

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2209502

Decision Date: 2/3/2023

Hearing Date: 01/26/2023

Hearing Officer: Thomas Doyle

Record Open to:

Appearance for Appellant:



Appearance for MassHealth:

Joanne Weldon for
Gloria Medeiros

Interpreter:



*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

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|---------------------------|----------------|--------------------------|------------------|
| Appeal Decision: | Denied | Issue: | Countable assets |
| Decision Date: | 2/3/2023 | Hearing Date: | 01/26/2023 |
| MassHealth's Rep.: | Joanne Weldon | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Remote (phone) | 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 November 30, 2022, MassHealth denied the appellant's application for MassHealth long term benefits because MassHealth determined that appellant has more countable assets than is allowed by regulation. (Ex. 1). The appellant filed this appeal in a timely manner on December 6, 2022. (Ex. 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied appellant's application for long term services because appellant had more countable assets than is allowed under MassHealth regulations.

Issue

Was MassHealth correct in determining appellant's application for long term care services because appellant has more countable assets than is allowed under the regulations?

Summary of Evidence

Appellant is a female in her mid 80's who was admitted to the facility on [REDACTED]. MassHealth received an application for long-term care benefits on May 30, 2022, with the facility seeking a start date of February 21, 2022. A request for information was sent on June 7, 2022 and a

denial was issued on July 12, 2022. Appellant reapplied for long term care on July 18, 2022 and another request for information was sent on July 20, 2022. On August 24, 2022 MassHealth denied the reapplication of July 18, 2022. The MassHealth denial of July 12, 2022 was appealed by appellant. This appeal was then withdrawn by appellant and MassHealth issued a request for proof of assets reduced on October 24, 2022. A denial by MassHealth was issued on November 30, 2022 and is the subject of this appeal. MassHealth found two bank accounts in appellant's name that at the time of hearing totaled \$9,738.36. Appellant also had a PNA account of \$163.41, giving appellant an asset total of \$9,901.77. The MassHealth representative testified that the appellant would have to spend down \$7,901.77 to be under the \$2,000 asset limit.

Appellant's appeal representative testified that the savings bank account is a passbook account held jointly with appellant's sister. Appellant is unable to access the account because sister of appellant has not been cooperative in accessing the account. The sister of appellant has possession of the passbook. The bank informed the appeal representative that either both parties needed to come into the bank together if the passbook was lost or if only one of them came to the bank, the individual had to have the passbook with them to access the account. In July 2022, the sister ceased coming to see appellant at the nursing home. The sister then changed her phone number and she could not be found. The appeal representative said she sent a certified letter to the sister's address and it was returned. The appeal representative then found out about a brother of appellant. He lived in Michigan. The brother told the appeal representative where the sister worked. She got in touch with the sister and explained the need for appellant to gain access to the account. The sister again stopped communicating with the nursing home and appellant. Messages were left for the sister to no avail. The appeal representative said she asked the bank to make an exception to the rules and allow appellant to make a withdrawal from the savings account but the bank refused. The appeal representative testified that she would most likely have to go to the probate court to have a guardian appointed.

Findings of Fact

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

1. Appellant is a woman in her mid 80's who was admitted to the nursing home from the hospital in early [REDACTED] (Ex. 4, pp. 6, 8; Testimony).
2. Appellant's original application was dated May 30, 2022. (Ex. 4, pp. 1, 6; Testimony). This application was denied on July 12, 2022 for missing verifications. (Id.).
3. Appellant reapplied on July 18, 2022 and this was denied on August 24, 2022. (Id.)
4. Appellant appealed the July 12, 2022 denial. This appeal was withdrawn with MassHealth honoring the May 30, 2022 application date. A request for proof of assets being reduced was issued on October 24, 2022. (Id.).
5. On November 30, 2022, MassHealth issued a denial for being over assets. (Id.)

6. Appellant has a checking account with a balance of \$460.18. Appellant's sister is named on this account. (Ex. 4, p. 14). Appellant has a savings account with a balance of \$9,278.18. Appellant's sister is on this account and is in possession of the passbook. (Ex. 4, p. 15; Testimony). Appellant has a PNA account balance of \$163.41. (Ex. 4, pp. 6, 7; Testimony).
7. Appellant's countable assets amounts to \$9,901.77. (Ex. 4, pp. 6-7, 14-15; Testimony).
8. Appellant signed the request for hearing form and appointed an appeal representative. (Ex. 2).
9. Appellant does not suffer from an intellectual or developmental disability. (Ex. 4, p. 10).

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Pursuant to 130 CMR 520.003(A), the total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed \$2,000 for an individual. Furthermore, 130 CMR 520.004 states the following regarding asset reduction:

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

(a) 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 at 130 CMR 520.019(F); or

(b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

520.005: Ownership of Assets

...

(C) Joint Bank Accounts.

(1) Bank accounts are defined at 130 CMR 520.007(B)(1).

(2) When the applicant or member is a joint owner of a bank account, the entire amount on deposit is considered available to the applicant or member, except when assessing assets in accordance with 130 CMR 520.016.

520.007: Countable Assets

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. (emphasis added).

...

(B) Bank Accounts.

(1) Definition. Bank accounts are defined as deposits in a bank, savings and loan institution, credit union, or other financial institution. Bank accounts may be in the form of savings, checking, or trust accounts, term certificates, or other types of accounts.

The issue in this appeal is whether MassHealth was correct in determining that the appellant was over the allowable asset limit and denying her MassHealth long-term care benefits. Appellants first application for benefits was filed in May 2022, eight months before appellant's hearing. This application was denied in early July 2022. Within days of the denial, appellant filed a reapplication for long term care. This reapplication was also denied in August 2022. At the end of August 2022, appellant filed a G.L. chapter 30A appeal of MassHealth's denial. This appeal was withdrawn by appellant and a request for proof of assets being reduced was issued by MassHealth on October 24, 2022. Nothing was received by MassHealth that appellant's assets were sufficiently reduced to qualify for benefits. (Testimony). On November 30, 2022, MassHealth denied appellant's application for long term benefits.

The appeal representative testified that appellant's sister was in possession of the bank passbook and the appeal representative made attempts to get the sister to cooperate in accessing the savings account, which listed both appellant and her sister. (Testimony). The appeal representative testified the bank said the account could only be accessed when the passbook was in the possession of the person seeking access to the account, and therefore appellant could not gain access to the account because she did not possess the passbook. The appeal representative implied that since the sister was not cooperating, the sister would not go to the bank with appellant to access the account. Appellant's sister stopped visiting appellant and changed her phone number. The appeal representative testified the sister remains unreachable as of the date of the hearing. (Testimony).

The bank accounts are countable assets against appellant. "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." (130 CMR 520.007). Appellant has had eight months and filed multiple applications for MassHealth benefits. Appellant has made minimal efforts to gain access to her bank account assets. Pleading with appellant's sister and the bank is insufficient. As noted, appellant has no intellectual or developmental disabilities. (Ex. 4, p. 10). She signed her request for hearing form and appointed an appeal representative. (Ex. 2). The appeal representative stated she would "probably eventually" move for a guardianship to try to gain access to appellant's bank

accounts.¹ Why this step has not yet been taken in the previous eight months is unclear. Testimony indicates appellant's social security payments were deposited into the passbook savings account. (Testimony). The documentary evidence bears this out. (Ex. 4, p. 15). It is a reasonable inference that this was appellant's bank account and her sister's name was placed on it for the sake of convenience. The sister's lack of cooperation in denying appellant access to the passbook savings account is concerning. No evidence was offered by appellant that she has contacted law enforcement or gone to court to gain access to her account.

Appellant's passbook savings bank account is a countable asset, even though she is having difficulty accessing it. But this is due to appellant's inaction, or lack of sufficient action, to obtain access to her assets to comply with MassHealth eligibility requirements. MassHealth's action, finding appellant has more countable assets than MassHealth benefits allow, was correct. Therefore, 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

¹ Through the testimony of the appeal representative, I infer that appellant is aware there are other avenues available to her to gain access to the passbook account but has thus far failed to take the necessary steps. See 130 CMR 520.007.

receipt of this decision.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center,
21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

[REDACTED]