

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied; Dismissed	Appeal Number:	2209286
Decision Date:	4/13/2023	Hearing Date:	01/03/2023
Hearing Officer:	Patricia Mullen	Record Open to:	03/31/2023

Appearance for Appellant:



Appearance for MassHealth:

Lindsay Gallant, Taunton 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; Dismissed	Issue:	Verifications
Decision Date:	4/13/2023	Hearing Date:	01/03/2023
MassHealth's Rep.:	Lindsay Gallant, Taunton MEC	Appellant's Rep.:	
Hearing Location:	Taunton MassHealth Enrollment Center (remote)		

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 28, 2022, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant's countable assets exceed the limit for MassHealth. (130 CMR 520.016 and Exhibit 1). The appellant filed this appeal in a timely manner on December 16, 2023¹. (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

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 Standard for long term care residents.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.016, in determining that the appellant's countable assets exceed the limit for MassHealth Standard for long term care residents.

Summary of Evidence

The appellant was represented telephonically at the hearing by her son/authorized representative and by the BOM from the nursing facility, who was also authorized by the appellant. (Exhibit 2). MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton. The MassHealth representative stated that the appellant submitted an application for MassHealth Standard for long term care residents on September 20, 2022 seeking an August 27, 2022 MassHealth start date. The appellant is a single individual and was admitted to the nursing facility on [REDACTED] (Testimony, exhibit 4).

The MassHealth representative stated that the appellant's application was denied by notice dated October 28, 2022 because her assets exceed \$2,000.00, the limit for MassHealth Standard for long term care residents. (Exhibit 1). The MassHealth representative stated that the appellant has two life insurance policies. Life insurance policy one has a cash surrender value (CSV) of \$2,217.79 and life insurance policy two has a CSV of \$624.51 for a total of \$2,842.30. (Testimony, exhibit 4, pp. 6, 7). The MassHealth representative stated that the appellant has a balance of \$1,885.67 in her bank account. (Exhibit 4, p. 4). The MassHealth representative testified that the appellant's total assets of \$4,727.97 exceed the MassHealth limit of \$2,000.00 by \$2,727.97. (Exhibit 1).

The appellant's son (hereinafter "the appellant's representative") stated that he received insurance checks in the mail the day prior to the hearing and intended to use the money for funeral expenses. The MassHealth representative stated that a copy of the appellant's funeral contract would need to be submitted to MassHealth, as well as proof that the life insurance policies were surrendered and payment went to the funeral home.

The record was left open until February 3, 2023 to give the appellant's representative the opportunity to submit a copy of the funeral contract, documentation from the life insurance company showing the two policies were surrendered, or documentation from the life insurance company showing that the funeral home is the owner and beneficiary of the two policies. (Exhibit 5). It was noted on the record open form that if the life insurance policies have been surrendered, the appellant's representative must submit documentation from the life insurance company showing the policies were surrendered, the bank statement into which the proceeds were deposited, and the check to the funeral home. (Exhibit 5). The record open form was scanned and emailed to the appellant's representative and to the MassHealth representative. (Exhibit 6, p. 3).

By email dated January 31, 2023, the appellant's representative wrote that he was waiting for the insurance company to send documentation and asked for a couple of more weeks to submit the requested information. (Exhibit 6, pp. 2, 3). The hearing officer extended the record open period to February 17, 2023. (Exhibit 6, p. 2). By email dated February 7, 2023, the appellant's representative wrote that the insurance company made a mistake and put the wrong beneficiary on the account and noted that it would take 72 hours to correct it; the appellant's representative noted that he would send the funeral contract and updated insurance information once he received it. (Exhibit 6, p. 1).

The appellant's representative submitted a copy of the funeral contract on February 20, 2023. (Exhibit 7). By email dated February 21, 2023, the MassHealth representative noted that the record closed on February 17, 2023 and MassHealth had not received the requested documentation showing the policies were surrendered, or that the owner/beneficiary were changed to the funeral home. (Exhibit 8, p. 2). By email dated February 21, 2023, the appellant's representative stated that the beneficiary of the policies is the funeral home. (Exhibit 8, p. 2). Attached to an email dated February 22, 2023, the appellant's representative submitted 2 letters from the life insurance company, both dated February 21, 2023, stating that the beneficiary of both policies is the funeral home, however the appellant remains owner of both policies. (Exhibit 8, pp. 1, 2; exhibit 10). By email dated February 22, 2023, the MassHealth representative reiterated that the ownership of the life insurance policies had to be changed to the funeral home. (Exhibit 8, p. 1). On the same date, the appellant's representative responded that he thought he just had to change the beneficiary. (Exhibit 8, p. 1). Also on February 22, 2023, the hearing officer re-sent the record open form which stated that both ownership and beneficiary of the life insurance policies had to be changed to the funeral home. (Exhibit 9, p. 1). The hearing officer extended the record open period for another two weeks, and later, on February 27, 2023 extended it again, to March 20, 2023, to give the appellant's representative more time to get this done. (Exhibit 9, p. 1; exhibit 11, p. 3). The hearing officer informed the appellant's representative that he needed to reach out to the insurance company that day, if he had not already done so, and submit documentation as soon as the changes were made. (Exhibit 11, p. 3).

By email dated March 21, 2023, the MassHealth representative noted that the record had closed the day prior and the requested information was still outstanding. (Exhibit 11, p. 3). By email dated March 21, 2023, the appellant's representative responded that the appellant passed away and the beneficiary was paid. (Exhibit 11, p. 2). By email dated March 21, 2023, the hearing officer asked the date on which the appellant died and asked for documentation showing that the funeral home had been paid by the life insurance policy proceeds. (Exhibit 11, p. 2). By email dated March 22, 2023, the appellant's representative stated that he would send the information that day. (Exhibit 11, p. 1).

The appellant's representative did not send the documentation showing that the life insurance proceeds were paid to the funeral home. On March 28, 2023, the hearing officer emailed both parties and requested that the appellant's representative send the documentation that day. (Exhibit 12). The hearing officer informed the appellant's representative that if more time was needed, authorization from the appellant's estate was needed to proceed with the appeal. (Exhibit 12). The

hearing officer asked the appellant's representative if a petition for Personal Representative or Voluntary Administrator of the appellant's estate had been filed or was going to be filed. (Exhibit 12). By email dated March 31, 2023, the hearing officer gave the appellant's representative until the end of that day to submit the requested documentation or to let the hearing officer know if a Personal Representative or Voluntary Administrator of the appellant's estate would be appointed. (Exhibit 13). The appellant's representative did not respond and did not submit the requested documentation.

By email dated April 3, 2023, the MassHealth representative informed the hearing officer that MassHealth checked with the Social Security Administration and the appellant passed away on [REDACTED] (Exhibit 14).

Findings of Fact

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

1. The appellant submitted an application for MassHealth Standard for long term care residents on September 20, 2022 seeking an August 27, 2022 MassHealth start date.
2. The appellant passed away on [REDACTED]; the appellant was a single individual and was admitted to the nursing facility on [REDACTED].
3. The appellant's MassHealth application was denied by notice dated October 28, 2022 because her assets exceeded \$2,000.00, the limit for MassHealth Standard for long term care residents.
4. The appellant had two life insurance policies; life insurance policy one had a CSV of \$2,217.79 and life insurance policy two had a CSV of \$624.51 for a total of \$2,842.30; the appellant had a balance of \$1,885.67 in her bank account; the appellant's assets totaled \$4,727.97.
5. At the hearing, the appellant's representative stated that he received insurance checks in the mail the day prior to the hearing.
6. The record was left open until February 3, 2023 to give the appellant's representative the opportunity to submit verification that the appellant's assets were spent down; the record open form stated that the appellant was to submit a copy of the funeral contract, documentation from the life insurance company showing the two policies were surrendered, or documentation from the life insurance company showing that the funeral home is the owner and beneficiary of the two policies. (Exhibit 5).
7. It was noted on the record open form that if the life insurance policies have been surrendered, the appellant's representative must submit documentation from the life insurance company showing the policies were surrendered, the bank statement into which the proceeds were deposited, and the check to the funeral home. (Exhibit 5).

8. The record open form was scanned and emailed to the appellant's representative and to the MassHealth representative.
9. By email dated January 31, 2023, the appellant's representative wrote that he was waiting for the insurance company to send documentation and asked for a couple of more weeks to submit the requested information; the hearing officer extended the record open period to February 17, 2023.
10. By email dated February 7, 2023, the appellant's representative wrote that the insurance company made a mistake and put the wrong beneficiary on the account and noted that it would take 72 hours to correct it; the appellant's representative noted that he would send the funeral contract and updated insurance information once he received it.
11. The appellant's representative submitted a copy of the funeral contract on February 20, 2023.
12. By email dated February 21, 2023, the MassHealth representative noted that the record closed on February 17, 2023 and MassHealth had not received the requested documentation showing the policies were surrendered, or that the owner/beneficiary were changed to the funeral home.
13. By email dated February 22, 2023, the appellant's representative submitted two letters from the life insurance company, both dated February 21, 2023, stating that the beneficiary of both policies is the funeral home, however the appellant remains owner of both policies.
14. By email dated February 22, 2023, the MassHealth representative reiterated that the ownership of the life insurance policies had to be changed to the funeral home.
15. On February 22, 2023, the hearing officer re-sent the record open form which stated that both the ownership of the life insurance policies and beneficiary had to be changed to the funeral home.
16. The hearing officer extended the record open period for another two weeks, and later, on February 27, 2023 extended it again, to March 20, 2023, to give the appellant's representative more time to submit the requested information showing the asset spend down; the hearing officer informed the appellant's representative that he needed to reach out to the insurance company that day, if he had not already done so, and submit documentation as soon as the changes were made.
17. By email dated March 21, 2023, the MassHealth representative noted that the record had closed the day prior and the requested information was still outstanding.
18. By email dated March 21, 2023, the appellant's representative responded that the appellant passed away and the beneficiary was paid.
19. By email dated March 21, 2023, the hearing officer asked the date on which the appellant died and asked for documentation showing that the funeral home had been paid by the life insurance policy proceeds.
20. By email dated March 22, 2023, the appellant's representative stated that he would send the information that day; there was no further communication from the appellant's representative

after the March 22, 2023 email.

21. The appellant's representative did not send the documentation showing that the life insurance proceeds were paid to the funeral home nor did he respond to the inquiry as to the date of the appellant's death.
22. On March 28, 2023, the hearing officer emailed both parties and requested that the appellant's representative send the documentation that day; the hearing officer informed the appellant's representative that if more time was needed, authorization from the appellant's estate was needed to proceed with the appeal; the hearing officer asked the appellant's representative if a petition for Personal Representative or Voluntary Administrator of the appellant's estate had been filed or was going to be filed; the appellant did not respond.
23. By email dated March 31, 2023, the hearing officer gave the appellant's representative until the end of that day to submit the requested documentation or to let the hearing officer know if a Personal Representative or Voluntary Administrator of the appellant's estate would be appointed; the appellant's representative did not respond and did not submit the requested documentation.
24. By email dated April 3, 2023, the MassHealth representative informed the hearing officer that MassHealth checked with the Social Security Administration and the appellant passed away on [REDACTED]

Analysis and Conclusions of Law

Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

(130 CMR 520.016(A)).

The appellant had assets totaling \$4,727.97, and thus her assets made her financially ineligible for MassHealth Standard for long term care residents.

Noncountable assets are those assets exempt from consideration when determining the value of assets. In addition to the noncountable assets described in 130 CMR 520.006 and 520.007, the following assets are noncountable...

(F) Funeral or Burial Arrangements.

(1) The following funeral or burial arrangements for the applicant, member, or spouse are considered noncountable assets:

(a) any burial space, including any burial space for any immediate family member;

(b) one of the following:

1. a separately identifiable amount not to exceed \$1,500 expressly reserved for funeral and burial expenses; or

2. life-insurance policies designated exclusively for funeral and burial expenses with a total face value not to exceed \$1,500;

- (c) the cash-surrender value of burial insurance; and
- (d) prepaid irrevocable burial contracts or irrevocable trust accounts designated for funeral and burial expense.

(2) Appreciated value or interest earned or accrued and left to accumulate on any contracts, accounts, or life insurance is also noncountable. If the applicant, member, or spouse uses any of these assets, including the interest accrued, for other than funeral or burial arrangements of the applicant, member, or spouse, the MassHealth agency considers the asset available and countable under the provisions of 130 CMR 520.007, 520.018, and 520.019.

(3) The applicant, member, or spouse has the right to establish a burial arrangement or change the designation of his or her funds to a burial arrangement described in 130 CMR 520.008(F). If such arrangement is made within 60 days after the date that the applicant or member was notified of his or her right to do so, then the MassHealth agency considers the arrangement to have been in existence on the first day of the third month before the application.

(130 CMR 520.008(F)).

Although at the hearing, the appellant's representative stated that he received the insurance checks in the mail the day prior to hearing, that does not seem to be the case as the insurance company issued letters dated February 21, 2023 noting that the owner of the policies remained the appellant and the beneficiary of the policies was the funeral home. After all the record open extensions, the appellant's representative was given over 3 months to document that the owner and beneficiary of the two life insurance policies was the funeral home, or documentation that the proceeds from the two life insurance policies was paid to the funeral home for expenses set forth in the funeral contract. The appellant did not provide the requested information, despite repeated requests and extensions of the record open period.

The appellant passed away on February 23, 2023, during the record open period. The nursing facility did not submit an updated SC-1 indicating the appellant's death nor did the nursing facility inform MassHealth of the appellant's death. In response to an email from the hearing officer, the appellant's representative reported the appellant's death on March 21, 2023, almost a month after her passing. Due to the death of the appellant, neither the appellant's son nor the business office manager from the nursing facility has authority to represent the appellant and thus have no standing for this appeal. As of February 23, 2023, there was no longer an eligible "Appellant Representative" as defined by 130 CMR 610.004, 610.016.² Because the party requesting the hearing is not an

² Appeal Representative – (1) a person or an organization who agrees to comply with applicable rules regarding confidentiality and conflicts of interest in the course of representing an applicant or member, provided such person or organization (a) has provided the BOH with written authorization from the applicant or member to act responsibly on his or her behalf during the appeal process; or (b) has, under applicable law, authority to act on behalf of an applicant or member at an appeal or otherwise in making decisions related to health care or payment for health care including, but not limited to, a guardian, conservator, personal representative of the estate of an applicant or member, holder of power of attorney, or an invoked health care proxy; or (2) a person or organization who has been

applicant, MassHealth member, nursing facility resident, or appeal representative as defined in 130 CMR 610.004, the appeal is dismissed pursuant to 130 CMR 610.035(A)(7), (9).

Further, the appellant's representative did not submit the requested documentation to show spend down of the appellant's assets. MassHealth noted that it would even accept proof that the life insurance proceeds from the two policies were paid to the funeral home after the appellant's death, however the appellant's representative did not submit this documentation. Even as of the date of this decision, over 3 months after the hearing, the requested documentation has not been submitted. Had the appellant not passed away, resulting in dismissal for lack of authority, the appeal would have been denied because verification of the spend down of the excess assets was not submitted, despite a 3 month record open period. Therefore, the appeal is dismissed and denied.

Order for MassHealth

None.

designated an authorized representative, as defined in 130 CMR 610.004: Authorized Representative, pursuant to a valid Authorized Representative Designation Form. (130 CMR 610.004).

If a timely request for a hearing is filed but the applicant or member has died prior to the filing, BOH must be informed of the death of the applicant or member at the time of a request for a hearing by the person filing the appeal. In addition, the filing of the appeal on behalf of such a deceased individual must be accompanied by one of the following: (1) (a) written proof that the person filing the appeal is a personal representative of the applicant's or member's estate with a current and valid appointment from a court of proper jurisdiction; or (b) if there is no such personal representative, then written proof of a currently pending petition, docketed in a court of proper jurisdiction, which seeks the appointment of such a personal representative. In addition, the person filing the appeal must notify BOH in writing of the status of the pending petition every 30 days and, once a personal representative with a current and valid appointment has been established, the personal representative must submit written proof of such authority and a desire to pursue the appeal to BOH, within ten days of the appointment. (2) Failure to comply with all of the requirements in 130 CMR 610.016(B) may constitute grounds for dismissal. (130 CMR 610.016(B)).

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center
Appellant Rep.: [REDACTED]
Appellant Rep.: [REDACTED]