

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2204765
Decision Date:	9/27/2022	Hearing Date:	7/27/2022
Hearing Officer:	Cynthia Kopka	Record Open to:	8/15/2022

Appearance for Appellant:



Appearance for MassHealth:

Gloria Medeiros, Taunton



*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:	Approved in part; denied in part	Issue:	Eligibility start date
Decision Date:	9/27/2022	Hearing Date:	7/27/2022
MassHealth's Rep.:	Gloria Medeiros	Appellant's Rep.:	
Hearing Location:	Taunton (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 May 5, 2022, MassHealth approved Appellant for MassHealth Standard long term care benefits effective August 22, 2021. Exhibit 1. Appellant's estate filed this appeal in a timely manner on June 28, 2022. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth approved Appellant for MassHealth Standard long term care benefits effective August 22, 2021.

Issue

The appeal issue is whether MassHealth was correct in determining the start date of long-term care coverage.

Summary of Evidence

A MassHealth eligibility representative appeared by telephone and provided documents in support. Exhibits 4 and 5. A summary follows. MassHealth received Appellant's application for long term care benefits on June 23, 2021. Appellant requested that coverage begin on June 1, 2022, as

Appellant privately paid through May 2021. MassHealth denied the application on August 4, 2021 for failure to submit all verifications. Appellant submitted documents on August 24, 2021, creating a reapplication date. On October 4, 2021, MassHealth denied the reapplication for missing information. Appellant appealed this denial on November 2, 2021 (Appeal No. 2178364). Appellant died while Appeal No. 2178364 was pending, and Appellant's estate continued the appeal and application following Appellant's death.¹ Appellant submitted all required verifications during the prior appeal and MassHealth preserved the August 24, 2021 reapplication date. Appellant did not object to the August 24, 2021 application date.

On May 5, 2022, MassHealth approved Appellant's application effective August 22, 2021. Appellant's assets were not reduced until April 9, 2022. MassHealth determined that as of May 1, 2021, the earliest possible retroactive coverage date, Appellant's assets totaled \$59,779.55, over the \$2,000 asset limit by \$57,779.55. These assets included an IRA account with distributions in 2021 totaling \$38,638.02.

To calculate the start date of coverage, MassHealth used a *Haley*² calculation. MassHealth deducted from the excess asset amount (\$57,779.55) allowable funeral expenses totaling \$3,378, bringing the excess asset total to \$54,407.55. Using the private pay daily rate of \$480, MassHealth calculated that Appellant's eligibility for long-term care benefits would begin on August 22, 2021 after using the excess assets to pay the private rate for 113 days. During the hearing, the MassHealth representative acknowledged that she made an error, as the last distribution was actually \$38,108. The MassHealth representative agreed to make the adjustment to the eligibility calculation.

Appellant's representative appeared by telephone and provided documents in support. Exhibit 6. A summary follows. Appellant inquired about an additional funeral expense that MassHealth missed, payment of \$2,750 made to the cemetery on October 19, 2021. Exhibit 5 at 30. The MassHealth representative confirmed that this was allowable and would be deducted from the excess asset amount.

Appellant's representative provided verifications of payments made to the nursing home that were not deducted from the excess asset amount by MassHealth prior to making the *Haley* calculation. Appellant provided a bill from the facility showing payments of \$17,343.70 made to the facility beginning three months prior to the application date of August 24, 2021. Exhibit 6 at 5. Appellant argued that these payments covered accrued patient liability (or PPA).

MassHealth responded that these payments were captured in the *Haley* calculation because the payments were made after the May 1, 2021 retroactive date used in the calculation. In essence, the *Haley* calculation of 113 days of private payment could already include the days for which the \$17,343.70 were paid. If MassHealth did the *Haley* calculation as of the asset picture on June 1, 2021, the payments could potentially be offset. MassHealth also questioned why the May 3, 2021 payment left a negative balance on the invoice. Appellant acquiesced that the bill provided with payments shown was not clear, as it did not show for what dates of services the payments were

¹ For ease, the terms "Appellant" and "Appellant's estate" are used interchangeably throughout the decision.

² *Haley v. Comm'r of Pub. Welfare*, 394 Mass. 466 (1985).

made. There was also a gap in the bill dates, indicating that some of the payments may have been applied to other charges besides the patient liability. Appellant requested additional time to provide a letter from the facility showing the dates of service for which the payments were made in an effort to offset the excess asset amount.

Appellant's representative argued that another payment should be considered a medical expense. On April 9, 2022, Appellant paid \$3,150 to her health care agent for "all hours spent advocating for [Appellant] ... Monitoring medications and working with pharmacies and coordination of care and ensuring ... medical wishes were being followed." Exhibit 5 at 11 and 12. The bill was for 126 hours at \$25 per hour. *Id.* at 12. Additionally, Appellant's representative asked why a \$1,400 stimulus payment was not deducted. MassHealth responded that she did not see where the stimulus was deposited in the bank statements. Appellant's representative offered to look in the documents and provide the information.

On September 9, 2021, Appellant revoked her former durable power of attorney (DPOA) and appointed a new DPOA by signing the revocation on her own behalf. Exhibit 6 at 8. Appellant's representative testified that the former DPOA, Appellant's family member, was not cooperating with the application process. Appellant's representative argued that the new DPOA immediately contacted the IRA institution to liquidate the account. However, the process was delayed when Appellant died a couple months later. Appellant's representative argued that Appellant herself was too sick to manage her affairs, such as paying the nursing home bill, and there was no one with authority to do it on her behalf for a long period. This is evidenced by the long gap in between payments to the nursing facility. *Id.* at 5. Appellant's representative argued that some days Appellant would be competent and other days she would not be. The IRA institution pushed back on the DPOA authority. Appellant's representative argued that the IRA asset was inaccessible prior to September 9, 2021 when Appellant's former DPOA was uncooperative, and during the time period between when the IRA institution received the request from the new DPOA and the time it was actually cashed out.

The MassHealth representative testified that she did not consider the IRA asset inaccessible because the December 2021 statement showed a zero balance. The last payment was made in November 2021. This indicated to MassHealth that the account was closed during the time period Appellant's representative argued that the asset was inaccessible. Exhibit 5 at 53. Distributions totaling \$38,108.59 were made between October 4, 2021 and December 1, 2021. Exhibit 4 at 11, Exhibit 5 at 54, 72.

The hearing record was held open through August 8, 2022 for Appellant to submit the letter to the facility and through August 15, 2022 for MassHealth to review and respond. Exhibit 7. On August 9, 2022, the MassHealth representative reported that Appellant had not submitted a letter from the facility regarding the \$17,343.70 payments. MassHealth made the adjustments referenced above and calculated a new eligibility start date of August 15, 2022, after deducting the cemetery payment and correcting the IRA distribution amount. MassHealth did not make any of the other adjustments requested at hearing. Exhibit 8.

Findings of Fact

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

1. On June 23, 2021, MassHealth received Appellant's application for long term care benefits. The request was denied for failure to submit all required verifications and relogged on August 24, 2021.
2. On October 4, 2021, MassHealth denied the reapplication for missing information. Appellant appealed this denial on November 2, 2021 (Appeal No. 2178364). The appeal was resolved, preserving the August 24, 2021 reapplication date.
3. On May 5, 2022, MassHealth approved Appellant's application effective August 22, 2021.
4. Appellant filed a timely appeal on June 28, 2022. Exhibit 2.
5. After hearing, MassHealth revised the application start date to August 15, 2021. Exhibit 8.
6. Appellant's assets were reduced to the allowable limit on April 9, 2022.
7. As of May 1, 2022, Appellant's assets totaled \$59,250.12. *Id.*
8. MassHealth deducted from the excess asset amount (\$57,250.12) allowable funeral expenses totaling \$6,128, bringing the excess asset total to \$51,122.12. *Id.*
9. MassHealth calculated Appellant's date of eligibility by dividing the excess asset amount of \$51,122.12 by the nursing facility's private pay daily rate of \$480. MassHealth determined that Appellant's eligibility for long-term care benefits would begin on August 15, 2021 after 106 days paying the private rate.
10. On April 9, 2022, Appellant paid \$3,150 to her health care agent for "all hours spent advocating for [Appellant] ... Monitoring medications and working with pharmacies and coordination of care and ensuring ... medical wishes were being followed." The bill was for 126 hours at \$25 per hour. Exhibit 5 at 11 and 12.
11. Between May 3, 2021 and April 9, 2022, Appellant paid \$17,343.70 to the nursing facility. Exhibit 6 at 5.
12. On September 9, 2021, Appellant revoked her former durable power of attorney (DPOA) and appointed a new DPOA by signing the revocation on her own behalf. Exhibit 6 at 8.
13. Appellant's IRA had a zero balance as of December 31, 2021. Distributions totaling \$38,108.59 were made between October 4, 2021 and December 1, 2021. Exhibit 4 at 11, Exhibit 5 at 54, 72.

14. Appellant did not provide evidence of how the \$17,343.70 paid to the facility was applied during the record open period. Exhibit 8.

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. 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.

130 CMR 520.004 (emphasis added).

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). Permissible transfers include transfers to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F). 130 CMR 520.019(D)(7).

Here, Appellant's effective application date is August 24, 2021 with June 1, 2021 as the requested coverage start date. The parties do not dispute that Appellant was over the asset limit until April 9, 2022. MassHealth used May 1, 2021, the earliest possible retroactive date based on the reapplication date, according to 130 CMR 520.004(A)(1)(b), to calculate eligibility in an effort to determine the most favorable start date for Appellant. The parties do not dispute that as of May 1, 2021, Appellant had \$59,250.12 in assets.

MassHealth reviewed how the assets were spent down to determine the date of eligibility as per 130 CMR 520.004(C). Ultimately, MassHealth deducted only the costs related to Appellants funeral and burial from the excess asset amount. Appellant argued that MassHealth should have deducted \$17,343.70 that was paid to the facility and \$3,150 paid to the health care agent. Appellant failed to show that the \$17,343.70 in payments made to the facility was for care provided within the time period allowed by 130 CMR 520.004(B) and not duplicative of the *Haley* calculation. The evidence provided for the payment to the health care agent also did not include dates of service, and the invoice supporting the payment was vague at best. Appellant has not demonstrated that MassHealth's determination not to offset these payments was made in error.

Finally, Appellant argued that MassHealth was incorrect in counting the IRA assets because they were inaccessible prior to September 9, 2021 and during the time period between when the DPOA submitted paperwork to the institution and the eventual cash out of the funds. The regulations regarding inaccessible assets are set forth in 130 CMR 520.006:

(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.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

(1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or
(2) from the period beginning six months after the date of application or acquisition, whichever is later, if

(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

Appellant raises facts to suggest that the IRA assets were inaccessible under 130 CMR 520.006(C)(2)(a), arguing that the former DPOA was not representing Appellant's interests and a good-faith effort was made to appoint a new DPOA. However, the evidence supports MassHealth's determination that the asset was not legally inaccessible to Appellant during the time Appellant's representative claimed there were delays in processing, as the account appeared to be liquidated prior to December 2021. Finally, the evidence shows that Appellant was sufficiently competent to sign the documents revoking the former DPOA and appointing a new DPOA in September 2021. Appellant has not provided convincing evidence that the funds in the IRA account were legally inaccessible due to Appellant's incapacity and the former DPOA's failure to cooperate.

The appeal is approved in part, as MassHealth agreed to adjust the coverage start date to August 15, 2021. To the extent Appellant seeks an earlier adjustment, this appeal is denied.

Order for MassHealth

Adjust the coverage start date to August 15, 2021.

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.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

[REDACTED]

Eligibility – Policy Implementation Unit 7th fl. Rm 7004

General Counsel's Office –Sharon Boyle