

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2207585
Decision Date:	12/21/2022	Hearing Date:	11/28/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

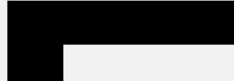
Via telephone:

Andrea Pelczar, 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:	12/21/2022	Hearing Date:	11/28/2022
MassHealth’s Rep.:	Andrea Pelczar	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 August 9, 2022, MassHealth approved the appellant’s long-term care application effective July 11, 2022 (Exhibit 1). The appellant filed this appeal in a timely manner on October 13, 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 long-term care benefits effective July 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 June 17, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of May 1, 2022. The application listed real estate and also indicated that the appellant intended to return home. The appellant is over the age of 65. On August 9, 2022, MassHealth approved the appellant with a start date of July 11, 2022.

The MassHealth representative explained that the appellant became asset eligible on July 11, 2022 when she transferred real estate proceeds from the sale of her home to her disabled adult child. On August 9, 2022, MassHealth received verification showing that the real estate was sold and transfer deed signed on July 1, 2022. It was recorded on July 7, 2022. The closing disclosure statement dated July 7, 2022 showed that net proceeds of \$395,861.81 were wired to her attorney's office. On July 11, 2022, her attorney's office disbursed a check for \$395,861.81 to the appellant's disabled daughter from its IOLTA.

The MassHealth representative stated that according to Realtor.com, the real estate was listed for sale on May 25, 2022, prior to MassHealth receiving the application, indicating that the appellant made the decision not to return home prior to MassHealth receiving the application on June 17, 2022. It is MassHealth's position that the real estate was a countable asset, as were the sale proceeds.

The appellant was represented at hearing via telephone by her attorney who stated that the appellant signed the MassHealth application on May 9, 2022, but then they had to gather additional verifications and did not file it with MassHealth until June 17, 2022. The appellant signed the application prior to the home being listed and intended to return home when she signed it. He stated that in a request for additional verification, one of the items requested by MassHealth was a statement for expectation to return home and on July 14, 2022, the appellant's physician indicated that it was not reasonable to expect the appellant to return home within six months after the date of admission. He argued that the statement of expectation to return home does not apply to the subjective intent to return home, which is the determining factor under regulation 130 CMR 520.008, in determining whether the home, not the proceeds of the sale of the home, is considered a countable asset. He stated that the statement of expectation to return home is relevant to whether there is a home maintenance allowance, not the intent to return home, which is totally subjective. At time the appellant signed the application, she intended to return home. That changed when it was determined that the disabled daughter would not be able to provide sufficient assistance at home for the appellant.

The appellant's attorney argued that the home is a noncountable asset pursuant to 130 CMR 520.008(A) and only becomes a countable asset once the member moves out of his home without the intent to return, pursuant to 130 CMR 520.007(G)(8). The exception pursuant to 130 CMR 520.007(G)(2), is that "the value of such real estate is exempt for nine calendar months after the date of notice by the MassHealth agency, provided that the individual signs an agreement with the MassHealth agency..." He argued that the appellant sold the property for fair market value within

nine months of entering the facility and she should be considered asset eligible as of the requested start date of May 1, 2022. She would be ineligible from July 7, 2022 until July 11, 2022, when the proceeds of the sale went to the disabled daughter.

The MassHealth representative responded that she does not see how someone can intend to return home to real estate that is openly being marketed for sale. The application was filed June 17, 2022, when the property was already on the market. MassHealth was not given the opportunity to address countability or an agreement to sell because the application contained erroneous information (her intent to return home when the property was actively on the market). MassHealth argued that since the property was already on the market, the decision had been made on May 25, 2022 (when the property was listed) that the appellant was not returning home. Additionally, the nine-month exemption is not automatic. An applicant needs to indicate to MassHealth that she does not intend to return home, at which point one can sign the agreement to sell form or get a denial and dispute it. If an agreement to sell form, which also calls for the proceeds to be spent on an applicant's care, is signed one can get the nine-month exemption. But here, no agreement to sell was ever signed and it was presented to MassHealth that the appellant intended to return home. It was not until August 9, 2022, that MassHealth became aware that the home was sold. Based on the listing date and the application receipt date, it appears to MassHealth the real estate has been countable all along.

The appellant's attorney argued that the home was noncountable because the appellant intended to return home and it would only become countable when it becomes a former home, but that is subject to the nine-month exemption in 130 CMR 520.007(G)(2). The property was sold for fair market value and within the nine-month exemption period. He stated that MassHealth did not give any notice that the home is considered countable and did not send the agreement to sell.

MassHealth responded that an asset is countable pursuant to the regulation, not when MassHealth tells an applicant it is countable. MassHealth received an application with inaccurate information and the appellant did not update the application. MassHealth does not give a notice on each individual asset. There was no agreement to sell form signed, so the nine-month exemption is not applicable. As evidenced by the listing of the property on May 25, 2022, the appellant did not intend to return home and the home was countable until it was sold and the proceeds went to the disabled daughter on July 11, 2022. Based on the timing, it appears that the appellant was trying to avoid spending any of the proceeds on her care. The appellant had proceeds of over \$390,000. She could have paid for her care for the months of May, June, and July and still made a permissible gift to her disabled daughter.

The appellant's attorney argued that the real estate was exempt under 130 CMR 520.007(G)(2) until the date it was sold on May 7, 2022. The sale proceeds were countable for four days from July 7, 2022 through July 10, 2022. As such, the appellant's start date should be May 1, 2022, terminating on July 7, 2022, and reinstated on July 11, 2022, the day after the permissible transfer of the proceeds to the disabled daughter.

Findings of Fact

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

1. On June 17, 2022, MassHealth received a long-term care application on behalf of the appellant, who is over the age of 65 (Testimony and Exhibit 4).
2. The appellant is requesting a start date of May 1, 2022 (Testimony and Exhibit 4).
3. On August 9, 2022, MassHealth approved the appellant with a start date of July 11, 2022 (Testimony and Exhibit 1).
4. On October 13, 2022, the appellant timely appealed the approval notice (Exhibit 2).
5. The appellant's residence was listed for sale on May 25, 2022 and sold on July 7, 2022 (Testimony and Exhibit 4).
6. The proceeds from the sale of the appellant's former home were transferred to her disabled daughter on July 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 of her home prior to submitting the MassHealth application and the subsequent sale of it. 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 a countable asset. 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 noncountable asset, the property and the proceeds from its sale were countable until they were permissibly transferred to the disabled daughter on July 11, 2022. See 130 CMR 130 CMR 520.019(D).

One final exemption exists at 130 CMR 520.007(G)(2) 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)(2) (emphasis added). This exemption is inapplicable here where no agreement was signed. As MassHealth was not notified of the sale of the home until after the home was already sold, MassHealth would not have had the opportunity to have the agreement to sell form signed and 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

