

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|-----------------|------------------------|--|
| Appeal Decision: | Approved | Appeal Number: | 2203042 |
| Decision Date: | 7/28/2022 | Hearing Date: | 05/11/2022 |
| Hearing Officer: | Patricia Mullen | Record Open to: | 07/15/2022 (appellant); 07/22/2022 (MassHealth) |

Appearance for Appellant:

██████████, business
assistance, nursing facility

Appearance for MassHealth:

office Berthilde Franklin, Taunton MEC



*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

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|---------------------------|--|--------------------------|---|
| Appeal Decision: | Approved | Issue: | Assets |
| Decision Date: | 7/28/2022 | Hearing Date: | 05/11/2022 |
| MassHealth's Rep.: | Berthilde Franklin, Taunton MEC | Appellant's Rep.: | Business office assistant from nursing facility |
| Hearing Location: | Taunton MassHealth Enrollment Center Room | 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

Through a notice dated March 8, 2022, MassHealth determined that the appellant is not eligible for MassHealth Standard for long term care residents because her assets exceed the MassHealth limit of \$2,000.00. (see 130 CMR and Exhibit 1). The appellant filed this appeal in a timely manner on April 21, 2022¹. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal. (see 130 CMR 610.032). The record was originally left open until June 13, 2022, and later extended to July 8, 2022, and July 15, 2022, to give the appellant's representative the opportunity to submit documentation regarding the assets. (Exhibits 6, 18, 19). MassHealth had until July 22, 2022 to respond. (Exhibit 21).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends;
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth determined the appellant is not financially eligible for MassHealth Standard for long term care residents.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, in determining that the appellant's assets exceed the MassHealth limit.

Summary of Evidence

The appellant was represented telephonically at the hearing by the nursing facility's business office assistant, who the appellant's power of attorney (POA) authorized to represent her at the hearing. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center in Taunton. The MassHealth representative stated that the appellant was approved for MassHealth Standard for long term care residents with a start date of March 11, 2020. MassHealth sent the appellant a review on October 26, 2021 and the appellant returned the review on November 30, 2021. (Testimony). The MassHealth representative stated that the review was processed and MassHealth sent the appellant a request for information on December 24, 2021. The appellant did not submit verifications in a timely manner and her MassHealth was terminated by notice dated February 10, 2022; the February 10, 2022 termination notice was not appealed and the appellant's MassHealth benefits terminated on February 24, 2022. (Testimony, exhibit 5). The MassHealth representative stated that the appellant submitted asset verifications on March 8, 2022 and that became the reapplication date. The MassHealth representative stated that the application was denied by notice dated March 8, 2022 based on MassHealth's determination that the appellant's assets exceed the MassHealth limit of \$2,000.00. (Exhibit 1).

MassHealth submitted no documentation for the hearing. The MassHealth representative stated that the appellant had a savings account with a balance of \$130.60, and a checking account with a balance of \$1,991.06 for a total bank account balance of \$2,121.66. The MassHealth representative stated that the appellant did not have a personal needs allowance account, so MassHealth put \$1.00 for that asset. (Exhibit 1). The MassHealth representative stated that the appellant had real estate property valued at \$9,600.00. Upon questioning by the hearing officer, the MassHealth representative explained the property is a timeshare property. The MassHealth representative stated that the appellant had total assets of \$11,722.66 and excess assets of \$9,722.66.

The hearing officer noted that on the March 8, 2022 notice, the real estate assets are listed as \$19,100.00. (Exhibit 1). The MassHealth representative stated that she did not know where the hearing officer was getting that amount and the hearing officer pointed out that it was on the notice on appeal. (Exhibit 1). The MassHealth representative stated that it must be an error because the only countable real estate was the timeshare valued at \$9,600.00. The MassHealth representative stated that she would review the notes on the case to determine how MassHealth arrived at the real

estate value of \$19,100.00 listed on the notice. After reviewing case notes, the MassHealth representative stated that the appellant listed 3 timeshare properties on her application and submitted Agreement to Sell forms for the 3 timeshares. The MassHealth representative stated that when she was preparing for the appeal, the timeshare valued at \$9,600.00 was the only one listed as still countable. The MassHealth representative stated that the timeshare properties were not countable at the time the appellant was approved for MassHealth in 2020. The MassHealth representative stated that the case notes show that at the time of the 2021 review, the appellant's representative submitted letters stating that the contracts for the other 2 timeshare properties were removed from the timeshare programs and the appellant's usage rights were terminated. The MassHealth representative stated that it appears that, as a result of these letters, MassHealth no longer considered the other 2 timeshare properties countable. The MassHealth representative noted that no such letter was received with regard to the timeshare property at issue and thus it was still considered countable.

The hearing officer pointed out that the 3 timeshare properties were not considered countable by MassHealth at the time of application, and asked what documentation was submitted at that time. The MassHealth representative stated that she did not know what the appellant submitted at the time of application, other than the Agreement to Sell forms.

The appellant's representative stated that the appellant owns the timeshare property at issue in full but had still been paying toward the other 2 timeshare properties. The appellant's representative stated that when the appellant stopped making payments for the other 2 timeshare properties, the timeshare company canceled the contracts and terminated the appellant's usage rights. The appellant's representative state that because the appellant owns the timeshare property at issue in full, foreclosure proceedings will be commenced for failure to pay maintenance fees.

The appellant's representative stated that the appellant has not paid any of the fees on the timeshare property since at least 2020. The appellant's representative stated that the timeshare company sent the appellant a letter dated December 10, 2021 threatening foreclosure. The appellant's representative stated that she was on the phone with the timeshare company that morning asking why the foreclosure proceedings have not yet commenced. The timeshare company informed the appellant's representative that the property is now in the attorney's hands for foreclosure. (Testimony). The appellant's representative stated that the timeshare company informed her that the appellant would be receiving a letter from the attorney regarding foreclosure. The appellant's representative stated that the appellant owes \$1,400.00 in past due fees and she is not able to pay this bill.

The record was left open until June 13, 2022 to give the appellant's representative the opportunity to submit a document stating that the timeshare property is in foreclosure; the December 10, 2021 letter from the timeshare company; and the May 3, 2022 timeshare bill to the appellant. (Exhibit 6).

During the record open period, the appellant's representative submitted a copy of the letter dated December 10, 2021 in which the timeshare company informs the appellant that she is delinquent on assessments due and is in breach of her contract with the company. (Exhibit 7). The letter states further that if the appellant does not pay within 30 days, the appellant's account will be referred to a

foreclosure attorney who will proceed to file a foreclosure complaint against the appellant. (Exhibit 7). The appellant's representative also submitted a letter dated June 1, 2022 from the timeshare company with language identical to the language in the December 10, 2021 letter. (Exhibit 8). The appellant's outstanding debt to the timeshare company as of April 15, 2022 was \$1,419.42; the appellant has paid nothing to the timeshare company since at least November, 2020. (Exhibit 8, pp. 4, 5).

By email dated June 9, 2022, the hearing officer asked the MassHealth representative to review the documentation and respond; the hearing officer also asked if another Agreement to Sell form would be acceptable and asked the MassHealth representative to confirm that MassHealth determined total countable assets of \$9,600.00, not \$19,100.00 as noted on the notice on appeal. (Exhibit 9, p. 2). The MassHealth representative responded that the documentation submitted by the appellant's representative was not acceptable. (Exhibit 9, p. 2). By email dated June 9, 2022, the hearing officer again asked if a new Agreement to Sell would be sufficient and the MassHealth representative responded that MassHealth needs "a closure notice for the association". (Exhibit 9, p. 1). By email dated June 9, 2022, the hearing officer again asked if an Agreement to Sell would be acceptable and asked the MassHealth to confirm the asset amount in light of the different asset amount listed on the notice on appeal. (Exhibit 9, p. 1).

By email dated June 13, 2022, the hearing officer extended the record open period to June 27, 2022, to give the appellant's representative the opportunity to submit a letter from the timeshare company cancelling the contract for the timeshare property at issue and canceling the appellant's usage rights. (Exhibit 14, p. 4).

By email dated June 16, 2022, the MassHealth representative's manager submitted the Agreement to Sell forms for the 3 timeshare properties dated July 28, 2020, the appraisals of the timeshare properties, and the documentation showing the canceled contracts for two of the timeshare properties. (Exhibit 10, p. 1; exhibits 11, 12, 13). The appraisals show that one timeshare was assessed at \$5,500.00, one was assessed at \$4,000.00, and the timeshare at issue is valued at \$9,600.00, for a total of \$19,100.00. (Exhibit 12, pp. 9, 19, 29). The MassHealth manager questioned the MassHealth representative as to whether more documentation might be necessary to show that the appellant is no longer the owner of the other 2 timeshare properties. (Exhibit 10, p. 1). The MassHealth manager noted that the Agreement to Sell forms are still valid and if the appellant puts the properties back on the market, they would be deemed non-countable by MassHealth. (Exhibit 10, p. 1; exhibit 11). The MassHealth manager submitted letters from the timeshare company dated April 23, 2021 informing the appellant that the contracts for two of the timeshare properties were being removed and her usage rights have been terminated for non-payment of dues. (Exhibit 13, pp. 26, 30).

By email dated June 22, 2022, the MassHealth manager submitted documentation showing that the three timeshare properties were put on the market for sale in 2020, with prices below assessed values. (Exhibits 16, 17). By email dated June 24, 2022, the hearing officer extended the record open period to July 8, 2022 to give the appellant's representative the opportunity to submit documentation that the timeshare property at issue is on the market. (Exhibit 18). By email dated June 30, 2022, the appellant's representative reported that the appellant's POA would not be putting

the timeshare property on the market because it costs \$2,500.00 to list the property and the appellant does not have the money. (Exhibit 19, p. 3). The appellant's representative pointed out that all 3 timeshare properties had been put on the market in 2020 and were not sold. (Exhibit 19, p. 3). By email dated July 7, 2022, the hearing officer extended the record open period to July 15, 2022. (Exhibit 19, p. 1).

On July 14, 2022, the appellant's representative submitted the appellant's bank account statement dated June 30, 2022 showing a balance of \$3,864.07 and direct deposit income totaling \$2,084.82. (Exhibit 20, p. 3). The appellant's representative submitted documentation showing that it would cost \$2,385.00 to list the timeshare property for sale. (Exhibit 20, p. 9). The appellant's representative submitted a Notice of Intent to Foreclose Pursuant to Massachusetts General Laws c. 183B, section 29B, dated April 6, 2022, from the foreclosure attorney. (Exhibit 20, p. 10). The notice states that the appellant owes \$1,238.82 to the timeshare company and if the default is not cured by July 5, 2022, the timeshare company will proceed to take steps pursuant to Massachusetts General Laws c. 183B, section 29B to institute "Forfeiture Proceedings" to terminate the appellant's ownership of the property by a foreclosure proceeding to seize and sell the timeshare property. (Exhibit 20, p. 11). The appellant's representative stated that the appellant did not have the funds to pay the past due fees to the timeshare company and would not be paying such fees. (Exhibit 20).

By email dated July 22, 2022, the appellant's representative informed the hearing officer that the appellant passed away on July 19, 2022. (Exhibit 21).

Findings of Fact

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

1. The appellant was approved for MassHealth Standard for long term care residents with a start date of March 11, 2020.
2. MassHealth sent the appellant a review on October 26, 2021 and the appellant returned the review on November 30, 2021; the review was processed and MassHealth sent the appellant a request for information on December 24, 2021.
3. The appellant did not submit verifications in a timely manner and her MassHealth was terminated by notice dated February 10, 2022; the February 10, 2022 termination notice was not appealed and the appellant's MassHealth benefits terminated on February 24, 2022.
4. The appellant submitted asset verifications on March 8, 2022 and that became her MassHealth re-application date.
5. The appellant's re-application was denied by notice dated March 8, 2022 based on MassHealth's determination that the appellant's assets exceed the MassHealth limit of \$2,000.00.

6. Such notice was timely appealed and is at issue in this appeal decision.
7. MassHealth's March 8, 2022 notice lists a PNA balance as \$1.00, a bank account balance of \$2,121.66 and real estate assets totaling \$19,100.00 for assets totaling \$21,222.64, and excess assets of \$19,222.66.
8. At the hearing, the MassHealth representative testified that the appellant had real estate property valued at \$9,600.00 and she did not know where the hearing officer was getting the \$19,100.00 real estate amount; the hearing officer pointed out that it was on the notice on appeal.
9. At the time of application, the appellant submitted Agreement to Sell forms dated July 28, 2020 and listings showing the 3 timeshare properties were for sale with prices below their assessed values.
10. The appraisals show that one timeshare was assessed at \$5,500.00, one was assessed at \$4,000.00, and the timeshare at issue is valued at \$9,600.00.
11. None of the 3 timeshare properties sold.
12. The timeshare company informed the appellant by letters dated April 23, 2021 that the contracts for two of the timeshare properties were being removed and her usage rights have been terminated for non-payment of dues.
13. The appellant has not paid any of the fees on the third timeshare property, at issue in this appeal, since at least 2020.
14. The appellant's bank account balance is \$3,864.07 and she has monthly direct deposit income totaling \$2,084.82.
15. It would cost the appellant \$2,385.00 to list the timeshare property for sale.
16. The appellant received a Notice of Intent to Foreclose Pursuant to Massachusetts General Laws c. 183B, section 29B, dated April 6, 2022, from the foreclosure attorney; the notice states that the appellant owes \$1,238.82 to the timeshare company and if the default is not cured by July 5, 2022, the timeshare company will proceed to take steps pursuant to Massachusetts General Laws c. 183B, section 29B to institute "Forfeiture Proceedings" to terminate the appellant's ownership of the property by a foreclosure proceeding to seize and sell the timeshare property.
17. The appellant does not have the funds to pay the past due fees to the timeshare company and will not be paying such fees.
18. The appellant passed away on July 19, 2022.

Analysis and Conclusions of Law

Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000. (130 CMR 520.016(A)).

Inaccessible Assets

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency 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.

(B) Examples of Inaccessible Assets. 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), (B)).

At the time of the appellant's 2020 MassHealth application, the appellant owned 3 timeshare properties, one assessed at \$5,500.00, one assessed at \$4,000.00, and the timeshare at issue assessed at \$9,600.00, for a total of \$19,100.00. The value of real estate listed on the MassHealth notice dated March 8, 2022, and at issue in this appeal, is \$19,100.00. By letters dated April 23, 2021, the timeshare company informed the appellant that the contracts for two of the timeshare properties (assessed at \$5,500.00 and \$4,000.00) were being removed and the appellant's usage rights have been terminated for non-payment of dues. Although such letters are dated prior to the March 8, 2022 MassHealth notice, they may have been submitted to MassHealth after such notice. MassHealth determined, based on these letters, that those 2 timeshare properties are no longer countable. Because no such letter was submitted for the timeshare property at issue, MassHealth is seeking proof that such property is in foreclosure. It is not clear why the timeshare company did not issue a similar letter for non-payment of dues for the timeshare property at issue, especially since all 3 timeshare properties had assessed values and thus if one would require a foreclosure proceeding for failure to pay, it follows that all 3 should require foreclosure proceedings. The fact that the timeshare company would not issue such letter for the timeshare at issue is out of the control of the appellant.

It is clear that the timeshare company will need to foreclose on the appellant's timeshare because she cannot and will not pay the amount due. The appellant received a Notice of Intent to Foreclose Pursuant to Massachusetts General Laws c. 183B, section 29B, dated April 6, 2022, from the foreclosure attorney. The notice states that the appellant owes \$1,238.82 to the timeshare company and if the default is not cured by July 5, 2022, the timeshare company will proceed to take steps pursuant to Massachusetts General Laws c. 183B, section 29B to institute "Forfeiture Proceedings"

to terminate the appellant's ownership of the property by a foreclosure proceeding to seize and sell the timeshare property. The appellant has paid no fees on the property since 2020. The timeshare company might have thought they were doing the appellant a favor by prolonging the foreclosure proceedings by giving her more time to pay, but instead their delay in filing such proceedings has led to the finding of excess assets for MassHealth eligibility. The appellant did not pay the delinquent fees by July 5, 2022 and thus is in default and the timeshare company is instituting forfeiture proceedings. Because the timeshare property is now the subject of a legal proceeding, I determine it is inaccessible pursuant to 130 CMR 520.006. Furthermore, the appellant has passed away and such property is now part of her estate for probate and thus inaccessible.

The appellant's bank account statement dated June 30, 2022 shows a balance of \$3,864.07 and direct deposit income totaling \$2,084.82. After deducting the appellant's direct deposit income, her bank account balance is below \$2,000.00.

MassHealth's action is overturned and the appeal is approved. MassHealth Standard for long term care residents can begin up to 3 months retroactive from the re-application date of March 8, 2022, and thus the appellant is approved retroactive to the termination date of February 24, 2022. (130 CMR 516.006).

Order for MassHealth

Rescind the notice dated March 8, 2022 and reopen the appellant's MassHealth Standard for long term care residents retroactive to February 24, 2022.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center
Appellant's Rep.: [REDACTED]