

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved; Remanded	Appeal Number:	2300961
Decision Date:	5/10/2023	Hearing Date:	03/09/2023
Hearing Officer:	Rebecca Brochstein	Record Closed:	03/16/2023

Appearances for Appellant:




Appearances for MassHealth:

Evelyn Daniel, Springfield MEC



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved; Remanded	Issue:	Long-term care eligibility
Decision Date:	5/10/2023	Hearing Date:	03/09/2023
MassHealth's Rep.:	Evelyn Daniel, Springfield MEC	Appellant's Reps.:	
Hearing Location:	Board of Hearings (Remote)		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated January 3, 2023, MassHealth denied the appellant's request for long-term care services because of excess assets (Exhibit 1). The appellant filed a timely appeal on February 6, 2023 (130 CMR 610.015(B); Exhibit 2). Denial of a request for long-term care benefits is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's long-term care application due to excess assets.

Issue

The issue in this appeal is whether the appellant has established that her assets are under the regulatory limit.

Summary of Evidence

A caseworker from the Springfield MassHealth Enrollment Center appeared telephonically and testified as follows: The appellant was admitted to a nursing facility on a short-term basis in August 2022. A MassHealth long-term care application was filed on her behalf, seeking coverage for the period of September 3 to November 29, 2022. The caseworker stated that the current application date (based on a re-application) is July 18, 2022.¹

In processing the application, MassHealth found the appellant's assets exceeded the regulatory limit of \$2,000. The caseworker stated that the appellant has a [REDACTED] account with a balance of \$3,135.31, which is the only asset that MassHealth counted. On January 3, 2023, MassHealth denied the application due to excess assets. See Exhibit 1.² The MassHealth representative stated that MassHealth listed this as a bank account on the denial notice, but it is not clear what type of asset it is. She noted that the appellant's bank statements show she receives income from two different [REDACTED] accounts (which would not be countable assets), but that further documentation is needed to determine if the account at issue is tied to either of these streams of income.

The appellant was represented by her son (who holds her power of attorney) as well as an employee of the nursing facility's business office. They argued the [REDACTED] statement that shows an account with a balance of \$3,135.31 is tied to an annuity account that has been paying income to the appellant for years, and should not be considered a countable asset. The nursing facility representative testified that the appellant receives income of \$107.82 per month from the annuity (which appears in her bank account), and that the original annuity contract states the asset is not transferable. She added that the statement reflecting the current balance of \$3,135.31 does not show the annuity account number, which has made it difficult to show the statement is for the annuity. She noted that the appellant also receives a separate [REDACTED] pension payment of \$210.90 per month.

The son testified that he has been attempting to get additional information about the annuity account for at least a year. He stated that the account is a thrift plan that is related to the appellant's retirement benefits from [REDACTED], her one-time employer. The son added that the asset was annuitized almost 30 years ago, and that the appellant has been receiving payments from it since that time. He testified that he asked the company whether the account could be liquidated; he was told that because she annuitized the account, it cannot be liquidated, assigned, or transferred. The son stated that he has tried "tirelessly" to get more documentation from [REDACTED]; in particular, he has sought an "income verification letter" that references the annuity contract and the current balance, as well as confirmation that the account cannot be liquidated, transferred, or assigned. He stated that while the company has promised to provide such a letter, it has never produced anything

¹ The date of the original application and most of the related procedural history is not part of this record.

² The notice states the balance of the account at that time was \$3,340.26, and that the excess assets are \$1,340.26.

and now says it is unable to do so.

The record was held open after the hearing for the appellant's representatives to submit additional documentation pertaining to the [REDACTED] account. During the record-open period, they submitted the following:

- Certificate of annuity from [REDACTED]: Group Annuity Contract No. is [REDACTED]; amount of annuity is listed as \$107.82 monthly, starting December 1, 1995.
- Letter from [REDACTED] dated 7/12/22: States that appellant receives a monthly benefit of \$107.82 per month, payable for her lifetime. Plan is identified as "[REDACTED]."
- [REDACTED] Retirement Savings Statement: For quarter ending September 30, 2022, the statement shows an ending balance of \$3,135.31. No account number is visible on the statement.
- [REDACTED] Direct Deposit Confirmation, dated [REDACTED] 2022: Shows "MM Pension GAC" payment of \$210.90.
- [REDACTED] Pension Deposit Statement, dated [REDACTED] 2022: Shows deposit of \$107.82 for "Contract Number [REDACTED]."
- Correspondence with [REDACTED]: Includes email messages between the son and a representative from [REDACTED], in which the son requested verification that the annuity referenced in the contract is the same account shown on the quarterly statement.
 - On February 8, 2023, the [REDACTED] representative wrote to the son that he "requested the Income Verification letter to be customized for you stating is [sic] the same account as the statement" and that "it should be processed [within] the next 5 days." (Exhibit 5 at 5)
 - On February 27, 2023, the son wrote "this is my fourth of fifth attempt to get an answer from you regarding the status of the letter. I am fastly [sic] approaching a very important deadline. If I do not get a response today I will be forced to send a subpoena to you requesting the records be available at the agencies [sic] hearing." The [REDACTED] representative responded: "I apologize for the miscommunication unfortunately I'm unable to provide status over email please call us at [phone number]." (Exhibit 5 at 3)
 - On March 1, 2023, the son drafted a subpoena seeking "Any and all Pension Plan, Pension Benefits, Pension Accounts, Thrift Plans, Thrift Plan benefits sponsored by and through [REDACTED] Insurance Company and for the benefit of [appellant]." A constable served the subpoena on the company on March 2, 2023. (See Exhibit 5 at 9-11)

Findings of Fact

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

1. The appellant was admitted to a nursing facility on a short-term basis in August 2022.
2. A MassHealth long-term care application was filed on the appellant's behalf, seeking coverage for the period of September 3 to November 29, 2022.
3. The case was previously denied and re-logged for July 18, 2022, which is the current application date.
4. On January 3, 2023, MassHealth denied the application for excess assets of \$1,340.26. MassHealth found the only countable asset was a [REDACTED] account with a balance of \$3,346.26. A more updated statement shows the balance at \$3,135.31.
5. The appellant receives two monthly retirement payments from [REDACTED], her one-time employer. One is a pension benefit of \$210.90, and the other is a thrift plan annuity payment of \$107.82.
6. The \$107.82 thrift plan annuity payments began in December 1995. The annuity contract refers to the benefit as the "[REDACTED] Thrift Plan."
7. The appellant receives quarterly statements for an account described as "[REDACTED] Thrift Plan Retirement Savings". There is no account number visible on the statement.
8. The appellant's son has made considerable attempts to obtain verification that the annuity referenced in the December 1995 contract is the same account shown on the quarterly statements, and to confirm that it cannot be liquidated.
 - a. On February 8, 2023, a [REDACTED] representative wrote that he put in a request for a customized income verification letter stating that the annuity is the account reflected in the quarterly statement, and that it "should be processed [within] the next 5 days."
 - b. On February 27, 2023, in response to another inquiry by the son, the [REDACTED] representative stated that he would be unable to provide information over email.
 - c. On March 1, 2023, the son drafted a subpoena seeking "Any and all Pension Plan, Pension Benefits, Pension Accounts, Thrift Plans, Thrift Plan benefits sponsored by and through [REDACTED] Insurance Company and for the benefit of [appellant]." A constable served the subpoena on the company on March 2, 2023.

Analysis and Conclusions of Law

Under 130 CMR 520.003(A)(1), the total value of countable assets owned by or available to an individual applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed \$2,000. At issue in this case is the agency's denial of the appellant's MassHealth application due to excess assets. MassHealth determined that the appellant has only one countable asset, but that it is worth \$3,346.26 (or, according to a more recent statement, \$3,135.31). The appellant contends that the account is an income-producing annuity that has been making payments to the appellant for nearly thirty years, and that it should not be considered a countable asset for MassHealth purposes. There is no dispute that the appellant has such an annuity account; the question is whether the account is the same asset reflected in the quarterly statements.

The appellant's representatives have detailed extensive efforts to obtain clarification on this account from [REDACTED], to no avail. However, the circumstantial evidence suggests they are correct that the quarterly [REDACTED] statement (from which MassHealth identified the asset balance of \$3,135.31) is indeed tied to the annuity that has been making payments since 1995. First, while the quarterly statements do not reflect an account number, they refer to the account as "[REDACTED] Thrift Plan Retirement Savings" – which is similar to the "[REDACTED] Thrift Plan" identified on the 1995 annuity certificate. Second, in his correspondence with the appellant's son, the [REDACTED] representative implicitly confirmed that the annuity is the account referenced in the quarterly statement by indicating he would request an "income verification letter" that stated as much. Though the letter never materialized, the content of these communications supports the appellant's position.

Further, the terms of the annuity contract support the position that the annuity is not a countable asset. Under 130 CMR 520.003(J)(1), if an annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset. Consistent with what the appellant's son reported from his inquiries to [REDACTED], there is no provision in this annuity contract that indicates the benefit may be converted to a lump sum and disbursed to the appellant. The MassHealth representative did not dispute this point.

For the reasons set forth above, this appeal is approved and remanded.

Order for MassHealth

Deem the asset in question to be an annuity account that is noncountable for MassHealth purposes. Redetermine the appellant's MassHealth eligibility in accordance with this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date hereon, 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Springfield MEC

