

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved-in-part; Denied-in-part	<b>Appeal Number:</b>	2300890
<b>Decision Date:</b>	3/17/2023	<b>Hearing Date:</b>	03/07/2023
<b>Hearing Officer:</b>	Casey Groff, Esq.		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Karen Ryan, Tewksbury MassHealth  
Enrollment Center



*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-in-part; Denied-in-part	<b>Issue:</b>	Over 65 Eligibility; Inaccessible Assets
<b>Decision Date:</b>	3/17/2023	<b>Hearing Date:</b>	03/07/2023
<b>MassHealth's Rep.:</b>	Karen Ryan	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Board of Hearings (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 February 1, 2023, MassHealth approved Appellant for long-term care benefits with an “otherwise eligible” start date of December 13, 2022. See Exh. 4 and 130 CMR 520.003; 520.004. Appellant filed this appeal in a timely manner on February 1, 2023 to dispute the start date.<sup>1</sup> 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 approved Appellant for long-term care benefits with an effective start date of December 13, 2022.

## Issue

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<sup>1</sup> The fair hearing request initially sought to appeal an earlier MassHealth notice dated 12/23/22, which included a subsequent period of ineligibility following the “otherwise eligible” start date of 12/13/22, due to a disqualifying transfer. At hearing, it was discussed that the disqualifying transfer was later cured, prompting MassHealth to issue the 2/1/23 notice, thereby superseding the 12/23/22 notice. Because Appellant submitted a timely fair hearing request to challenge both notices, the parties agreed that the operative notice under appeal was the 2/1/23 notice.

The appeal issue is whether MassHealth was correct in approving Appellant for MassHealth long-term care benefits with an effective start date of December 13, 2022.

## Summary of Evidence

A MassHealth eligibility representative appeared at the hearing by telephone and testified as follows: Appellant is over the age of 65 and a current nursing facility resident. On April 6, 2022, MassHealth received an application on behalf of Appellant seeking long-term care benefits. After a period of paying privately for her care, Appellant requested a MassHealth benefit start date of November 18, 2022. The MassHealth representative testified that as of the November 18, 2022 request date, Appellant had the following assets: (1) a thrift savings plan (TSP) retirement account with a balance of \$56,028.00; (2) a bank account with a balance of \$571.00; and (3) a personal needs allowance (PNA) account of \$8,593.00. Added together, MassHealth calculated a total countable asset amount of \$65,192.00. See Exh. 5. After subtracting the \$2,000 individual limit, Appellant had an excess asset amount of \$63,192.00. Id.

Next, MassHealth considered Appellant's submission of medical bills that could be used to reduce the excess asset amount. The allowable expenses, which were verified by Appellant, totaled \$52,326. See Exh. 7, p. 5. MassHealth subtracted the allowable expenses from Appellant's excess asset amount and calculated a remaining excess asset amount of \$10,866. See Exh. 5. MassHealth then divided the excess asset amount by the nursing home's private daily rate of \$464.26 to arrive at a 24-day period of ineligibility and rendering Appellant "otherwise eligible" on December 13, 2022. Through a notice dated February 1, 2023, MassHealth approved Appellant for long-term care benefits with an effective start date of December 13, 2022. See Exh. 4.

Appellant was represented at hearing by a Medicaid specialist. The representative argued that in calculating assets, MassHealth should have deemed a portion of the amount held in Appellant's TSP plan as an "inaccessible asset" under 130 CMR 520.006. Although the account statement reflected a balance of \$56,028, Appellant was unable to access twenty percent of the total balance due to mandatory federal income tax withhold. Appellant argued that MassHealth erroneously counted the withheld amount as an available asset, thereby subjecting Appellant to an unwarranted period of ineligibility.

In support of this argument, Appellant's representative referred to verifications that had been provided to MassHealth and were submitted into evidence as Exhibits 4 through 7. According to the TSP-99 distribution form, Appellant's power of attorney (POA) submitted paperwork to surrender the retirement funds on October 26, 2022. On the form, Appellant elected to "withdraw all of my amount" and chose to receive a "total distribution of my TSP account." See id. at 2-3. In a later section titled "Federal Withholding," the distribution form explained that for account holders taking either a partial or total distribution, a "federal withholding on your withdrawal will be taken at a rate of 20%, unless you choose to have additional federal

withholding apply.” See *id.* p. 6. There was no option to defer or reduce the withhold requirement. Through a check dated November 25, 2022, Appellant received the entire TSP distribution amount of \$45,641.95. See Exh. 7 p. 6. On December 5, 2022, Appellant applied the total amount received to pay her outstanding nursing home bills. According to Appellant’s 2022 form 1099-R, the total federal income tax withheld for the TSP distribution was \$11,163.21. See Exh. 6, p. 12. Appellant argued that she has no means of legally accessing the withheld amount and as such, it should be considered “inaccessible.” MassHealth should have counted only the retirement funds that were distributed, and thus available, to Appellant. Doing so would have lowered her total countable asset amount to render Appellant eligible on her requested start date.

Appellant’s representative argued that, by counting the entire TSP balance, MassHealth is effectively penalizing Appellant and the nursing home because Appellant simply does not have the funds to pay the facility for the period of ineligibility. The representative added that all Appellant’s assets have been used exclusively to pay for her care. Appellant’s representative explained that the withheld taxes will become “available” and therefore countable, if and when they are returned to Appellant via a tax refund.

In response, the MassHealth representative argued that taxes are not an allowable expense that MassHealth considers for purposes of a Haley spend-down calculation. As the payor of last resort, MassHealth only considers medical bills and/or funeral expenses as means of reducing an applicant’s assets. As such, MassHealth counted the entire balance of the TSP account as of the requested start date.

## **Findings of Fact**

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

1. Appellant is over the age of 65 and is a current nursing facility resident.
2. On April 6, 2022, MassHealth received an application on behalf of Appellant seeking MassHealth long-term care benefits.
3. After a period of paying privately for her nursing home care, Appellant requested a MassHealth benefit start date of November 18, 2022.
4. Statements provided during the verification process indicated that Appellant had the following account balances at the time of her requested start date: (1) a TSP retirement account balance of \$56,028.00; (2) a bank account balance of \$571.00; and (3) a PNA account balance of \$8,593.00.
5. On October 26, 2022, Appellant, through her POA, submitted paperwork to surrender the TSP funds, indicating that she elected to “withdraw all of my amount” and chose to receive a “total distribution of my TSP account.”

6. Funds held in a TSP are subject to a mandatory federal withholding on any withdrawal (partial or total) at a rate of at least twenty percent.
7. Through a check dated November 25, 2022, Appellant received a total TSP distribution of \$45,641.95.
8. According to Appellant's 2022 form 1099-R, the total federal income tax withheld for the TSP distribution was \$11,163.21.
9. On December 5, 2022, Appellant used the entire distribution amount to pay for her nursing home care.
10. In determining Appellant's eligibility, MassHealth calculated a total countable asset amount of \$65,192.00, which included the entire balance of TSP funds as reflected on the account statement (\$56,028.00).
11. As of the requested start date, Appellant had medical expenses of \$52,326.
12. After subtracting medical expenses and a \$2,000 individual asset amount from Appellant's assets, MassHealth calculated a remaining excess asset amount of \$10,866.
13. The nursing facility has a private daily rate of \$464.26.
14. MassHealth imposed a 24-day period of ineligibility and, per its February 1, 2023 notice, approved Appellant for long-term care benefits with an effective start date of December 13, 2022.

## Analysis and Conclusions of Law

This appeal addresses whether MassHealth correctly approved Appellant for long-term care coverage with a benefit start date of December 13, 2022. For an individual to become eligible for term-care benefits, his or her assets may not exceed \$2,000. See 130 CMR 520.003. However, an applicant whose countable assets exceed the asset limit may become eligible through MassHealth's asset reduction process, described as follows:

(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.

...  
(C) Date of Eligibility. ***The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.***

130 CMR 520.004 (emphasis added).

In this case, MassHealth determined that Appellant had total countable assets of \$65,192.00 on her requested start date, November 18, 2022. In its calculation, MassHealth included the total balance of \$56,028 held in Appellant's TSP account. After subtracting allowable medical expenses in accordance with the aforementioned asset-reduction process, MassHealth determined that Appellant had a remaining excess asset amount of \$10,866 and imposed a 24-day period of ineligibility from the requested start date. Appellant contends that MassHealth erred in counting the entire balance of the TSP account when determining eligibility and instead, should have deemed the portion of retirement funds subject to a mandatory federal tax withhold as "inaccessible."

Generally, MassHealth considers funds held in a bank account or any financial institution as a countable asset to the extent the applicant has ownership of, and access to, such funds. See 130 CMR 520.007(B)(2). Additionally, funds held in retirement accounts are countable, less any penalty fees for early withdrawals. See 130 CMR 520.007(C). MassHealth does not count assets that are "inaccessible" to the applicant. See 130 CMR 520.006(A). The provision governing inaccessible assets provides, as follows:

520.006: Inaccessible Assets

(A) Definition. ***An inaccessible asset is an asset to which the applicant or member has no legal access.*** The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to  
(1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and  
(2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. ***The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled***  
***(1) from the date of application or acquisition, whichever is later,*** if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or  
***(2) from the period beginning six months after the date of application or acquisition, whichever is later, if***  
***(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and***

the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or  
(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

See 130 CMR 520.006 (emphasis added).

Appellant successfully demonstrated that the taxable amount withheld from her TSP funds were “inaccessible” under 130 CMR 520.006. As of November 18, 2022, Appellant’s TSP account reflected a total balance of approximately \$56,028.00. However, after electing to withdraw a “total distribution” of her TSP account, Appellant received \$45,641.95, only eighty percent of the total balance, as reflected in the disbursement check dated November 25, 2022. See Exh. 6, p. 3; see also Exh. 7, p. 6. The remaining twenty percent of TSP funds were subject to a mandatory federal tax withhold. See Exhs. 6-7. Consistent with this policy, Appellant’s 1099-R form indicates that \$11,163.21 was withheld as federal income tax. See Exh. 6, p. 12. When electing to surrender the account, Appellant had no option to defer or reduce the tax withhold obligation. Nor does Appellant have any legal avenues through which she can access the withheld funds at this time. As such, the withheld TSP funds are currently “inaccessible” to Appellant.<sup>2</sup> The remaining \$45,641.95 which was available to Appellant and distributed to her upon closing the account, may be counted for determining eligibility.

In consideration of the above analysis, Appellant’s countable assets as of November 18, 2022 consisted of TSP retirement funds of \$45,641.95, a bank account of \$571.00, and PNA account of \$8,593.00, for a total countable asset amount of \$54,805.95. Subtracting MassHealth’s \$2,000 individual asset limit, Appellant had excess assets of \$52,805.95. Appellant also verified that she incurred \$52,326 in allowable medical expenses as of the requested start date, leaving a remaining excess asset amount of \$479.95. After dividing the remaining excess amount by the nursing facility’s private daily rate of \$464.26, Appellant is subject to a 1-day period of ineligibility. Appellant is therefore eligible for MassHealth long-term care benefits effective November 19, 2022.

The appeal is APPROVED-in-part to the extent that Appellant’s withheld retirement funds may be deemed inaccessible and entitle her to an earlier start date. The appeal is DENIED-in-part to the extent that Appellant is subject to a one-day period of ineligibility.<sup>3</sup>

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<sup>2</sup> In accordance with 130 CMR 520.006, the withheld funds will no longer be inaccessible if, and when, they are returned to Appellant via a tax refund. At that point, MassHealth may deem the acquired funds a countable asset and render an eligibility determination accordingly.

<sup>3</sup> At hearing, Appellant’s representative argued that Appellant should receive the requested start date of November 18, 2022 and not be subject to any period of ineligibility.

## Order for MassHealth

Deem the portion of retirement funds withheld for taxes as an inaccessible asset. Rescind notice dated February 1, 2023. Approve Appellant for long-term care benefits with an effective start date of November 19, 2022.

## 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.

## 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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Casey Groff, Esq.  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957,

Appellant Representative: [REDACTED]