

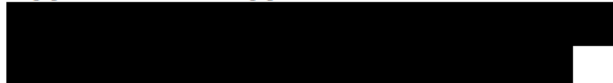
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied in part	<b>Appeal Number:</b>	2208131
<b>Decision Date:</b>	2/24/2023	<b>Hearing Date:</b>	11/29/2022
<b>Hearing Officer:</b>	Paul C. Moore	<b>Record Closed:</b>	02/15/2023

**Appearance for Appellant:**



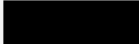
**Appearance for MassHealth:**

Jennifer Moreno, Springfield MassHealth  
Enrollment Center (by telephone)



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied in part	<b>Issue:</b>	Verifications; Trust
<b>Decision Date:</b>	2/24/2023	<b>Hearing Date:</b>	11/29/2022
<b>MassHealth Rep.:</b>	Jennifer Moreno	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (remote)		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through a notice dated October 3, 2022, MassHealth informed the appellant that he does not qualify for MassHealth long-term care services because he did not give MassHealth the information it needs to decide his eligibility within the required time frame (Exh. 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on October 31, 2022 (Exh. 2). Denial of assistance is a valid ground for appeal to BOH (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth determined that the appellant is ineligible for MassHealth long-term services because he did not give MassHealth the information needed to determine his eligibility.

## Issue

Did MassHealth correctly determine that the appellant does not qualify for MassHealth due to missing verifications?

## Summary of Evidence

A MassHealth representative from the Springfield MassHealth Enrollment Center (“MEC”) testified

by telephone that the appellant, who is over age 65 and unmarried, filed a MassHealth application for long-term care services on August 5, 2022. The appellant was admitted to a nursing facility on [REDACTED] 2022. The facility is seeking coverage for the appellant's stay beginning on [REDACTED] 2022. On August 19, 2022, MassHealth sent a request for information (VC-1 Form) to the appellant seeking corroborative information regarding his income and assets, including information about a trust of which the appellant is a beneficiary (Exh. 5). Some, but not all, corroborative information was received; as a consequence, MassHealth sent a notice of denial to the appellant on October 3, 2022 (Exh. 1). It is the October 3, 2022 denial that the appellant appealed to BOH (Exh. 2).

At hearing, the MassHealth representative stated that MassHealth has not received a copy of the [REDACTED] instrument ("the trust"), nor a schedule of trust beneficiaries.<sup>1</sup> The MassHealth representative stated that she does not know if the appellant is a grantor of, and/or a beneficiary of, the trust. She added that there are investment accounts in the trust. The MassHealth representative stated that if the appellant is a beneficiary of the trust, MassHealth will need a copy of all monthly or periodic statements for the investment accounts in the trust from [REDACTED] 2017 to the present, showing account balances, and transfers into and disbursements from the accounts. In addition, the MassHealth representative stated that MassHealth needs a copy of a current listing of trust assets, and their values, signed by the trustee (Testimony).

The appellant was represented at hearing by the business office manager at the facility where the appellant is a resident ("appeal representative"). She testified that she would reach out to the attorney who drafted the trust to get a copy of the instrument and schedule of beneficiaries, and to the trustee to obtain a copy of all the account statements. The hearing officer agreed to keep the record of this appeal open until December 20, 2022 for the appeal representative to produce the requested documentation, and until January 9, 2022 for the MassHealth representative to report back whether MassHealth has all documents needed to proceed to an eligibility determination (Exh. 6).

On December 2, 2022, the hearing officer received by e-mail correspondence from the appeal representative a copy of the entire trust instrument, a schedule of beneficiaries, and copies of investment account holdings from March 1, 2018 to the present (Exh. 7). Among other things, the trust shows that the appellant was a co-trustee of the trust until his resignation as such on June 20, 2022 (Exh. 7A). The trust also shows that the appellant is a beneficiary of the trust during his lifetime (*Id.*). Currently, the trustee of the trust is the appellant's brother (*Id.*).

On December 6, 2022, the appeal representative sent via e-mail to the hearing officer and to the MassHealth representative a copy of a closing statement for a [REDACTED] money market account formerly owned by the appellant (Exh. 8).<sup>2</sup>

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<sup>1</sup> Initials are used to protect confidentiality.

<sup>2</sup> This was not requested by MassHealth, nor was it the subject of testimony by MassHealth, during the appeal hearing.

On January 9, 2023, the MassHealth representative responded via e-mail to the hearing officer and the appeal representative that MassHealth had received a copy of the trust, including a list of beneficiaries and some account statements (Exh. 9). The MassHealth representative indicated, however, that the schedule of trust assets was not current, and she requested a list of current trust assets signed and dated by the current trustee (*Id.*). In addition, she requested documentary evidence that the grantors of the trust are deceased (*Id.*).

The hearing officer agreed to extend the record-open period for the submission of responsive documentation by the appeal representative until January 25, 2023 (Exh. 10).

On January 10, 2023, the appeal representative forwarded via e-mail to the hearing officer and to the MassHealth representative copies of the death certificates of both grantors of the trust (Exhs. 11A and 11B). In addition, on the same date, the appeal representative forwarded via e-mail to the hearing officer and to the MassHealth representative a statement from a brokerage company dated December 31, 2022, listing the account holdings and the value of each as of December 31, 2022 (Exh. 11D).

On January 17, 2023, the MassHealth responded to the hearing officer and appeal representative via email, stating as follows:

Per my manager. . . we need to see what is in the trust and if the appellant has received what he is entitled to. We need an actual schedule of assets from the trustee, a statement from [REDACTED] is not a schedule of assets.

(Exh. 12)

On January 20, 2023, the appeal representative sent the following e-mail correspondence to both the hearing officer and the MassHealth representative:

I am reaching out to you to see why the [REDACTED] account statement dated [REDACTED] 2022 is not enough to show the 'schedule of Assets.' Pages 3 and 4 show everything that the trust is 'holding'. . . .

The 3 [trust] beneficiaries net approximately \$2,000.00 per year each, that can be verified on [the appellant's] tax records.

(Exh. 13)

On January 26, 2023, the appeal representative submitted via e-mail a current list of trust assets held by [REDACTED] (consisting of cash, mutual funds, and bonds), signed and dated by the current trustee. The statement shows that the trust has current holdings of \$205,420.06 (Exh. 14).

On January 30, 2023, the MassHealth representative sent the hearing officer and the appeal representative the following e-mail correspondence:

Per my supervisor, the schedule of assets provided last is not acceptable and does not satisfy MassHealth request (*sic*) for appellant to provide a proper schedule of assets. This is a printout from the account. What we are looking for is a statement signed and dated by trustee where he specifically lists each and every account owned by the trust one by one. As of now, not all requested verifications have been provided.

(Exh. 15)

The hearing officer extended the record-open period again until February 15, 2023 for the appeal representative to submit financial statements for the trust account for a full five years preceding the date of the appellant's MassHealth application (*to wit*, back to August, 2017).

Nothing further was received by the deadline.<sup>3</sup>

### **Findings of Fact**

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

1. The appellant is over age 65 years old, and unmarried (Testimony, Exh. 5).
2. The appellant was admitted to a nursing facility in [REDACTED] 2022 (*Id.*).
3. The appellant filed an application for long-term care benefits on August 5, 2022 (*Id.*).
4. The facility is seeking coverage for the appellant's stay beginning on [REDACTED] 2022 (*Id.*).
5. On August 19, 2022, MassHealth sent a request for information (VC-1 Form) to the appellant seeking corroborative information regarding his income and assets, including information about a trust of which the appellant was a beneficiary (Exh. 5).
6. Some, but not all, corroborative information was received; as a consequence, MassHealth sent a notice of denial to the appellant on October 3, 2022 (Exh. 1).
7. The appellant filed a timely appeal of the MassHealth denial on October 31, 2022 (Exh. 2).

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<sup>3</sup> However, on February 17, 2023, after the deadline had passed, the appeal representative sent via e-mail additional monthly financial statements for the trust brokerage accounts for the period January 1, 2017 through December 31, 2017 (Exh. 16).

8. The appellant is a beneficiary of a trust (Exh. 7).
9. The appellant submitted a copy of the trust, list of beneficiaries, and a list of trust assets during a record-open period following the appeal hearing (Exh. 7, Exh. 11D, Exh. 14).
10. MassHealth deemed the signed, dated statement of current trust assets to be unacceptable (Exh. 15).
11. There is no evidence that the trust contains assets other than brokerage accounts.
12. The appellant submitted monthly financial statements for the trust brokerage accounts for the period January 1, 2017 through December 31, 2017 (although beyond the deadline for its submission), and for the period March 1, 2018 through December 31, 2022 (Exhs. 7 & 16).
13. Monthly statements of the trust holdings for the months of January, 2018 and February, 2018 were not produced.

### **Analysis and Conclusions of Law**

A MassHealth applicant or member must cooperate with MassHealth in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of the MassHealth program including recovery (130 CMR 515.008(A)). Once an application for benefits is received, MassHealth requests all corroborative information necessary to determine eligibility, advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information (130 CMR 516.001(B)). If the requested information is not received, MassHealth benefits may be denied (130 CMR 516.001(C)).

In particular, MassHealth regulation 130 CMR 516.001(A), "Filing an Application," states:

**(1) Application. To apply for MassHealth**

**(a)** for an individual living in the community, an individual or his or her authorized representative must file a Senior Application online at [www.MAHealthConnector.org](http://www.MAHealthConnector.org), complete a paper application, complete a telephone application, or apply in person at a MassHealth Enrollment Center (MEC).

**(b) for an individual in need of long-term-care services in a nursing facility, a person or his or her authorized representative must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center (MEC).**

(Emphasis added)

Further, an applicant over age 65 who is institutionalized must verify the value of all countable assets pursuant to 130 CMR 520.007.

The appellant is a beneficiary of a trust. It is not clear whether he is entitled to distributions of trust income only, or principal as well. In any case, that issue is not before the hearing officer.

The only issue to be decided is whether the appellant has submitted all requested verifications.

Following the hearing, during a record-open period, the appellant produced a copy of a brokerage financial statement containing the current value of all trust assets. The financial statement was accompanied by a signed, dated statement by the trustee.

MassHealth deemed this documentation to be unacceptable, stating that it wanted a signed statement by the trustee of each and every account owned by the trust “one by one.”

I conclude that the appellant has complied with the MassHealth request for a list of each and every trust asset, by listing all brokerage accounts, and their current values, on a current financial statement, with a cover letter from the trustee.

MassHealth’s inflexible position is that this submission is not a “proper” schedule of trust assets. I disagree.

However, the appellant has not complied with a second aspect of MassHealth’s request: all monthly financial statements for the trust for the period August, 2017 through August, 2022. The appellant failed to produce such statements for January, 2018 and February, 2018.

For these reasons, this appeal is DENIED in part.

### **Order for MassHealth**

Allow the appellant thirty (30) days from the date of this decision to provide the missing trust financial statements from January, 2018 and February, 2018. If these statements are produced, deem the appellant to have produced all verifications, and proceed to an eligibility decision for the appellant utilizing the August, 2022 application date. If these statements are not timely produced, consider the appellant not to have produced all needed verifications.

### **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.

## **Implementation of this Decision**

If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

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Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Dori Mathieu, Appeals Coordinator, Springfield MEC