

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2206879

**Decision Date:** 10/13/2022

**Hearing Date:** 10/12/2022

**Hearing Officer:** Patricia Mullen

**Appearance for Appellant:**

Redacted name  
Representative

son/Authorized

**Appearance for MassHealth:**

Gloria Medeiros, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Assets
<b>Decision Date:</b>	10/13/2022	<b>Hearing Date:</b>	10/12/2022
<b>MassHealth's Rep.:</b>	Gloria Medeiros, Taunton MEC	<b>Appellant's Rep.:</b>	Son/Authorized Representative
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center (remote)		

## 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 September 2, 2022, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant's assets exceed the MassHealth limit of \$2,000.00. (see 130 CMR 520.003 and Exhibit 1). The appellant filed this appeal in a timely manner on September 13, 2022. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's application 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 countable assets exceed the limit for MassHealth Standard.

## Summary of Evidence

The appellant was represented telephonically at the hearing by his son. There was no authority in the record for the appellant's son, but, during the hearing, MassHealth forwarded the appellant's son's Authorization Representative Designation. (Exhibit 5). MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton. The MassHealth representative stated that the appellant is a single individual, age 65 or older. The appellant submitted a MassHealth application on May 16, 2022, seeking a May 10, 2022 MassHealth start date, and such application was denied by notice dated July 5, 2022 for failure to timely submit verifications. (Exhibit 4, pp. 2, 4). The MassHealth representative stated that the July 5, 2022 denial notice was not appealed, but the appellant submitted some verifications on July 19, 2022 and that became the appellant's re-application date. By request dated July 28, 2022, MassHealth requested additional verifications, including proof that the appellant applied for Social Security benefits. (Exhibit 4, p. 7). The MassHealth representative stated that the July 19, 2022 application was denied by notice dated September 2, 2022 due to excess assets. Such notice was timely appealed and is at issue in this hearing. (Exhibit 2).

The MassHealth representative stated that the appellant had a balance of \$15,128.47 in his checking account, a balance of \$65.26 in his savings account, and stocks valued at \$5,414.56, for assets totaling \$20,608.39. (Exhibit 4, p. 3). The MassHealth representative stated that the asset limit for MassHealth Standard for long term care residents is \$2,000.00 and the appellant's assets exceed the MassHealth limit by \$18,608.39. The MassHealth representative stated that MassHealth still needs verification that the appellant has applied for Social Security benefits.

The appellant's representative stated that he does not dispute the assets as reported by the MassHealth representative, however he believes the appellant's car loan should be taken into account when determining the asset amount. The appellant's representative stated that the appellant owns an automobile and still owes about \$7,000.00 on the car loan. The appellant's representative did not know the value of the appellant's car. The MassHealth representative stated that MassHealth does not count the value of one vehicle in calculating countable assets for an applicant and thus the value of the appellant's car is not counted. The MassHealth representative stated further that MassHealth does not take into account any of the applicant's expenses, including car loans, in determining countable assets.

The appellant's representative stated that he is the appellant's activated Health Care Proxy, but he cannot access the money in the appellant's accounts to spend down the assets. The appellant's representative stated further that the appellant's money is needed for the plane fare to fly the appellant's body back to India for burial there. The appellant's representative stated that he has researched the cost to fly the appellant's body back to India and it will cost around \$15,000.00.

The hearing officer asked why a conservator was not being pursued and the appellant's representative stated that he went to an attorney regarding having a conservator appointed, but he cannot afford to have the conservatorship done. The appellant's representative stated that the nursing facility informed him that the conservatorship appointment is a long process and he does not have the time to work on it.

The appellant's representative state that the appellant looked into applying for Social Security but did not meet the criteria so did not apply. The MassHealth representative stated that MassHealth requires applicants to apply for Social Security and MassHealth would only need to see that the appellant applied, not the final determination.

## Findings of Fact

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

1. The appellant is a single individual, age 65 or older.
2. The appellant submitted a MassHealth application on May 16, 2022, seeking a May 10, 2022 MassHealth start date, and such application was denied by notice dated July 5, 2022 for failure to timely submit verifications.
3. The July 5, 2022 MassHealth denial notice was not appealed, but the appellant submitted some verifications on July 19, 2022.
4. By request dated July 28, 2022, MassHealth requested additional verifications, including proof that the appellant applied for Social Security benefits.
5. The July 19, 2022 application was denied by notice dated September 2, 2022 due to excess assets; such notice was timely appealed and is at issue in this hearing.
6. The appellant has a balance of \$15,128.47 in his checking account, a balance of \$65.26 in his savings account, and stocks valued at \$5,414.56, for assets totaling \$20,608.39.

## Analysis and Conclusions of Law

The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits: (1) for an individual — \$2,000. (130 CMR 520.003(A)(1).

### 520.006: 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.

- (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.

(130 CMR 520.006).

#### 520.007: Countable Assets

Countable assets are all assets that must be included in the determination of eligibility. Countable assets include assets to which the applicant or member or his or her spouse would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved. The applicant or member and the spouse must verify the total value of countable assets. However, if he or she is applying solely for MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: *MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB)* or MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-In for Qualifying Individuals (QI) both as described in 130 CMR 519.011: *MassHealth Buy-In*, verification is required only upon request by the MassHealth agency. 130 CMR 520.007 also contains the verification requirements for certain assets. The assets that the MassHealth agency considers include, but are not limited to, the following...

(B) Bank Accounts...

(D) Securities. Securities include, but are not limited to, stocks, bonds, options, futures contracts, debentures, mutual funds including money-market mutual funds, and other financial instruments...

(F) Vehicles as Countable Assets.

(1) Requirements. In determining the assets of an individual (and the spouse, if any), the countability of a vehicle is determined as follows.

- (a) One vehicle per household is noncountable regardless of its value if it is for the use of the eligible individual or couple or a member of the eligible individual's or couple's household.
- (b) The equity value of all other vehicles is a countable asset...

(130 CMR 520.007(B), (D), (F)).

There is no dispute that the appellant has bank account balances totaling \$15,193.73 and stocks valued at \$5,414.66. MassHealth is not counting the appellant's vehicle as it is exempt pursuant to 130 CMR 520.007(F). MassHealth might deduct the amount of the car loan in determining the total value of the car, if it were a countable asset, but it is not. MassHealth regulations do not allow for any loans or expenses to be used to offset an applicant's countable bank account balances and/or stock balances. (130 CMR 520.000, et. seq.).

The appellant's representative argued that the appellant's assets are needed to cover plane fare once the appellant passes, in order to fly his body back to India. In determining financial eligibility for MassHealth, MassHealth does not determine assets that are put aside for any anticipated future expenses as non-countable. (130 CMR 520.000, et. seq.). The appellant's bank accounts and stocks are countable, as noted above.

The appellant's countable assets totaling \$20,608.39. The appellant's representative noted that a conservatorship is not being pursued. The appellant's assets exceed the MassHealth limit of \$2,000.00 and thus MassHealth's determination is upheld. The 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.

---

Patricia Mullen  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center