life estate holder and the current interest rates. Prior to MassHealth issuing EOMs 19-12 and 20-16, MassHealth used a formula for calculating the life estate and remainder values as set forth in EOM 07-18. Appellant argued that the 07-18 formula factors into its calculation the prevailing interest rates at the time of sale. However, the POMS table relied upon here, published in 1999 and referenced in 19-12 and 20-16, utilizes a flat ten percent (10%) interest rate. Appellant argued that the formula set forth in EOM 07-18 more accurately reflects fair market value.

MassHealth is mandated by federal Medicaid laws to consider the fair market value of assets. 42 USC 1936(p)(c)(1)(a). Appellant argues that EOM 20-16 unreasonably and arbitrarily uses the exhibit table in POMS without applying the federal regulation cited therein, 26 CFR 20.2031-7, which specifically provides that the calculation of a life estate interests created on or after May 1, 2009 should use the "appropriate Internal Revenue Code Section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued." 26 CFR 20.2031-7(d)(1). By using the POMS table exhibit that relies upon a 10% interest rate, MassHealth ignores the federal guidance to use the Section 7520 interest rate and calculates an arbitrarily inflated value of the life estate interest.

Appellant argued that the proper, accurate way of calculating the value of a life estate interest would be the method provided for in EOM 07-18 methodology. This method is consistent with federal regulations, state estate tax law Mass. Gen. Laws ch. 65, § 5(b),³ and *Brennan v. Burke*, 2019 Mass. LCR LEXIS 104 (June 13, 2019). In determining the sale price of the life estate interest, Appellant used a 2% interest rate, the Section 7520 interest rate at the time of sale.⁴ The computation of the life estate value using this computation is as follows:

³ Appellant argued that though this is not a controlling MassHealth law, the Commonwealth's Department of Revenue determines the value of a life estate pursuant to IRS Codes: "The value of ... a life estate .. shall be determined in accordance with the actuarial tables in effect as of the decedent's death under section two thousand and thirty-one of the Code in effect on January first, nineteen hundred and eighty-five at such time and regulations issued thereunder."

⁴ Appellant did not offer provide supporting documentation of the Section 7520 interest rate in her brief or record open submission, but a search showed that the February 2020 Section 7520 interest rate was 2.2. See <https://www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates-for-prior-years#2020> .(last reviewed May 23, 2022).

Internal Revenue Code Section 7520 Interest Rate:	2.00%
Appellant's age in February 2020:	■
Resulting life estate factor:	.08824
Life estate valuation computation: .08824 x \$400,000 =	\$35,296

In summary, Appellant argued that the formula used in EOMs 19-12 and 20-16 does not yield an accurate valuation of a present life estate interest because the prevailing interest rate at the time of sale was significantly lower than the flat 10% rate used in the POMs exhibit table. Additionally, Appellant offers other arguments challenging the validity of MassHealth's promulgation of EOMs 19-12 and 20-16. Appellant argued that these memoranda are retroactive, which is arbitrary and capricious. EOM 19-12, issued August 15, 2019, changes the valuation process for all applications and redeterminations effective September 3, 2019. Appellant objects to the lack of phase-in period for computing life estate values under previous guidance, arguing that this differs from how MassHealth implemented changes in 2006 after the deficit reduction act, codified in 130 CMR 520.019(B)(2). Appellant illustrates this by arguing that had she applied for MassHealth on September 2, 2019, she would have qualified for benefits without a penalty period, but then would have been retroactively penalized during her 2020 review.

Finally, Appellant argued that it is improper for MassHealth to change the way it calculates life estate values in an EOM, arguing that it is in effect a change in regulation which substantially affects an applicant's rights must be made by following requirements of the Administrative Procedures Act prior to implementation. Appellant argued that EOMs 19-12 and 20-16 are not internal agency rules, but rather policies that affect "the rights or the procedures available to the public or that portion of the public affected by the agency's activities." Mass. Gen. Laws. Ch. 30A, §5(b). Here, the change in how MassHealth calculates the value of a life estate impacts the life estate holder's access to benefits and therefore should be a change subject to public notice and comment. Appellant argues that the delegation in 130 CMR 520.019(I)(1) (MassHealth "will calculate the values of the remainder interest and the life-estate interest in accordance with the life-estate tables as determined by the MassHealth agency") is improper.

Request for subpoenas

On April 12, 2022, Appellant's attorney filed a request to the hearing officer to issue two subpoenas pursuant to Mass. Gen. Laws ch. 30A, § 12(3). Appellant first requested to issue a subpoena duces tecum to the Keeper of Records of the Executive Office of Health and Human Services, ordering him or her to attend the hearing and bring

Any and all documents relating to the valuation of life-estate interests by MassHealth or the imposition of a transfer penalty for the disposition of life-estate interests pursuant to 130 CMR 520.018 or 130 CMR 520.019 and MassHealth Eligibility Operations Memorandums [sic] ("EOM") 20-16 and 19-12. Such documents include, but not [sic] limited to, guidance provided to the EOHHS by the federal government or its agencies, documentation pertaining to the change of life-

⁵ The parties at hearing agreed that Appellant's age at the time of application, February 2020, was 88 years old.

estate valuation under EOM 07-18.

Appellant also requested to issue a subpoena duces tecum to the Keeper of Records of the Board of Hearings (BOH), ordering him or her to attend the hearing and bring all “Fair Hearing decisions rendered by the Board of Hearings involving the valuation of life-estate interests by MassHealth or the imposition of a transfer penalty for the disposition of life-estate interests pursuant to 130 CMR 520.018 or 130 CMR 520.019 and MassHealth Eligibility Operations Memorandums [sic] 20-16 and 19-12.” Exhibit 4. In support of the request, Appellant’s attorney wrote

The documents and information requested in such subpoenas are material to the Appellant’s case as MassHealth’s differing treatment of life-estate valuations materially impacts the Appellant’s rights under the law. Similarly, the Board of Hearings has issued differing rulings as to the valuation of life-estate interests. It is essential that the Hearing Officer for this appeal have a complete record of both the history of MassHealth’s treatment of life-estate interest as well as differing treatments of life-estates by the Board of Hearings.

Exhibit 4 at 2. At hearing, Appellant’s attorney conceded that some of the information sought could be obtained by legal research, though argued that BOH decisions are more difficult to discover with legal research due to limited access to and publication of hearing decisions. Appellant’s attorney argued that the main concern in requesting the subpoena was to elicit testimony from MassHealth as to the implementation of policies and EOMs. Appellant’s attorney argued that the MassHealth representative appearing at hearing likely does not have answers to policy making questions. Appellant’s attorney sought to create as comprehensive an administrative record as possible to be able to challenge the policy making at the superior court or higher court levels. Appellant’s attorney declined to further brief the legal argument to support the requests for subpoena.

Appellant’s attorney questioned the MassHealth representative regarding the use of EOM 20-16 to calculate life estate interests. The MassHealth representative affirmed that the formula in EOM 20-16 is to determine the fair market value. The MassHealth representative testified that she had no idea whether she was explained to by policy makers how the POMS table generates the remainder and life estate interest. The MassHealth representative did not know why MassHealth changed from the formula used in EOM 07-18 to the formulas used in EOM 19-12 or 20-16. The MassHealth representative did not know whether MassHealth provided any explanation to its employees about the change in any internal or non-public document or memorandum.

Findings of Fact

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

1. On January 18, 2022, MassHealth received Appellant’s application for benefits. Appellant admitted to the facility on [REDACTED] and requested a coverage start date of January 1, 2022.

2. On March 29, 2022, MassHealth denied Appellant's application, having found impermissible transfers resulting in a penalty period. Exhibit 1.
3. Appellant filed a timely appeal on April 5, 2022. Exhibit 2.
4. In 2016, Appellant sold her home to family members, retaining a life estate interest. Exhibit 6 at 24.
5. On February 11, 2020, when Appellant was [REDACTED] and unmarried, Appellant sold her life-estate interest to her son, and the other remainder holders transferred their interest to the same son. *Id.* at 17.
6. Appellant received \$35,296.00 for the sale of the life estate.
7. In 2020, the tax assessed value for the property was \$549,000. *Id.* at 27.
8. The life estate factor for an [REDACTED] in the SSA Life Estate and Remainder Interest Table in Section SI 01140.120 of the POMS is 0.30859. *Id.* at 30.
9. Multiplying 0.30859 to \$549,000 equals \$169,415.91.
10. MassHealth determined that Appellant sold her life estate interest for \$134,119 less than fair market value.
11. Using the average daily rate of \$410, MassHealth calculated a period of ineligibility of 328 days, from January 1, 2022 to November 24, 2022. Exhibit 1.

Analysis and Conclusions of Law

Per 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. 130 CMR 519.006(A)(5). Specifically, 130 CMR 520.018(B) states that MassHealth "will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period." The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

Fair market value is "an estimate of the value of a resource if sold at the prevailing price. For transferred resources, the fair-market value is based on the prevailing price at the time of transfer." 130 CMR 515.001. All real estate owned by an individual is a countable asset, except the principal place of residence. 130 CMR 520.007(G)(1). Proceeds from the sale of real estate are a countable

asset. 130 CMR 520.007(G)(5).

The regulations require that applicants verify the fair market value of property by providing a copy of the most recent tax bill or the property tax assessment. 130 CMR 520.007(G)(3)(a). However,

[i]n the event that a current property-tax assessment is not available or the applicant or member wishes to rebut the fair-market value determined by the MassHealth agency, a **comparable market analysis or a written appraisal of the value of the property from a knowledgeable source will establish the fair-market value**. A knowledgeable source is a **licensed real-estate agent or broker**, a real-estate appraiser, an official of a bank, a savings-and-loan association, or a similar lending organization, or an official of the local real-estate tax jurisdiction.

130 CMR 520.007(G)(3)(b) (emphasis added).

The regulations regarding the transfer of a life-estate interest in property are set forth in 130 CMR 520.019(I) (emphasis added):

(I) Transfer of Life-Estate and Remainder Interest. The rules pertaining to transfer of life-estate and remainder interest apply in instances involving remainder interest of property including life estates, annuities, wills, and trusts.

(1) The MassHealth agency considers a transfer of property with the retention of a life estate, as defined in 130 CMR 515.001: *Definition of Terms*, to be a transfer of resources. The difference between the fair-market value of the entire asset and the value of the life estate is called the remainder interest. The remainder interest is the amount considered to be transferred at less than fair-market value. The MassHealth agency will calculate the values of the remainder interest and the life estate in accordance with the life-estate tables, as determined by the MassHealth agency. If the language of the document creating the life estate explicitly states that the owner of the life estate has the power to sell the entire property (not simply the life estate), then the creation of this type of life estate will be treated as a trust.

(2) If the nursing-facility resident's or the spouse's life-estate interest or property including the life-estate interest is sold or transferred, **the value of the life-estate interest at the time of the sale or transfer is calculated in accordance with the life-estate tables, as determined by the MassHealth agency**. The MassHealth agency will attribute the value of the life-estate interest at the time of the sale or transfer to the person selling or transferring the life estate.

(3) The MassHealth agency considers the purchase of a life estate in another individual's home made on or after April 1, 2006, a disqualifying transfer, unless the purchaser resides in the home for a period of at least one year after the date of the purchase.

On December 1, 2007, MassHealth revised its procedure to be used to determine the value of life

estate and remainder interests effective December 1, 2007. EOM 07-18 at 1. The memorandum instructs workers to use the Internal Revenue Service (IRS) Table S, “Single Life Factors Based on Life Table 90 SM,” in accordance with the interest rates under IRS code 7520 as of the date of the transfer or sale. *Id.* The memorandum details the procedure to follow to calculate the life estate, which involves finding the correct Table S to correspond with the appropriate 7520 interest rate (as listed in Tiger Tables, an actuarial rate web site) and applying the listed life estate interest factor based on the applicant’s age at the time of sale. *Id.* at 1-2. On August 15, 2019, MassHealth issued EOM 19-12, revising the methodology for calculating life estate interests to “align with federal guidelines” issued by the Centers for Medicare and Medicaid Services (CMS). EOM 19-12 at 1. The memorandum states that MassHealth will no longer use the IRS and Tiger Tables, and instead “will use the Social Security Administration (SSA) Life Estate and Remainder Interest Table to calculate the value of remainder interests and life estates. The SSA Life Estate and Remainder Interest Table is in Section SI 01140.120 of the Program Operations Manual System (POMS).” *Id.* The memorandum provides a link to the SSA Life Estate and Remainder Interest Table on the Social Security website. *Id.*

On August 28, 2020, MassHealth superseded EOM 19-12 with EOM 20-16, setting forth the procedures to calculate a life estate interest for individuals and for married couples. EOM 20-16 at 1-2. The memorandum provided that MassHealth would continue to use the same SSA Life Estate and Remainder Interest Table as referenced in EOM 19-12. *Id.* at 1. EOM 20-16 sets forth the procedure for calculating the value of a life estate interest for an individual, in pertinent part:

Generally, the value of the Life Estate interest is calculated based on the fair market value of the property at the time of transfer or on the date of application or redetermination if the applicant, member, or spouse still holds the interest. The Life Estate factor and Remainder Interest factor to be used depends on the age of the applicant, member, or spouse at the time that the transaction took place or at the time of application. That figure is then multiplied by the value of the property.

Procedure for Individuals

The procedure for calculating the Life Estate Value for an individual consists of using the fair market value of the property and multiplying this figure by the Life Estate factor associated with the age of the applicant.

As part of the fair hearing process, a hearing officer is to examine “the facts, the applicable law, the MassHealth agency’s rules, regulations, contracts, and *Policy Memoranda*,⁶ and the other circumstances of the appeal presented by the parties to determine the legality and appropriateness of the MassHealth agency’s or MassHealth agency employee’s action... .” 130 CMR 610.012(C)(2). It is a hearing officer’s duty “to render a fair, independent, and impartial decision based on the issues and evidence presented at the hearing and in accordance with the law, including the MassHealth agency’s rules, regulations, and *Policy Memoranda*” 130

⁶ The term “Policy Memoranda” is defined in 130 CMR 610.004 as “written explanations issued by the MassHealth director or the General Counsel’s office, of the MassHealth agency’s intent and interpretation or application of its regulations under 130 CMR”

CMR 610.065(A)(7). A hearing officer “must give due consideration to *Policy Memoranda* and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation.” 130 CMR 610.082(C)(3). A hearing officer may not rule on the legality of federal law, state law, or MassHealth regulations. 130 CMR 610.082(C)(2).

Here, MassHealth determined that Appellant made a disqualifying transfer when she sold her life estate interest in the property to her son for \$35,296. Appellant disputed the determination, challenging both the determination of the assessed value of the property in its entirety and the calculation of the life estate interest.

Calculation of property value

MassHealth provided evidence that the tax assessed value of the property at the time of sale was \$549,000. Appellant disputed this, arguing that the value was \$400,000. Appellant did not offer a comparable market analysis or a written appraisal of the value of the property from a knowledgeable source to challenge the assessed value. The home inspection report provided by Appellant did not provide estimates as to the cost to repair the home or the monetary effect that each of the property defects would have on the marketable value of the property. Appellant did not meet her burden of showing the error of MassHealth’s determination that the fair market value of the property at the time of sale was \$549,000.

Calculation of life estate interest

MassHealth calculated the value of Appellant’s life estate interest at the time of sale pursuant to the procedure set forth in EOM 20-16 without mathematical error. Appellant argued that it is improper for MassHealth to calculate the value of a life estate interest using this procedure. Appellant challenged the accuracy and validity of the methodology contained in EOM 20-16, but did not raise a factual dispute as to how MassHealth made its calculation (except as to the value of the property as a whole, discussed above). Appellant did not cite controlling Medicaid statutes, regulations, or case laws in challenging the EOM 20-16 procedure. Pursuant to 130 CMR 610.082(C)(3) the hearing officer must give due consideration to EOM 20-16 (issued pursuant to 130 CMR 520.019(I)) and MassHealth’s interpretation thereof. Each of Appellant’s challenges to the legality of EOM 20-16 (the purported inaccuracy in providing a fair market value for an interest, the promulgation with retroactivity, and the promulgation by policy memoranda as opposed to regulation) must be subject to judicial review in accordance with 130 CMR 610.092.

As Appellant has not raised a successful factual dispute as to the calculation of the value of Appellant’s life estate interest at the time of the transfer, this appeal is denied.

Request for subpoena

A party to a hearing may submit to BOH a request to issue a subpoena “requiring the attendance and testimony of witnesses and the production of any evidence including books, records, correspondence, or documents relating to any matter in question at the hearing.” 130 CMR

610.052(B). “If, **in its discretion** and in accordance with 130 CMR 610.065(B), BOH allows such request, a subpoena will be issued within three business days of receipt of such request.” *Id.* (emphasis added). A subpoenaed party may petition to vacate a subpoena, and BOH may grant such a petition in whole or in part upon a finding that

- (a) the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question;
- (b) the subpoena is unreasonable or unduly burdensome; or
- (c) the subpoena has not been issued in a reasonable period in advance of the time when the evidence to be produced is requested.

130 CMR 610.052(C)(2); *see also* Mass. Gen. Laws ch. 30A, § 12(4) (an agency may grant a petition to vacate a subpoena in whole or in part “upon a finding that the testimony, or the evidence whose production is required, does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive”). The regulatory duties and powers of the hearing officer include ruling on, excluding, and limiting evidence, ensuring that relevant evidence is secured and introduced, and eliciting all the information necessary to decide the issues involved and to ascertain the rights of the parties. 130 CMR 610.065(A) and (B).

Appellant’s request for a subpoena for the KOR of EOHHS was denied, as it was unreasonable, unduly burdensome, and did not relate with reasonable directness to any matter in question. Though a petition to vacate was not filed here, the hearing officer has discretion to allow or deny the subpoena as per the language in 130 CMR 610.052(B). Appellant’s request for a policy maker to testify as to the reason why MassHealth changed the way it calculated the value of a life estate was not necessary to decide the issue involved in this appeal. The legality or validity of EOMs 19-12 and 20-16 and MassHealth’s promulgation thereof cannot be decided by hearing officer. 130 CMR 610.082(C)(2). Therefore, there was no basis for eliciting the testimony of a policy maker at hearing.

Appellant’s request for a subpoena for the KOR of BOH was also denied, as it was unreasonable and unduly burdensome. The information Appellant sought by way of subpoena, hearing decisions, are publicly available through due diligence and legal research. Moreover, any prior BOH decisions regarding the valuation of a life estate had no precedential authority over the present decision.⁷

Order for MassHealth

None.

⁷Appellant did not offer evidence that there exist any differing or inconsistent BOH decisions on this topic, as Appellant did not cite any hearing decisions in the legal memorandum.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

[REDACTED]

Policy Implementation Unit 7th fl. Rm 7004