

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2208241

Decision Date: 12/13/2022

Hearing Date: 11/30/2022

Hearing Officer: Radha Tilva

Appearance for Appellant:



Appearance for MassHealth:

Jessica Barney, 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

Appeal Decision:	Denied	Issue:	LTC – Life estate - assets
Decision Date:	12/13/2022	Hearing Date:	11/30/2022
MassHealth's Rep.:	Jessica Barney	Appellant's Rep.:	[REDACTED]
Hearing Location:	Taunton MassHealth Enrollment Center	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 October 3, 2022, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that appellant has more countable assets than MassHealth allows (Exhibit 1). The appellant filed this appeal in a timely manner on November 3, 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 long-term care application because MassHealth determined that appellant has more countable assets than MassHealth allows.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant is ineligible for MassHealth long-term benefits because she is over the asset limit.

Summary of Evidence

The MassHealth representative that appeared at hearing by telephone testified that appellant was admitted to the nursing facility in [REDACTED]. MassHealth received an application for MassHealth long-term care benefits on August 22, 2022 and was seeking a long-term care start date of March 10, 2022. A conversion was received in August 2022 and a request for information was sent on August 30, 2022. The case was denied on October 3, 2022 for excess assets. The MassHealth representative explained that a credit union account had a balance of \$1,531.66 on August 10, 2022, a personal needs account had a balance of \$17.00 as of July 27, 2022, and a life estate for property in Maine was valued at \$93,861.00. When reviewing the case, the MassHealth representative amended the value of the property in Maine to \$24,188.92 (the life estate value) and explained that MassHealth initially erred when they used the \$93,861.00 value. The MassHealth representative explained that the life estate value in Maine is countable because appellant also has a life estate value in property in Massachusetts. The total excess asset amount was amended to \$23,737.58.

The appellant was represented by an attorney who testified that the asset is not countable. The property was transferred in 2001 to appellant's six children. The attorney explained that the laws in Maine prevent life estate holders from selling property in Maine. The attorney explained, in addition, that the six remaindermen do not want to sell the property either. The attorney argued that the life estate goes away when appellant dies. The attorney also argued that appellant can list the life estate value of the property, but no one will buy it. Appellant's counsel submitted a Social Security Program Operations Manual System (POMS – TN 22 (08-21) which discussed life estates in Maine. The POMS defined a life estate as granting ownership of property to another person for the duration of the other person's life and granting the holder the right to possess, control, and enjoy the property during the holder's lifetime. 310 C.J.S. Estates, subsection 36 (2020; 1 Maine Prac., Real Estate Law and Prac. Subsection 4.4 (2d ed.)). The POMS corroborated that a life tenant may sell or lease her ownership interest in the property, but cannot unilaterally sell the property (see Exhibit 4). The attorney stated he is not contesting MassHealth's calculation of the life estate (\$23,4188.92).

Findings of Fact

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

1. Appellant entered a nursing facility in [REDACTED]
2. A conversion was received for MassHealth long-term care benefits on August 22, 2022.
3. The case was denied on October 3, 2022 for excess assets.
 - a. The initial denial letter found total countable assets at \$95,409.66, with an excess asset amount of \$93,409.68.

- b. Upon review the MassHealth representative determined that only the life estate value of the property in Maine, totaling \$24,188.92, should be used.
- c. Thus, the total excess asset amount was amended to \$23,737.58.
- 4. The property in Maine was transferred to appellant's six children in 2001. Appellant reserved a life estate interest.
- 5. Appellant's children have no interest in selling the property in Maine.
- 6. Appellant has another life estate interest in property located in Massachusetts.

Analysis and Conclusions of Law

Under 130 CMR 520.003 the total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard may not exceed \$2,000.00. 130 CMR 520.007 specifies what assets MassHealth deems countable. 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. The dispute at hand deals with whether MassHealth was correct in considering appellant's life estate in property, located in Maine, countable.

130 CMR 520.003(G) states:

(G) Real Estate.

(1) Real Estate as a Countable Asset. *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.

(2) Nine-month Exemption. 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 within 30 days after the date of notice to dispose of the property at fair-market value. The MassHealth agency will extend the nine-month period as long as the individual or the spouse continues to make a good-faith effort to sell, as verified in accordance with 130 CMR 520.007(G)(4).

(3) Fair-market Value and Equity Value. The fair-market value and equity value of all countable real estate owned by the individual and the spouse must be verified at the time of application and when it affects or may affect eligibility. For applications

received on or after January 1, 2006, equity interest in the principal place of residence exceeding \$750,000 renders an individual ineligible for payment of nursing facility and other long-term-care services, unless the spouse of such individual or the individual's child who is younger than 21 years old or who is blind or permanently and totally disabled resides in the individual's home. The allowable equity interest amount will be adjusted annually, beginning in January 2011. The adjustment will be based year-to-year on the percentage increase in the Consumer Price Index...

(4) Good-faith Effort to Sell Real Estate. The individual or the spouse must verify his or her good-faith effort to dispose of countable real estate by evidence such as advertisements or documentation of the listing of the real estate with licensed real-estate agents or brokers, including a report of any offer from prospective buyers. The MassHealth agency will terminate eligibility if, at any time, the individual rejects a reasonable offer to buy the real estate. An offer to buy real estate is considered reasonable if it is at least two-thirds of the fair-market value, unless the individual proves otherwise to the MassHealth agency's satisfaction...

(10) Option to Liquidate to Pay for Medical Care. Instead of selling the countable former home, the individual may liquidate its equity value to pay for his or her medical care. If the individual chooses this option, the home will be noncountable until the equity value is liquidated, but not longer than nine calendar months after the date of the MassHealth agency's notice.

(11) Undue Hardship: Jointly Owned Assets.

(a) The MassHealth agency will continue to exclude otherwise countable property, including a former home, when it is jointly owned and the sale of the property by an individual would cause the other owners to lose housing.

(b) Loss of housing would result when the property serves as the principal place of residence for one (or more) of the other owners, and sale of the property would result in loss of that residence, and no other housing would be readily available for the displaced other owner. If undue hardship as defined in 130 CMR 520.007(G)(11) ceases to exist, the property becomes a countable asset.

(12) Lien. The MassHealth agency will place a lien before the death of a member against any real estate in which the member has a legal interest. This lien will be placed only if all of the conditions of 130 CMR 515.012: Real Estate Liens are met.

Appellant presented no evidence at hearing that anyone was living at the property or that the property was being rented. In addition, appellant does not presently have her life estate interest on the real estate market to qualify her for the nine-month exemption described above. Based on 130 CMR 520.003(G)(1) MassHealth was correct in counting the life estate value of the property in Maine. As supported in the POMS submitted by appellant life estates are defeasible interests that can be sold. While appellant's counsel might be right that no one may be interested in purchasing a life estate, including the remaindermen, that does not preclude MassHealth from counting the life estate value.

As this property is not appellant's principal place of residence, appellant does have an ownership interest in it, and therefore, MassHealth was correct in counting appellant's portion, the life estate value, as countable. For the reasons above 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]