Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2209536
Decision Date:	2/14/2023	**Hearing Date:**	01/13/2023
Hearing Officer:	Christopher Jones	**Record Open to:**	02/10/2023

Appearance for Appellant:
[redacted]

Appearance for MassHealth:
Jennifer Moreno - Springfield Intake

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 – Intake / Assets
Decision Date:	2/14/2023	**Hearing Date:**	01/13/2023
MassHealth's Rep.:	Jennifer Moreno	**Appellant's Rep.:**	[redacted]
Hearing Location:	Remote	**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 6, 2022, MassHealth denied the appellant's April 2022 application for MassHealth long-term-care benefits because the appellant had assets in excess of the asset limit. (Exhibit 2; 130 CMR 520.003-520.004.) The appellant filed this timely appeal on December 22, 2022. (Exhibit 3; 130 CMR 610.015(B); EOM 22-10 (Aug. 2022).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

The hearing record was left open until January 27, 2023 for the appellant to submit proof of asset reduction and for both parties to submit legal arguments. The record remained open until February 10 for MassHealth to review the submitted evidence.

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term-care benefits because the appellant had countable assets in excess of the asset limit.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003-520.004, in determining that the appellant's assets are too high to qualify for MassHealth.

Summary of Evidence

The appellant is an elderly individual who is residing in a nurse facility. They applied for MassHealth long-term-care benefits on April 12, 2022, requesting coverage as of January 20, 2022. Verifications were requested by MassHealth on April 24, and when no verifications were received MassHealth denied this application on May 24, 2022. All needed verifications were received within 30 days of this denial.

The appealed notice was issued on October 8, 2022 finding the appellant to be $443,200.07 over assets. The appealed notice references the April 2022 application date as the relevant date being denied. However, MassHealth's representative testified that this was a typographical error caused by the computer system. The relevant application date was the reapplication date of July 8, 2022; the date on which the verifications were processed following the May 24, 2022 denial notice. MassHealth argued that despite the computer system generating the notice incorrectly, the regulations require that the reapplication date be used.

The appellant's representative was surprised by MassHealth's position that it was using the reapplication date. They testified that MassHealth has always honored the original application when the verifications were all submitted within 30 days of the denial. MassHealth's representative responded that this is the practice only when an appeal is filed, as that preserves the member's right to prove eligibility retroactively.

Substantively, the MassHealth's representative agreed to exclude the value of the appellant's community home, but that left an excess asset amount of $95,500.07. This amount was comprised of a life insurance policy with a cash-value of $27,499.83, and a bank account with $69,924.24. The appellant's attorney explained that some of the delay in reducing these assets was that the appellant was setting up a Medicaid qualifying annuity. The record was left open to allow the appellant "to submit asset reduction verifications showing the ... bank account and life insurance value were converted into a qualifying Medicaid annuity. Updated bank statements and receipts are also needed for any other expenditures that were not converted into the annuity."

The appellant submitted bank statements from the appellant's checking account, showing two checks to the appellant's nursing facility, each for $3,356.58. This account had not been discussed during the hearing because it had been already verified below $2,000. A single page statement was provided from the bank account that held $69,924.24, showing it had been reduced to $170.22.[1] The cover letter further states that the "life insurance policy has been surrendered. If you would like the full statement, we can provide a full statement for the month of January when they are released. We can also provide a list with support of all the bills paid. Due to bills, she does not need an annuity." The appellant was immediately asked if there was additional proof of where the money went, and whether it was submitted directly to MassHealth separately, but they did not respond.

[1] The image of the statement is illegible, but the appellant's representatives wrote the number onto the image.

Regarding the application date issue, MassHealth cited 130 CMR 516.002(A)-(B), which makes clear that if an application is denied and "the requested information is received within 30 days of the date of denial, the date of receipt of one or more of the verifications is considered the date of reapplication[, and t]he date of reapplication replaces the date of the denied application." The appellant's response notes that MassHealth never identified in any of its noticing or communication that the application date had changed from the April application date to a reapplication date and always referenced the April date as relevant. They also argue that "Chapter 516, Page 516.002 also explains that '(C) Receipt of Corroborative Information. If the requested information, with the exception of verification of citizenship, identity, and immigration status, is received within 30 days of the date of the request, the application is considered complete.' We have always sent in the requested information within 30 days of the notice."

The parties were reminded of the closing of the record and the fact that the appellant had not submitted evidence showing that the assets had been reduced. MassHealth responded at their deadline confirming that they had received no additional verifications regarding asset reduction than were submitted into the hearing record, and that without proof of where the assets went the appellant cannot be considered to have reduced their assets.

Findings of Fact

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

1. The appellant is an elderly individual residing in a nursing facility. They filed an application for MassHealth long-term-care benefits on April 12, 2022, requesting coverage as of January 20, 2022. (Testimony by MassHealth's representative; Exhibit 5.)

2. MassHealth sent a request for verifications on April 24, 2022; no verifications were received. MassHealth denied the application on May 24, 2022. (Testimony by MassHealth's representative; Exhibit 5.)

3. MassHealth received the required verifications within 30 days of the denial notice being issued and internally assigned a reapplication date of July 8, 2022. (Testimony by MassHealth's representative.)

4. The next notice MassHealth issued was the October 6 excess assets denial. This notice identified the relevant application date as the April 2022 application date. This notice further identified the appellant as being $443,200.007 over assets. (Exhibit 2.)

5. At the hearing, MassHealth reduced the excess asset amount to $95,500.07. This amount was comprised of a life insurance policy with a cash-value of $27,499.83, and a bank account with $69,924.24. (Testimony by MassHealth's representative.)

6. The record was left open for the appellant's countable assets to be reduced below $2,000, and for the appellant the appellant "to submit asset reduction verifications showing the ... bank account and life insurance value were converted into a qualifying Medicaid annuity.

Updated bank statements and receipts are also needed for any other expenditures that were not converted into the annuity." (Exhibit 7.)

7. No assets were converted into an annuity. Updated bank statements were submitted to show that the bank account was reduced to $170.22, and two checks for $3,356.58 were written to the appellant's nursing facility. Otherwise, no paper trail was offered to explain where this money went. The appellant states that the insurance policy has been surrendered but does not identify when it was surrendered. (Exhibits 6; 7.)

Analysis and Conclusions of Law

MassHealth members must establish financial eligibility, which includes showing that their assets are below a threshold and that they reduced their assets in accordance with state and federal law. (See 130 CMR 520.000.) To qualify for long-term-care benefits, an applicant must complete an application and cooperate with the MassHealth agency by submitting corroborative information. (See 130 CMR 516.001(B).) If the requested verifications are received within 30 days, "the application is considered complete" and MassHealth continues to "determine the coverage type … for which the applicant is eligible." If not, MassHealth may deny the application. (130 CMR 516.001(C).)

MassHealth "will reactivate the application after a denial of eligibility for failure to provide requested verifications … [if] the requested information is received within 30 days of the date of denial, [and] the date of receipt of one or more of the verifications **is considered the date of reapplication**." (130 CMR 516.002(A) (emphasis added).) MassHealth may also deny an application where a member fails to cooperate and submit requested documentation. (See 130 CMR 515.008(C).)

Regarding financial eligibility, an individual applying for MassHealth long-term-care benefits must have countable assets below $2,000. (130 CMR 520.003(A).) If an applicant has assets above this threshold, their earliest eligibility start date is either:

> (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.

(130 CMR 520.004(A)(1).)

Bank accounts are "available only to the extent that the applicant or member has both ownership of and access to such funds." (130 CMR 520.007(B)(2).) Life insurance policies are counted as of their "cash-surrender value … . **The MassHealth agency will consider the cash-surrender-value**

amount an inaccessible asset during the adjustment period." (130 CMR 520.007(E)(1) (emphasis added); see also 130 CMR 520.006.)

As of the hearing, the appellant still had an un-surrendered life insurance policy with a cash-value of $27,499.83 and a bank account with $69,924.24. During the record open period, the appellant stated that they surrendered the life insurance policy and paid $6,713.16 to their nursing facility. This information does not verify that the appellant has "reduce[d] the assets to the allowable asset limit," sufficient for MassHealth to continue processing their application.

First, nothing documents that the life insurance policy was actually surrendered or when. The value of insurance policies is only inaccessible "during the adjustment period." It is possible to retroactively reduce assets once they are received. (See e.g., 130 CMR 520.008(F)(3).) However, without verification that the policy has actually been surrendered the inaccessibility regulation cannot make these assets even temporarily non-countable.

Second, by not documenting the distribution of the $69,924.24 from the bank account, there is no way to find that this money is no longer in the appellant's control, rather than simply transferred to another account that was not verified in the appellant's scant post-hearing submission. If asset reduction verifications had been submitted, MassHealth could proceed to determine whether the appellant engaged in disqualifying transfers or otherwise reduced their assets in a way that would preclude their desired start date. However, the next stage of the application necessarily requires that the applicant first show that their assets are reduced. They have not, therefore this appeal is DENIED.

Because this appeal is denied, the secondary issue regarding which application date was in effect is moot. A new application is now required.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

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