

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2301394
Decision Date:	4/5/2023	Hearing Date:	March 28, 2023
Hearing Officer:	Brook Padgett	Record Open:	April 11, 2023

Appellant Representative:




MassHealth Representative:

Karen Ryan, Tewksbury MEC
Briana Debitetto



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	130 CMR 520.006
Decision Date:	4/5/2023	Hearing Date:	March 28, 2023
MassHealth Rep.:	K. Ryan	Appellant Rep.:	
Hearing Location:	Tewksbury MEC		

Authority

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

Jurisdiction

The Appellant received a notice dated January 13, 2023 stating: “MassHealth has decided you are eligible for MassHealth Standard benefits to cover your care in a nursing facility Your eligibility begins on June 23, 2022.” (Exhibit 1).

The Appellant filed this appeal timely on February 21, 2023. (130 CMR 610.015(B); Exhibit 2).

Determination of eligibility is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

The Appellant was approved for MassHealth long term care benefits as of June 23, 2022.

Issue

Was the Appellant’s eligibility start date properly determined?

Summary of Evidence

The MassHealth representative testified the Appellant entered a Nursing Facility on [REDACTED] [REDACTED] applied for MassHealth long term care benefits on March 09, 2022, requesting long term care assistance as of April 01, 2022. The request was approved on January 13, 2023, with a start date of June 23, 2022 and a Patient Paid Amount of \$1,195.20. MassHealth stated the Appellant could not be approved for an earlier date as the Appellant had excess assets of \$27,040.00¹. The excess assets resulted in 63 days of disqualification and a start date of June 03, 2023 (the over asset amount of \$27,040.00 divided by the nursing facility daily rate of \$430.00 = 63 days of ineligibility which started from date of requested eligibility on April 01, 2022 until June 03, 2022)². MassHealth stated although the Appellant create a Pooled Trust reducing her assets below the statutory \$2,000.00 limit, the trust documentation was not signed until July 05, 2022 and the funds were not withdrawn and deposited into Trust until July 07, 2022; therefore the date of ineligible remained June 23, 2022. MassHealth submitted into evidence: bank balances (Exhibit 4), and a bank check dated March 31, 2022, Pooled Trust documents, bank balance dated July 07, 2022 demonstrating the withdrawal of funds for Pooled Trust. (Exhibit 5).

The Appellant's representatives responded that the law in Massachusetts is a check is "issued" as of the date that it is written and given to another person or entity. (See M.G.L. Chapter 106 § 3-105(a)). The representative argued the Appellant no longer had access to the funds once the check was issued on March 09, 2022, as the check was signed over and delivered to the entity assisting with the opening of the Pooled Trust. The Appellant no longer had the ability to use the funds once the check was handed over and could not "rescind" it. (See M.G.L. chapter 106 § 3-202(b)). The fact that there was a delay between the date the check was issued until the date that it cleared should not affect the Appellant's eligibility. The Appellant transferred her interest in the funds transferred into the qualifying Pooled Trust, in March of 2022 when she issued the check and not June of 2022 when the check was cashed. As a result the Appellant should be found eligible for MassHealth Benefits effective March 09, 2022.³ The Appellant submitted into evidence: a Memorandum in Support. (Exhibit 6).

At the request of the hearing officer the record was left open for the Appellant to provide any additional documentation verifying she initiated a Pooled Trust at the time the check was signed. (Exhibit 7).

The Appellant provided a copy of the bank check, and emails dated May 11, 2022 and May 18, 2022 between the Appellant's representative and the Medicaid consultants regarding the attorney from Berkshire County Arc (BCA) responding to the Pooled Trust request. (Exhibit 8).

After review MassHealth responded that they would not alter the determination of a start date of June 03, 2022. MassHealth argues that while the check issued on March 31, 2022 and the enrollment form was emailed to the trust company on April 15, 2022 and there is no explanation

¹ \$29,049.00 - \$2,000.00 asset limit.

² Although the Appellant applied for long term care coverage on March 09, 2023 private payments resulted in an eligibility request date of April 01, 2023.

³ The Nursing Facility is requesting a state date of April 01, 2022, not March 09, 2022.

or documentation explaining why there is gap before the trust was signed on June 23, 2022. (Exhibit 9).

Findings of Fact

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

1. The Appellant entered a Nursing Facility on [REDACTED] applied for MassHealth long term care benefits on March 09, 2022, and requested long term care assistance as of April 01, 2022. (Testimony).
2. On March 31, 2022, the Appellant obtained a Cashier's Check/Bank Check for \$28,464.75 with "Pay to the Order of Berkshire County ARC" with the notation "Pooled Trust" in the memo line. (Exhibit 5).
3. Berkshire County Arc is an organization that assists individuals with disabilities create pooled special needs trusts.
4. The Appellant signed Pooled Trust documents on July 05, 2022 and the funds were removed from the Appellant's bank account on July 07, 2022. (Exhibit 5).
5. MassHealth determined the Appellant had excess assets of \$27,040.00 at the time of application which resulted in 63 days of disqualification from and a start date of June 03, 2023. (Testimony)
6. On January 13, 2023, MassHealth approved the Appellant's Standard benefits with a start date of June 23, 2022. (Exhibit 1).

Analysis and Conclusions of Law

There is no question the Appellant used excess assets to fund a Pooled Trust which has subsequently accepted by MassHealth as valid. The only question if the assets became unavailable at the time of purchase of the Cashier's Check/Bank Check which was used to fund the Pooled Trust or when the Pooled Trust documents were signed, and the check chased.

A Cashier's Check/Bank Check is an instrument authorized and backed by the financial resources of the participating bank. The amount of the Cashier's Check/Bank Check cannot exceed the payer's bank account and requires a payee's name be placed on the check. The purpose of this type of check is that it guaranteed by the bank, drawn on the bank's own funds and signed by a cashier and treated as guaranteed funds because the bank, rather than the purchaser, is responsible for paying the amount. When an individual purchases a cashier's check the bank puts a hold on the amount of the check from the individual's account while they assume the responsibility for covering the cashier's check. The check amount is then deducted from the individual's account when the bank check is cashed. This is unlike a personal check which the bank does not debit from the individual's account until the check is deposited or cashed by the

recipient.

The evidence demonstrates the Appellant purchased the Cashier's Check/Bank Check on March 31, 2022 signifying BCA as the payee and stating "Pooled Trust" in the memo line. Although the paperwork which completed the funding of the Trust was not finalized and signed until July 05, 2022 and the funds were not removed from the Appellant's account until July 07, 2022, it is clear the funds were designated for the creation of a Pooled Trust and because it was funded by a Cashier's Check/Bank Check on March 31, 2022 the funds were no longer available for the Appellant's use as of that date.⁴

The Appellant's excess assets became inaccessible on March 31, 2022 when the Appellant purchased a Cashier's Check/Bank Check for the creation of a Pooled Trust and this appeal is therefore APPROVED.

Order for MassHealth

Redetermine the Appellant's long term care eligibility after disregarding assets used to fund the Pooled Trust.

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, Division of Medical Assistance, at the address on the first page of this decision.

Brook Padgett
Hearing Officer
Board of Hearings

cc: MassHealth representative: Tewksbury MEC

[REDACTED]

⁴ 130 CMR 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.