

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2301250
Decision Date:	5/16/2023	Hearing Date:	03/15/2023
Hearing Officer:	Patricia Mullen	Record Open to:	05/12/2023

Appearance for Appellant:



Appearance for MassHealth:

Liz Landry, 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

Appeal Decision:	Approved	Issue:	Verifications
Decision Date:	5/16/2023	Hearing Date:	03/15/2023
MassHealth's Rep.:	Liz Landry, Taunton MEC	Appellant's Rep.:	Invoked HCP
Hearing Location:	Taunton MassHealth Enrollment Center (remote)		

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 January 27, 2023, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant did not submit requested verifications. (see 130 CMR 516.001 and Exhibit 1). The appellant filed this appeal in a timely manner on February 15, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). The record was left open until May 12, 2023, to give the appellant the opportunity to submit verifications. (Exhibit 8).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001, in determining that the appellant did not submit requested verifications necessary for MassHealth to

determine eligibility.

Summary of Evidence

The appellant was represented telephonically by her invoked Health Care Proxy (HCP), who is also her nephew. (Exhibit 3). MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton. The MassHealth representative stated that the appellant is a single individual and submitted a MassHealth application on December 12, 2022, seeking a July 4, 2021 MassHealth start date. The MassHealth representative noted that the earliest possible start date for a December 12, 2022 MassHealth application, is September 1, 2022. The MassHealth representative stated that the appellant was admitted to the nursing facility in [REDACTED] and the nursing facility sent an SC-1 to MassHealth on October 6, 2022. (Testimony) MassHealth sent the nursing facility a conversion application on October 11, 2022, and the nursing facility returned the conversion on December 12, 2022. (Testimony). MassHealth sent the appellant a Request for Information dated December 21, 2022. (Exhibit 5, p. 8) The MassHealth representative stated that the appellant did not submit all requested verifications and the application was denied by notice dated January 27, 2023. (Exhibit 1). The MassHealth representative stated that as of the date of hearing, the following requested verifications remained outstanding: CD account statements from March, 2021 to present, and dividend income from Met Life.

The MassHealth representative submitted documentation showing that the appellant had been open on MassHealth in the community since at least 2014. (Exhibit 5, p. 6). The MassHealth representative stated that the MassHealth system shows that the appellant had a CD with a balance of \$1,497.00, when it was last verified in May, 2019. (Exhibit 5, p. 4, testimony). The MassHealth representative stated that the appellant also had unverified Met Life dividend income that was previously listed in the MassHealth system.

The appellant's representative stated that he has been working with a representative from the nursing facility (SNF) and he sent all documents to her on March 1, 2023. The appellant's representative stated that the SNF representative informed him that she sent all the requested information to MassHealth. The appellant's representative stated that the appellant receives about \$20.00 quarterly from her Met Life life insurance policy and such amount is direct deposited into her checking account. The appellant's representative stated that he would submit the 1099 document showing dividend income to MassHealth.

The appellant's representative testified that the appellant cashed out the CD a few years ago and spent the money. The appellant's representative noted that he has been trying to get verification of the closed CD account, but the bank in which the appellant had the CD was sold to another bank and he is having difficulty getting the new bank to give him the closing statement.

The record was left open until April 18, 2023, to give the appellant's representative the opportunity to submit statements for the CD account from March, 2021 to present, or the closing statement and where the proceeds went; and a 1099 for the Met Life dividends. (Exhibit 6). The appellant's representative submitted the verification of the Met Life dividend income within the record open period. (Exhibit 7, pp. 1-2; exhibit 8, p. 5). By email dated April 18, 2023, the appellant's representative informed the MassHealth representative that he contacted the bank that bought out the bank that held the appellant's CD, and was told he needed to fax a closure request. (Exhibit 7, p. 1; exhibit 8, p. 4). The appellant's representative wrote that he sent numerous closure requests to the bank, but has received no response. (Exhibit 7, p. 1; exhibit 8, p. 4). The appellant's representative noted that he would continue to call the bank. (Exhibit 8, p. 4).

The appellant's representative wrote that he knew for a fact that the CD was cashed out 3 years ago, because he was with the appellant when she closed the CD. (Exhibit 7, p. 1; exhibit 8, p. 2). The appellant's representative stated that the appellant wanted to put the representative's name on her bank accounts, and as they were completing the paperwork, a bank employee informed them of the CD. (Exhibit 8, p. 2). The appellant's representative stated that the appellant had forgotten she even had a CD. (Exhibit 8, p. 2). The appellant's representative stated that he remembers the appellant took the proceeds as cash and he assumes she used the money for living expenses, such as groceries. (Exhibit 8, p. 1; exhibit 7, p. 1). The appellant's representative reported that the appellant is not of sound mind and suffers from severe dementia and thus is of no help in obtaining the information. (Exhibit 8, p. 3). The appellant's representative stated that he is the appellant's Power of Attorney (POA), in addition to her HCP. (Exhibit 8, p. 2). By email dated April 26, 2023, the MassHealth representative confirmed that the CD at issue is not showing up on the MassHealth Asset Verification System. (Exhibit 8, p. 3). The hearing officer extended the record open period to May 12, 2023, to give the appellant's representative the opportunity to get the CD information. (Exhibit 8, p. 3). Nothing was submitted during the extended record open period. (Exhibit 8, p. 1).

Findings of Fact

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

1. The appellant is a single individual and submitted a MassHealth application for long term care coverage on December 12, 2022, seeking a July 4, 2021 MassHealth start date.
2. The appellant was admitted to the nursing facility in [REDACTED] and the nursing facility sent an SC-1 to MassHealth on October 6, 2022.
3. MassHealth sent the nursing facility a conversion application on October 11, 2022, and the nursing facility returned the conversion on December 12, 2022.

4. MassHealth sent the appellant a Request for Information dated December 21, 2022.
5. The appellant did not submit all requested verifications and the application was denied by notice dated January 27, 2023.
6. As of the date of hearing, the following requested verifications remained outstanding: CD account statements from March, 2021 to present, and dividend income from Met Life.
7. The appellant's representative submitted verification of dividend income during the record open period.
8. The appellant had been open on MassHealth in the community since at least 2014.
9. The MassHealth system shows that the appellant had a CD with a balance of \$1,497.00, when it was last verified in May, 2019.
10. MassHealth's Asset Verification System is not showing a current match with the CD at issue.
11. A few years ago, the appellant added her POA/HCP to her bank accounts and while completing the paperwork for this, the bank reminded the appellant she had the CD account.
12. At the time the appellant added her POA/HCP to her accounts, she cashed out the CD and took the proceeds as cash.
13. The bank in which the appellant had the CD has since been sold to another bank.
14. The appellant's representative has sent multiple closure requests to the bank, but has received no response.
15. The appellant suffers from severe dementia and is not helpful in obtaining information regarding the cashed out CD.

Analysis and Conclusions of Law

Corroborative Information. The MassHealth agency requests all corroborative information necessary to determine eligibility.

- (1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of receipt of the application.

(2) The notice advises the applicant that the requested information must be received within 30 days¹ of the date of the request, and of the consequences of failure to provide the information.

130 CMR 516.001(B).

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. The MassHealth agency will determine the coverage type providing the most comprehensive medical benefits for which the applicant is eligible. If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied. (130 CMR 516.001(C)).

The hearing officer may not exclude evidence at the hearing for the reason that it had not been previously submitted to the acting entity, provided that the hearing officer may permit the acting entity representative reasonable time to respond to newly submitted evidence. The effective date of any adjustments to the appellant's eligibility status is the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted.

CMR 610.071(A)(2).

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,

¹ Effective April 1, 2023, MassHealth will extend the time that non-MAGI applicants and members will have for verifying eligibility factors and providing corroborative information, from 30 days to 90 days. This extension will provide more time to respond to a Request for Information and submit verifications and information necessary for MassHealth to make an eligibility determination. (see MassHealth Eligibility Operations Memo 23-09, March 2023).

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.

(130 CMR 520.006).

The CD account in question here does not meet the definition of an inaccessible asset pursuant to 130 CMR 520.006, however information with regard to the account cannot be obtained, through no fault of the appellant or the appellant's representative, who is also her POA and HCP. The CD account was not listed on the appellant's MassHealth application, nor was it discovered through an asset verification bank match in MassHealth's system. The CD account was last verified by the appellant in 2019, 4 years ago, presumably as part of a community MassHealth review. At that time, the CD account had a balance of \$1,497.00, which in and of itself is under MassHealth's asset limit. The appellant's representative has spent a considerable amount of time, making multiple attempts, to get verification of the closure of this CD account, but the bank has not complied with the requests. The appellant suffers from dementia and is not able to provide information with regard to this CD account, however the appellant's representative was with her when she closed the CD account and clearly remembers that she received cash when she closed out the account. The appellant was admitted to the nursing facility in 2021 and it is reasonable that over the course of two years from 2019 to 2021, the appellant spent the CD proceeds of approximately \$1,500.00 on her needs. I determine that under the unique circumstances in this case, MassHealth should not deny the appellant's MassHealth application for failure to submit verification of this particular account. If the CD account was still open, it would have most likely appeared in a MassHealth Asset Verification System match. I accept the appellant's representative's testimony that the account is closed and the appellant received the balance at closing in cash. MassHealth's denial notice dated January 27, 2023 is rescinded and MassHealth is to make the appellant's eligibility determination based on the verifications submitted. The appeal is approved.

Order for MassHealth

Rescind the notice dated January 27, 2023, and reopen and process the appellant's MassHealth application dated December 12, 2022.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center
