

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2202720
Decision Date:	7/19/2022	Hearing Date:	April 29, 2022
Hearing Officer:	Brook Padgett	Record Open:	June 30, 2022

Appellant Representative:



MassHealth Representative:

Ke'isha McMullen



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	130 CMR 520.022
Decision Date:	7/19/2022	Hearing Date:	April 29, 2022
MassHealth Rep.:	K. McMullen	Appellant Rep.:	
Hearing Location:	Springfield		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

The appellant received a notice dated March 31, 2022, stating: MassHealth has reviewed your application for MassHealth long term care services which you filed on March 25, 2022. You are not eligible for MassHealth long term care services as you have more countable assets than MassHealth benefits allow. (Exhibit 1).

The appellant filed this appeal timely on April 11, 2022. (130 CMR 610.015(B); Exhibit 2).

Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

The appellant's long term care application was denied as she is over the MassHealth long term care asset limit.

Issue

Is the appellant over assets limit for long term care eligibility?

Summary of Evidence

MassHealth testified the appellant applied for long term care benefits on January 26, 2022 requesting benefits beginning November 16, 2021. The appellant's application indicated she had rental property contained in the [REDACTED] 2012 Trust (Trust) valued at \$400,968.21. MassHealth denied the appellant's request on March 31, 2022, as the appellant was determined to be \$398,969.21 over the \$2,000.00 asset limit. MassHealth argued the appellant has access to life insurance under section 20.03 and the Trust income under section 3.04. MassHealth maintained Trust principal is countable under section 2.03 and 3.04 which allows Trust principal to be paid to and for the benefit of the appellant and/or spouse. MassHealth submitted into evidence The [REDACTED] 2012 Trust, Trustee Certificate dated January 11, 2012, Registry of Deeds search and Fiscal Year 2021 Real Estate Tax Notice. (Exhibit 4).

The appellant was represented by counsel who responded the appellant was diagnosed with dementia several years ago and was admitted to a long-term care facility on [REDACTED]. The appellant has privately paid the nursing facility from the date of admission until November 14, 2021. The representative argued there is no life insurance contained in the Trust and the appellant has no ownership in the Trust property as it was transferred to the Trust on January 11, 2012 and the appellant is not a beneficiary. The Trustee has no obligation to the appellant as the Trustees have a fiduciary duty to hold and protect the property for the beneficiaries. Since the appellant is not a beneficiary the Trustees have no fiduciary duty to the appellant. Further the Trust asset is currently operating at a loss. The appellant submitted into evidence: 2021 1040, with Schedule E - Supplemental Income and Loss, Schedule 1 - Additional Income and Adjustments to Income, Form 8582 - Passive Activity Loss Limitations, Form 4562 - Depreciation and Amortization, 2021 Real Estate Tax Notice, and 2021 insurance payment for the Trust asset. (Exhibit 5).

The record was left open for MassHealth to confirm the application date of January 26, 2022 and the appellant to present evidence regarding the rental property. (Exhibit 6).

The appellant submitted additional documentation within the required time limits which restated the rental property contained in the Trust is not countable as the Trustees have a fiduciary duty to hold and protect the property for the beneficiaries. Since the appellant is not a beneficiary the Trustees have no fiduciary duty to the appellant. In the alternative counsel maintains if the Trust property is deemed countable MassHealth should attribute any net income to the nursing facility after deduction of the costs and expenses associated with the protecting, maintaining and the general upkeep of property. The appellant submitted into evidence: 3 leases (\$1,350.00 apartment for #1 and #2 and \$950.00 for apartment #3) each terminates on July 31, 2022; 2020 1040 with Schedule E - Supplemental Income and Loss and Schedule 1 - Additional Income and Adjustment to Income. (Exhibit 7).

MassHealth responded that the correct date of application is January 26, 2022 and the case is still denied for asset as the trust is countable. (Exhibit 8).

Findings of Fact

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

1. The appellant is a single individual residing in a nursing facility who filed an application for MassHealth long term care benefits on January 26, 2022 requesting benefits beginning November 16, 2021. (Testimony)
2. The appellant as Grantor established the Trust on January 11, 2012. (Exhibit 4).
3. The only asset of the Trust's is a three-family home valued at \$400,968.21. (Exhibit 4).
4. The [REDACTED] 2012 TRUST ARTICLE III:
3.04 During the lifetime of the Grantor, the Trustees shall hold the insurance policies on the Grantor's life and shall hold, manage, invest, and reinvest the other trust property, if any, and shall collect the income and proceeds thereof. The Trustees shall pay or apply to or for the Grantor's benefit the income with respect to assets listed in Schedule "B" or added thereto in quarterly or other convenient installments and shall pay over to the Grantor such amounts of principal from such assets as Grantor may in writing from time to time request. The Trustees are further authorized during the lifetime of the Grantor without request from him to pay or apply to or for his benefit such amount of principal, including the whole thereof, as the Trustees in the Trustees sole discretion may from time to time deem necessary or advisable for his comfort, maintenance, or support. (Exhibit 4).
5. The MassHealth long term care asset limit is \$2,000.00 (130 CMR 520.003).

Analysis and Conclusions of Law

Regulations at 130 CMR 520.008 state that if the home of an applicant is placed in a trust or in a similar arrangement, MassHealth must apply the trust rules at 130 CMR 520.021 through 520.024. The appellant created the Trust on January 11, 2012; therefore, regulations at 130 CMR 520.023 are controlling.

130 CMR 520.023: Trusts or Similar Legal Devices Created on or after August 11, 1993

(B) Revocable Trusts.

(1) The entire principal in a revocable trust is a countable asset.

- (2) Payments from a revocable trust made to or for the benefit of the individual are countable income.
- (3) Payments from a revocable trust made other than to or for the benefit of the nursing-facility resident are considered transfers for less than fair-market value and are treated in accordance with the transfer rules at 130 CMR 520.019(G).

- (4) The home or former home of a nursing-facility resident or spouse held in a revocable 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).

The issue is whether the Trust created in 2012 is revocable and as a result the assets contained in the Trust are accessible by the appellant and therefore countable for MassHealth long term care eligibility. The appellant's representative asserts the Trustees' sole responsibility is to hold and protect the property of the Trust for the named beneficiaries. Since the appellant is not a beneficiary of the Trust, the Trustees have no fiduciary obligation or duty to the appellant and therefore the Trust assets are not countable.

The common understanding of a revocable trust is a trust which can be amended or revoked by the person or persons who established the trust.¹

ARTICLE III of the Trust states in part “**The Trustees** shall pay or apply to or for the Grantor's benefit the income with respect to assets listed in Schedule “B” or added thereto in quarterly or other convenient installments, and **shall pay over to the Grantor such amounts of principal from such assets as Grantor may in writing from time to time request**... (See Exhibit 4).

Under the terms of the Trust, the appellant as grantor has retained the right to receive as much of the principal of the Trust as the appellant requests. The remaining Trust language gives the Trustee no discretion regarding the appellant/grantor's request. Based on this plain language the Trust is revocable and therefore countable for MassHealth long term care eligibility.

The appellant's representative maintained if the asset were determined countable, only the net income generated from the asset should be attributed to the appellant's cost of nursing home care (currently the asset is operating at a loss). The appellant does not qualify for MassHealth long term care as she is over the asset limit for MassHealth eligibility so income from the assets is not considered. Income would be counted only if the asset in the Trust was below the asset limit.

The regulations are clear and unambiguous as are the facts that appellant is a nursing facility resident whose assets are in a revocable trust created in 2012 and that all assets within the revocable trust are countable. MassHealth correctly determined the appellant countable assets exceed the \$2,000.00 MassHealth eligibility limit and the appellant is ineligible for MassHealth long term care services. This appeal is denied.

Order for the MassHealth

None.

¹ Black's Law Dictionary definition of a revocable trust is “A trust in which the settlor reserves the right to revoke.” Sixth Edition (1990).

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.

Brook Padgett
Hearing Officer
Board of Hearings

Cc: MassHealth Representative: Springfield MEC