

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2203885
Decision Date:	7/14/2022	Hearing Date:	06/22/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Gabe Gillis, Tewksbury 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

Appeal Decision:	Denied	Issue:	LTC – Start Date
Decision Date:	7/14/2022	Hearing Date:	06/22/2022
MassHealth’s Rep.:	Gabe Gillis	Appellant’s Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center 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

Through a notice dated May 12, 2022, MassHealth approved the appellant’s long-term care application effective March 11, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on May 23, 2022 (see 130 CMR 610.015(B) and Exhibit 2). Limitations on assistance are valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant for MassHealth Standard benefits effective March 11, 2022.

Issue

The appeal issue is whether MassHealth was correct in determining the eligibility start date.

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: On April 7, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant. The appellant is over the age of 65 and married, but her application was processed as if she were a single individual because her spouse is already in a long-term care facility. The appellant entered the facility on [REDACTED] and is requesting a start date of January 27, 2022. On May 12, 2022, MassHealth approved the appellant with a start date of March 11, 2022.

The MassHealth representative explained that the appellant's former residence was sold on March 11, 2022, prior to applying for MassHealth. He argued that on March 11, 2022, the appellant had access to half the proceeds from the sale of the home (the other half was owed to her spouse) and chose to deposit her portion of the proceeds into a pooled trust. The date the appellant signed her portion of the proceeds over to the pooled trust, March 11, 2022, is the date she became asset eligible for MassHealth. The MassHealth representative stated that pursuant to 130 CMR 520.007(G)(5), the proceeds from the sale of real estate are a countable asset in the month received. Thus, MassHealth argued the appellant was not asset eligible until she deposited those proceeds into the pooled trust.

The appellant's representative appeared at hearing via telephone and testified as follows: the pooled trust was created on January 26, 2022. The appellant listed her home for sale on February 13, 2022, within 30 days of her admission. On March 11, 2022, the home was sold, and the proceeds were received by the representative's office on March 15, 2022. The appellant's portion of the proceeds were sent directly to the trust and never entered her personal checking account. The appellant's representative stated that, while the appellant met the conditions of an agreement to sell, the appellant did not sign one because the home was listed within 30 days of admission and sold less than one month later. She stated that MassHealth never asked for a signed agreement to sell. The appellant's son lives across country and came to empty out the house, put it on the market, and get the appellant in the facility. The fact that he put it on the market early should not penalize the appellant. Additionally, she had trouble getting medical records from the facility, which delayed her submitting the application until April 7, 2022.

The appellant's representative also explained that there were two checks totaling \$47,737.45, one from reimbursement for a totaled vehicle and the other, from the surrender value of a life insurance policy. Half of the proceeds were deposited directly into the appellant's trust (the other half went to her husband) on February 9, 2022 and never entered her checking account. The appellant's representative argued that MassHealth allowed these funds to be directly deposited into the trust, but not the funds from the sale of real estate, which is inconsistent.

The MassHealth representative responded that he was not sure about the treatment of the two checks, but at issue on appeal is the real estate. He also explained that the purpose of the agreement to sell is to give an applicant time to sell the home, but here, the home was already sold by the time she applied. He argued that the appellant had access to the proceeds before MassHealth could determine her eligibility and the proceeds of the sale of the home were available to her up until

March 11, 2022, when they were signed over to the pooled trust.

Findings of Fact

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

1. On April 7, 2022, MassHealth received a long-term care application on behalf of the appellant, who is over 65 and married with a spouse already in a long-term care facility (Testimony and Exhibit 4).
2. The appellant entered the facility on [REDACTED] and is requesting a start date of January 27, 2022 (Testimony and Exhibit 4).
3. On May 12, 2022, MassHealth approved the appellant with a start date of March 11, 2022 (Testimony and Exhibit 1).
4. The appellant's former residence was sold on March 11, 2022 (Testimony and Exhibit 4).
5. The appellant signed her portion of the proceeds from the sale of the home directly to the pooled trust on March 11, 2022 (Testimony and Exhibit 4).

Analysis and Conclusions of Law

For an individual applying for long-term-care benefits, MassHealth has an asset limit of \$2,000. 130 CMR 520.003. If an applicant's assets exceed the limit for MassHealth Standard, they may become eligible by reducing their assets in accordance with 130 CMR 520.004. Unless the applicant reduces their assets through medical expenses, the applicant becomes eligible for long-term care service "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" 130 CMR 520.004(A)(1)(A). MassHealth does not count some assets toward this \$2,000 limit, 130 CMR 520.008, and there are specific rules for when other assets are countable, 130 CMR 520.007.

Regarding real estate

All real estate owned by the individual and the spouse, with the exception of the principal place of residence as described in 130 CMR 520.008(A), is a countable asset. The principal place of residence is subject to allowable limits as described in 130 CMR 520.007(G)(3). Business or nonbusiness property as described in 130 CMR 520.008(D) is a noncountable asset.

130 CMR 520.007(G)(1).

The principal place of residence is described as:

(A) The Home. The home of the applicant or member and the spouse and any land appertaining to the home, as determined by the MassHealth agency, if located in Massachusetts **and used as the principal place of residence**, are considered noncountable assets, except when the equity interest in the home exceeds the amount described in 130 CMR 520.007(G)(3). The home is subject to the lien rules at 130 CMR 515.012: Real Estate Liens. If the home is placed in a trust or in an arrangement similar to a trust, the MassHealth agency will apply the trust rules at 130 CMR 520.021 through 520.024

130 CMR 520.008(A) (emphasis added).

However, this protection of the “Home” ceases once an applicant “moves out of his or her home to enter a medical institution, [and] the MassHealth agency considers the former home a countable asset that is subject to 130 CMR 520.007(G)(2), provided all of the following conditions are met.” 130 CMR 520.007(G)(8). The pertinent conditions are that the “individual is institutionalized”¹ and the “applicant ... moves out of [their] home without the intent to return...” 130 CMR 520.007(G)(8).

There is no MassHealth regulation directly governing how to evaluate an applicant’s intent to return home; however, the appellant’s intent not to return home seems clear from the listing and sale of her home. Because, under 130 CMR 520.008(A), the exemption of the home is no longer applicable once the applicant expressed her intent not to return by listing it for sale, the appellant’s property was always countable from that time forward. Further, the proceeds from the sale of countable real estate “are a countable asset in the month received and in subsequent months.” 130 CMR 520.007(G)(5); see also 130 CMR 520.009(E)(1)(d) (excepting countable real property proceeds from being treated as income). Because the real property ceased to be a non-countable home when the appellant listed it for sale, the property and the proceeds from its sale were countable until they were permissibly transferred to the pooled trust account. See 130 CMR 130 CMR 520.019(D)(5).

One final exemption exists at 130 CMR 520.007(G)(4) for real estate that is listed for sale during the application process. However, this exemption only applies “for nine calendar months **after the date of notice by the MassHealth agency, provided that the individual signs an agreement** with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value.” 130 CMR 520.007(G)(4) (emphasis added). This exemption is inapplicable here where no agreement was signed and the property was sold prior to the MassHealth application, as MassHealth would not have had the opportunity to issue the relevant notice, from which date the exemption runs.

For these reasons, this appeal is DENIED.

¹ The definition of “Institutionalization” is the “placement of an individual in one or more medical institutions, where placement lasts or is expected to last for a continuous period of at least 30 days.” 130 CMR 515.001.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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

