

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2207400
Decision Date:	1/24/2023	Hearing Date:	11/28/2022
Hearing Officer:	Alexis Demirjian	Record Open to:	1/23/2023

Appearance for Appellant:



Appearance for MassHealth:

Andrea Pelczar, Tewksbury MEC
Alfred Peach, 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:	Eligibility - Over Assets
Decision Date:	1/24/2023	Hearing Date:	11/28/2022
MassHealth's Rep.:	Alfred Peach	Appellant's Rep.:	[REDACTED]
Hearing Location:	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 September 19, 2022, MassHealth denied the Appellant's application for MassHealth benefits for long term care services in a nursing home because MassHealth determined that the Appellant had more countable assets than MassHealth benefits allow. (see 130 CMR 520.003 and 130 CMR 520.004 and Exhibit 6). The Appellant filed this appeal in a timely manner on October 6, 2022 (see 130 CMR 610.015(B) and Exhibit 2).¹ Denial of assistance is valid grounds for appeal before the Board of Hearings. (see 130 CMR 610.032). A hearing in this matter was scheduled for October 31, 2022. (See Exhibit 1). On October 28, 2022, the October 31st hearing was postponed at the request of the Appellant's representative and the grounds for the request were that the Appellant's representative needed more time to obtain bank records. (See Exhibit 2) On November 4, 2022, the hearing was rescheduled to take place on October 28, 2022. (See Exhibit 1)

Action Taken by MassHealth

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

MassHealth denied the Appellant's application for MassHealth long-term-care services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, in determining that the Appellant was over assets to qualify for MassHealth benefits.

Summary of Evidence

The MassHealth representative testified that the Appellant is an [REDACTED]-year-old female who was admitted to the facility on [REDACTED] 2022. MassHealth received an application for long-term care benefits on May 30, 2022, and the facility is seeking a start date of April 30, 2022. MassHealth found three bank accounts and an insurance policy in the Appellant's name that at the time of hearing totaled in the amount of \$32,795.02. The MassHealth representative testified that the Appellant would have to spend down \$30,795.00 to be under the \$2,000 asset limit.

The Appellant's representative testified that the Appellant is interested in doing a spend down; however, she has had problems obtaining bank statements and documentary evidence of spend down. She stated that with some additional time, she could provide verification of the spend down and that she had been in the process of making payments to the nursing home for the Appellant's care and would submit documentary evidence to support her testimony. The Appellant's representative testified that she was having problems obtaining bank statements and the Hearing Officer informed the Appellant's representative that a subpoena could be issued to aid in this pursuit. In response to the Hearing Officer's offer of a subpoena, the Appellant's representative declined as she thought she had a good working relationship with the bank manager and would be able to obtain them without assistance.

The MassHealth representative advised that the Appellant's representative needed to provide proof of spend down including the patient paid amount to the nursing home, any receipts related to spending and corresponding bank statements.

The record in the appeal was left open until December 30, 2022, to allow the Appellant to provide proof of spend down, as well as the private pay letter from the facility. MassHealth was given until January 13, 2023, to respond to the submissions.

On December 14, 2022, the Appellant's representative requested a subpoena but did not include information necessary to issue the subpoena. (See Exhibit 8) On that same date, the Hearing Officer responded to all parties and asked for the specific account numbers, type of accounts, period of the records being requested and the address of the bank. (Id.) MassHealth responded to this email and provided the time period needed and indicated that as of December 14, 2022, the Appellant's representative had not provided any verification of asset spend down since the denial issued on September 19, 2022. (Id.) The Appellant's representative did not respond to this email and accordingly no subpoena was issued. (Id.)

Despite the fact that the Appellant's representative did not respond to the December 14th email and did not provide any documentation to MassHealth or the Board of Hearings, on January 4, 2023, the Hearing Officer emailed the Appellant's representative regarding the outstanding information necessary to issue a subpoena. (Id.) Again, the Appellant's representative failed to respond to the Hearing Officer's email regarding the critical information to issue a subpoena and as such it was issued. (Id.)

On January 13, 2023, the Appellant's representative sent an ex parte communication to the Hearing Officer and wanted to speak via telephone. (See Exhibit 9) That request was denied, and the communication was forwarded to MassHealth. In response, MassHealth indicated that it still not had received any verifications of spend down.² (Id.)

Findings of Fact

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

1. The Appellant is an [REDACTED]-year-old female who entered the facility on [REDACTED] 2022. (Testimony and Exhibit 7).
2. MassHealth received an application for long-term care benefits on May 30, 2022, and the facility is seeking a start date of April 30, 2022. (Testimony and Exhibit 7).
3. Between the checking accounts and insurance policy, the Appellant had \$32,795.02 in assets, over the \$2,000 asset limit (Testimony and Exhibit 7).
4. The Appellant has not provided any evidence of spend down of assets since the denial letter of September 19, 2022. (Exhibits 7, 8, and 9).

Analysis and Conclusions of Law

Pursuant to 130 CMR 520.003(A), 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 \$2,000 for an individual. Furthermore, 130 CMR 520.004 states the following regarding asset reduction:

(A) Criteria.

- (1) An applicant whose countable assets exceed the asset limit of

² The Appellant's representative claimed that she had tried numerous times to reach Mr. Peach and his line was busy and she was unable to leave a message. Mr. Peach indicated that he has voicemail and checked call logs and did not see any missing calls from the Appellant's representative's documented phone number. This Hearing Officer called Mr. Peach's phone number and was able to leave a message via voicemail, additionally Mr. Peach includes his email address on the phone message.

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.

The issue in this appeal is whether MassHealth was correct in determining that the Appellant was over the allowable asset limit and denying her MassHealth long-term care benefits. The Appellant's representative gave testimony that she was in the process of spending down the Appellant's assets; and she was given time to provide proof of spend down. The Appellant has not sufficiently demonstrated that she has reduced her assets. For these reasons, 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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

Appellant's Representative: [REDACTED]

