

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Denied

**Appeal Number:** 2207708

**Decision Date:** 11/10/2022

**Hearing Date:** 11/08/2022

**Hearing Officer:** Radha Tilva

**Appearance for Appellant:**



**Appearance for MassHealth:**

Kelly Souza, Taunton MEC Rep.



*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>	LTC - assets
<b>Decision Date:</b>	11/10/2022	<b>Hearing Date:</b>	11/08/2022
<b>MassHealth's Rep.:</b>	Kelly Souza	<b>Appellant's Rep.:</b>	Son
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center	<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

Through a notice dated September 30, 2022, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that appellant has more countable assets than MassHealth benefits allows (Exhibit 1). The appellant filed this appeal in a timely manner on October 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 appellant's MassHealth application because appellant has more countable assets than MassHealth benefits allows.

## Issue

The appeal issue is whether MassHealth was correct in determining that appellant is ineligible for MassHealth benefits because appellant has more countable assets than MassHealth allows.

## Summary of Evidence

The MassHealth representative that appeared at hearing testified that appellant is over the age of 65 and living in the community. On July 29, 2022 MassHealth received an over 65 senior application for MassHealth benefits which stated that appellant jointly owned property in China valued at \$100,000.00. The property was jointly owned with her spouse who is now deceased. MassHealth is considering \$50,000.00 of it a countable asset. In addition, appellant had approximately \$3,7420.00 in cash. The MassHealth representative explained that appellant cannot settle the apartment in China as she cannot go overseas and sell the property. The MassHealth representative further testified that she spoke with her supervisor and cannot consider the property inaccessible.

The appellant was represented at hearing by her son who appeared by telephone. The appellant's son testified that the property does not automatically transfer to his mother upon his father's death. In addition, the Chinese government prevents online transactions of the transfer or sale of property and requires the appellant to go in person. The appellant's son stated that in addition to extremely expensive airline tickets COVID prevented them from being able to travel to China due to their strict policies regarding quarantine. Appellant provided proof of the ticket prices in his fair hearing request (see Exhibit 2). The appellant is waiting for the quarantine time to be lifted so that he can take his mother and not have to take too many days off from work. The appellant's son stated that the property is sitting in China vacant and is not subject to any legal proceedings such as probate. The son would like to use the funds from the property to get his mother her own place to live.

## **Findings of Fact**

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

1. On July 29, 2022 MassHealth received an over 65 senior application for MassHealth benefits.
2. MassHealth determined on September 30, 2022 that appellant is over the asset limit of \$2,000.00 because appellant owns \$50,000.00 worth of property in China.
3. The property was owned with her husband who is now deceased.
4. The appellant now lives in Massachusetts and has a household size of one.
5. The appellant cannot transfer the property or sell it without physically going to China.
6. The quarantine restrictions and price of the tickets makes it difficult for appellant to travel to China.

## **Analysis and Conclusions of Law**

Under 130 CMR 520.003(A) MassHealth has a countable asset limit of \$2,000.00 for individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited. The appellant's representative does not dispute that she owns \$50,000.00 in property overseas.

Pursuant to 130 CMR 520.007(G)(1) 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 property in China is not appellant's principal place of residence as she does not reside there and it is not located in Massachusetts, therefore, it cannot be considered a noncountable asset (130 CMR 520.008(A)).

Moreover, the property does not fall under an exemption and cannot be considered an inaccessible asset either. Under 130 CMR 520.006, an inaccessible asset is an asset to which the applicant or member has no legal access. Examples of inaccessible assets in the regulations 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 (130 CMR 520.006). The appellant has legal access to the property here as it is not subject to any court proceedings. The fact that she cannot travel to China due to the cost and quarantine restrictions does not exempt it as the regulation above clearly states the property ownership has to be the subject of legal proceedings. Thus, MassHealth was correct in determining it countable. 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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Radha Tilva  
Hearing Officer  
Board of Hearings

cc:

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

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