

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2203098
<b>Decision Date:</b>	8/24/2022	<b>Hearing Date:</b>	6/22/2022
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	7/29/2022

**Appearance for Appellant:**



**Appearance for MassHealth:**

David Gelin, Tewksbury



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Eligibility
<b>Decision Date:</b>	8/24/2022	<b>Hearing Date:</b>	6/22/2022
<b>MassHealth's Rep.:</b>	David Gelin	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury (remote)	<b>Aid Pending:</b>	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 long term care application because Appellant had more countable assets than MassHealth benefits allow. Exhibit 1. Appellant filed this appeal in a timely manner on April 25, 2022. Exhibit 2. 130 CMR 610.015(B). Challenging the denial of assistance is a valid basis for appeal. 130 CMR 610.032. The appeal was rescheduled from May 24, 2022 to June 22, 2022 at the request of Appellant's representative. Exhibit 4. The hearing record was held open through July 22, 2022 at the request of Appellant and extended through July 29, 2022. Exhibits 6, 9.

## Action Taken by MassHealth

MassHealth denied Appellant's long term care application because Appellant had more countable assets than MassHealth benefits allow.

## Issue

The appeal issue is whether MassHealth was correct in determining that Appellant's countable assets exceeded MassHealth's limit.

## Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. MassHealth received

Appellant's application for long term care benefits on February 16, 2022. The SC-1 form listed a requested start date of September 10, 2020. However, due to the application date, the earliest possible retroactive coverage date was November 1, 2021.

On March 29, 2022, MassHealth denied Appellant's application for excess assets totaling \$14,013.10. Exhibit 1. Current statements showed that Appellant had \$411.80 in his personal needs account (PNA) and \$16,201.30 in his Direct Express account. Exhibit 5 at 16-17. MassHealth deducted a \$600 noncountable stimulus payment, reducing the assets in the Direct Express account to \$15,601.30. *Id.* at 9. To verify the spend down, MassHealth would need to see updated bank statements, a private pay letter and updated SC-1 if money is paid to the facility, and a funeral contract with goods and services.

Appellant's representative appeared by phone and testified as follows. Appellant fell ill while in the process of spending his assets, which caused delays. Appellant's representative testified that Direct Express required permission for Appellant to spend more than \$1,000 in a day. Appellant bought himself a guitar and will use the rest of his assets to set up a funeral contract and pay the facility.

At Appellant's request, the hearing record was held open through July 22, 2022 for the submission of the verification of spend down. Exhibit 6. Appellant's representative provided his submission on July 14, 2022. Exhibit 7. The cover letter states that Appellant paid \$12,650 to the facility covering September 2021 through October 15, 2021. *Id.* at 2. Appellant's representative requested a start date of October 16, 2021 and provided an updated SC-1. *Id.* at 4. Appellant's representative wrote that the Direct Express balance as of June 30, 2022 was \$13,513.73, which will be reduced to \$863.73 once the private payment is deducted. *Id.* at 2, 46. The packet includes an invoice for \$12,650 but no proof of payment. *Id.* at 6. Appellant provided shopping receipts for personal purchases. *Id.* at 8-35.

On July 22, 2022, MassHealth responded that it would not be able to approve the application because the Direct Express statement still showed a balance over \$2,000. Exhibit 8. Appellant did not respond to a request for the July 2022 bank statement. Exhibit 9.

## Findings of Fact

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

1. On February 16, 2022, MassHealth received Appellant's application for long term care benefits.
2. On March 29, 2022, MassHealth denied Appellant's application for excess assets totaling \$14,013.10. Exhibit 1.
3. Appellant filed a timely appeal on April 25, 2022. Exhibit 2.
4. At the time of denial, Appellant had \$411.80 in his PNA and \$16,201.30 in his Direct Express account. Exhibit 5 at 16-17.

5. MassHealth deducted a \$600 noncountable stimulus payment, reducing the assets in the Direct Express account to \$15,601.30. *Id.* at 9.
6. At Appellant's request, the hearing record was held open through July 22, 2022 for Appellant to submit proof of the spend down. Exhibit 6.
7. On July 14, 2022, Appellant submitted an updated Direct Express statement showing a balance of \$13,513.73 as of June 30, 2022. Exhibit 7 at 46.
8. Appellant did not respond to a request for the July 2022 bank statement. Exhibit 9.

## Analysis and Conclusions of Law

The total value of countable assets owned by or available to an individual applying for MassHealth Standard for long term care assistance may not exceed \$2,000.00. 130 CMR 520.003(A)(1). Per 130 CMR 520.004, the amount of an applicant's total countable assets affects the start date for MassHealth long term care benefits:

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

(a) as of the date the applicant reduces his or her excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F); or

(b) as of the date, described in 130 CMR 520.004(C), 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.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility

(1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: *Date of Application*; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

In reviewing whether an applicant spent down assets in a permitted manner, MassHealth looks to the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F), which state:

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D), the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency's satisfaction that

(1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or

(2) the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration. Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

Permissible transfers include transfers to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse. 130 CMR 520.019(D)(5).

Bank accounts are countable assets as per 130 CMR 520.007(B) and are to be verified as follows:

(3) Verification of Account Balances. The MassHealth agency requires verification of the current balance of each account at application, during eligibility review, and at times of reported change.

(a) Noninstitutionalized individuals excluding the individuals described at 130 CMR 519.007(B): *Home- and Community-Based Services Waiver-Frail Elder* must verify the amount on deposit by bank books or bank statements that show the bank balance within 45 days of the date of application or the date that the eligibility review is received in a MassHealth Enrollment Center or outreach site.

(b) Nursing-facility residents as described at 130 CMR 515.001: *Definition of Terms* must verify the amount on deposit by bank books or bank statements that show the current balance and account activity during the look-back period.

Here, the evidence showed that as of June 30, 2022, Appellant had \$13,513.73 in his Direct Express account. Appellant's representative stated that Appellant privately paid \$12,650 to the facility but did not offer proof of payment or show the bank statement reflecting that the assets were reduced to the allowable limit. Appellant has not shown that MassHealth's determination of excess assets was made in error. Accordingly, this appeal is denied.

## **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.

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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

[REDACTED]

Policy Implementation Unit 7<sup>th</sup> fl. Rm 7004