

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2209682
<b>Decision Date:</b>	2/7/2023	<b>Hearing Date:</b>	01/31/2023
<b>Hearing Officer:</b>	Alexandra Shube		

**Appearance for Appellant:**

*Via telephone:*



**Appearance for MassHealth:**


*Via telephone:*

Jamie Silva, 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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	LTC – Over Assets
<b>Decision Date:</b>	2/7/2023	<b>Hearing Date:</b>	01/31/2023
<b>MassHealth’s Rep.:</b>	Jamie Silva	<b>Appellant’s Rep.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center Remote	<b>Aid Pending:</b>	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 December 6, 2022, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that the appellant was over the allowable asset limit (see 130 CMR 520.003 and Exhibit 1). The appellant filed this appeal in a timely manner on December 30, 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 terminated the appellant’s long-term care benefits because he was over the allowable asset limit.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003 and 130 CMR 520.007, in determining that the appellant was over assets to qualify for MassHealth benefits.

## Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant is over the age of 65 and a resident of a long-term care facility. On August 29, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of May 24, 2022. On December 6, 2022, after additional time had been granted for verifications, MassHealth denied the application for being over the allowable asset limit. The appellant had ten unreported properties and owed back taxes on each. MassHealth determined the value of the assets as the property value minus back taxes. There is one property (hereinafter Property #1) that is currently listed for sale and exempt from determination for nine months, unless it is sold sooner. MassHealth also excluded the appellant's primary residence (hereinafter referred to as the primary residence, storage unit, or unit). The total countable property value was \$273,758.65 and there was \$102.31 in the appellant's bank account as of July 25, 2022, which combined for total countable assets of \$273,860.96, putting the appellant \$271,860.96 over the \$2,000 allowable asset limit.

The appellant was represented at hearing via telephone by an attorney and paralegal. They stated that the appellant is virtually homeless, has no family, and has only \$102 in his bank account. The appellant's primary residence is more of a storage unit than an actual dwelling. It does not have a shower and is filled with personal property that the appellant has accumulated over the years. According to his long-time attorney (who is not involved in the MassHealth appeal) similar storage units may be worth as much as \$300, but the unit cannot be listed until it is cleaned out. The appellant owes \$6,086 in unpaid condominium fees on the unit. The long-time attorney provided an affidavit supporting this information in which he also stated he has been approached by several other unit owners interested in the buying the storage unit once it becomes available; however, it appears that the value of the unit less two outstanding mortgages will negate any equity in the property.

As to Property #1, it is a vacant parcel of land that had significant title issues. The appellant's long-time attorney was able to remedy those issues and the property has been listed for \$425,000, but there have not been any offers yet. A representative from the real estate agency that listed the property provided an affidavit in which it stated that \$425,000 represents fair market value for Property #1.

The appellant's attorney and paralegal stated at hearing that the remaining properties owned by the appellant are slivers of land that have no fair market value, are landlocked, and are not buildable. No real estate agents were willing to list the properties for sale because they lack any value. In the real estate agent's affidavit, he attested that the parcels are not marketable and have no fair market value. He stated they are all undevelopable, landlocked, and have title issues. He attested that there are three parcels that are coded as potentially developable, but they are landlocked and not buildable according to the town's building inspector. In the appellant's long-time attorney's affidavit, he attested that the appellant has no ability to redeem any of them as they are landlocked, have never been surveyed, and has only a fractional interest, if any, in the parcels. For those reasons, he stated that no real estate broker was willing to list those properties.

The appellant's attorney and paralegal stated that the appellant has no family members and is not trying to protect any assets. They agreed that the Commonwealth could lien the appellant's properties and, once Property #1 is sold, the appellant will have to privately pay and spend down the funds to maintain his eligibility. They argued that since the appellant's primary residence is not countable, Property #1 is exempt for nine months under the agreement to sell, and the other properties have no fair market value, the appellant is within the asset limit and should qualify for MassHealth long-term care benefits.

## **Findings of Fact**

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

1. The appellant is over 65 years old and resides in a nursing facility (Testimony and Exhibit 4).
2. On August 29, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of May 24, 2022 (Testimony and Exhibit 4).
3. On December 6, 2022, after additional time had been granted for verifications, MassHealth denied the application for being over the allowable asset limit (Testimony and Exhibit 1).
4. The appellant timely appealed the denial notice on December 30, 2022 (Exhibit 2).
5. There were ten unreported properties on which the appellant owed back taxes (Testimony and Exhibit 4).
6. There was one property, Property #1, that is currently listed for sale and exempt from determination for nine months, unless sold sooner (Testimony and Exhibit 4).
7. MassHealth also excluded the appellant's primary residence (Testimony and Exhibit 4).
8. The total countable property value was \$273,758.65 and there was \$102.31 in the appellant's bank account as of July 25, 2022, which combined for total countable assets of \$273,860.96, putting the appellant \$271,860.96 over the \$2,000 allowable asset limit (Testimony and Exhibit 4).
9. The appellant's properties, other than Property #1 and the primary residence, are landlocked, undevelopable, and have no fair market value. There are no real estate brokers willing to list them. (Testimony and Exhibit 5).

## Analysis and Conclusions of Law

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.

130 CMR 520.007(G) states the following regarding 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)...

(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.

Pursuant to 130 CMR 520.007(G)(1), the real estate is a countable asset, however, I agree with the appellant that the value of the real is not \$273,758.65. MassHealth based its assessment on the

2022 assessed values. Based on the appellant's testimony and documentation and affidavits provided, that is not a realistic value for the real estate. The appellant credibly showed that the properties in question are landlocked, undevelopable, have title issues, and have no fair market value. A long-time attorney for the appellant and a local real estate broker who are both familiar with the area and properties in question attested that they are not marketable, there is no broker who will list them, and they do not have any fair market value. While three of the parcels were coded as potentially developable, they are not actually buildable pursuant to the town's building inspector. As such, the appellant's properties (other than Property #1 and his primary residence) should be valued at \$0, not the \$273,758.65 proposed by MassHealth. For these reasons, the appeal is approved.

## **Order for MassHealth**

Issue a new determination based upon valuing the properties in question at \$0.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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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Alexandra Shube  
Hearing Officer  
Board of Hearings

cc:

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

