

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2205224
<b>Decision Date:</b>	9/27/2022	<b>Hearing Date:</b>	8/23/2022
<b>Hearing Officer:</b>	Cynthia Kopka		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Lindsay Gallant, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Eligibility start date
<b>Decision Date:</b>	9/27/2022	<b>Hearing Date:</b>	8/23/2022
<b>MassHealth's Rep.:</b>	Lindsay Gallant	<b>Appellant's Rep.:</b>	POA
<b>Hearing Location:</b>	Taunton (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 June 9, 2022, MassHealth approved Appellant for MassHealth Standard long term care benefits effective March 8, 2022. Exhibit 1. Appellant filed this appeal in a timely manner on July 9, 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 March 8, 2022.

## Issue

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

## Summary of Evidence

The MassHealth representative appeared by phone and submitted evidence in support. Exhibit 4. A summary follows. MassHealth received Appellant's application for long term care benefits on January 7, 2022 seeking a coverage start date of January 1, 2022. On June 9, 2022, MassHealth approved the application effective March 8, 2022. Exhibit 1.

Appellant reduced assets to the regulatory limit of \$2,000 on March 8, 2022 by writing a check from his bank account to fund an annuity. Exhibit 4 at 8. MassHealth used a *Haley*<sup>1</sup> calculation to determine the most favorable eligibility date. The MassHealth representative determined that as of October 1, 2021 (the earliest possible retroactive date based on the January 7, 2022 application), Appellant's excess assets were \$472,203.45. *Id.* at 10. Using the private pay daily rate of \$550, MassHealth calculated that Appellant's eligibility for long-term care benefits would begin on February 10, 2024 after using the excess assets to pay the private rate for 862 days. *Id.* As the spend down date of March 8, 2022 is more favorable to Appellant, MassHealth did not use the *Haley* start date.

Appellant's representatives appeared by phone and submitted evidence in support. Exhibit 5. A summary follows. Appellant requested a revised eligibility date of February 17, 2022. Appellant provided a worksheet of assets and liabilities as of February 16, 2022. Exhibit 5 at 3. Appellant's assets as of February 16, 2022 totaled \$133,137.57. Appellants liabilities as of this date totaled \$131,442.15. The list of liabilities included the annuity contract, health insurance, medical bills, credit card, and phone. *Id.* Appellant also lists Appellant's fee to the facility incurred between January 1 and February 16, 2022, totaling \$25,850.00. Appellant paid a portion of this bill in the amount of \$9,873.00. *Id.* In all, the total unpaid medical expenses identified by Appellant on this document are \$28,212.83. Appellant also paid his tax returns to the facility. Appellant's representatives argued that Appellant's net assets were within MassHealth's limit. Appellant's representatives also blamed attorneys for delays in getting the annuity funded.

Upon request, MassHealth provided Haley calculations for two alternative dates. For the start date requested by SC-1 form, January 1, 2022, MassHealth determined that Appellant's excess assets were \$119,706.58 on this day. Using the private pay daily rate of \$550, MassHealth calculated that Appellant's eligibility for long-term care benefits would begin on August 6, 2022 after using the excess assets to pay the private rate for 217 days. Exhibit 6 at 2. For the amended start date requested at hearing, February 17, 2022, MassHealth determined that Appellant's excess assets on this date were \$121,423.91. Using the private pay daily rate of \$550, MassHealth calculated that Appellant's eligibility for long-term care benefits would begin on September 25, 2022 after using the excess assets to pay the private rate for 220 days. *Id.* at 3.

## Findings of Fact

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

1. On January 7, 2022, MassHealth received Appellant's application for long term care benefits, seeking a coverage start date of January 1, 2022.
2. On June 9, 2022, MassHealth approved the application effective March 8, 2022. Exhibit 1.

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<sup>1</sup> *Haley v. Comm'r of Pub. Welfare*, 394 Mass. 466 (1985).

3. Appellant filed a timely appeal on July 9, 2022. Exhibit 2.
4. On March 8, 2022, Appellant reduced his assets below the allowable limit by writing a check from his bank account to fund an annuity. Exhibit 4 at 8.
5. MassHealth determined *Haley* eligibility dates using the nursing facility's private pay daily rate of \$550, as follows:
  - a. As of October 1, 2021, Appellant's excess assets were \$472,203.45. Eligibility for long-term care benefits would begin on February 10, 2024 after 862 days paying the private rate. *Id.* at 10.
  - b. As of January 1, 2022, Appellant's excess assets were \$119,706.58. Eligibility for long-term care benefits would begin on August 6, 2022 after 217 days paying the private rate. Exhibit 6 at 2.
  - c. As of February 17, 2022, Appellant's excess assets were \$121,423.91. Eligibility for long-term care benefits would begin on September 25 2022 after 220 days paying the private rate. *Id.* at 3.
6. Appellant provided a worksheet of assets and liabilities as of February 16, 2022 showing assets totaling \$133,137.57 and liabilities totaling \$131,442.15. This included the annuity contract balance of \$113,008.28. Exhibit 5 at 3.
7. Appellant's incurred \$25,850.00 in expenses to the nursing facility between January 1 and February 16, 2022, Appellant paid \$9,873.00 of this bill. *Id.*
8. Total unpaid medical expenses identified by Appellant in Exhibit 5 were \$28,212.83.

## 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.

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).

MassHealth determined that Appellant reduced his assets on March 8, 2022 and was therefore eligible for coverage to begin on that date based on 130 CMR 520.004(A)(1)(a). MassHealth determined that Appellant would not get a more favorable date by applying 130 CMR 520.004(A)(1)(b).

Appellant argued that as of the revised requested start date, February 17, 2022, Appellant's assets less liabilities were below the \$2,000 limit. The bulk of Appellant's liabilities that offset the excess assets are the annuity contract, which is not a medical expense as per 130 CMR 520.004(C). Even if all of the unpaid medical expenses identified by Appellant on the provided Exhibit \_\_ (\$28,212.83) were deducted from the excess asset amount identified by MassHealth in the February 17, 2022 Haley calculation (\$121,423.91), the revised Haley calculation date for February 17, 2022 would be 169 days from February 17, 2022, or August 5, 2022.

MassHealth calculated the most advantageous eligibility start date in Appellant's favor. This hearing decision will not disturb that finding. As Appellant seeks coverage prior to March 8, 2022, 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: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

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

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