

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302473
Decision Date:	10/27/2023	Hearing Date:	04/27/2023
Hearing Officer:	Casey Groff, Esq.	Record Closed:	10/11/2023

Appearance for Appellant:



Appearance for MassHealth:

Kim McAvinchey, Tewksbury 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:	Denied	Issue:	Eligibility; LTC; Verifications
Decision Date:	10/27/2023	Hearing Date:	04/27/2023
MassHealth's Rep.:	Kim McAvinchey	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	Aid Pending:	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 January 23, 2023, MassHealth denied Appellant's application for MassHealth long-term care (LTC) benefits because Appellant did not provide necessary verifications to determine eligibility within the required time frame. See Exhibit 1 and 130 CMR 515.008. Appellant, through his daughter/power of attorney (POA) filed this appeal in a timely manner on March 28, 2023. See 130 CMR 610.015(B) and Exhibit 1. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032.

A hearing took place on April 27, 2023. See Exh. 3. At the conclusion of the hearing, the record was left open for Appellant to submit outstanding verifications. See Exh. 4. During the record open period, Appellant was granted numerous extensions to provide the necessary documentation to allow MassHealth to render an eligibility determination. See Exhs. 6-12. A final extension was granted on September 8, 2023. See Exh. 12. The record closed on October 11, 2023, following final submissions and responses by both parties. See Exh. 14.

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth LTC benefits for failure to provide MassHealth with necessary verifications to determine his eligibility within the required time frame.

Issue

The appeal issue is whether MassHealth was correct in denying Appellant's application for LTC benefits because he failed to submit requested verifications within the designated time frame.

Summary of Evidence

A representative from MassHealth appeared at the hearing via telephone and testified as follows: On 12/1/22, MassHealth received an application on behalf of Appellant, a single individual, seeking coverage for long-term care (LTC) benefits with a requested start date of 12/1/2022. At the time of application, Appellant was over the age of 65 and a current resident of the nursing facility. A copy of Appellant's LTC application was submitted into evidence as Exhibit 3(b). The application states that the individual seeking benefits "must...give [MassHealth] information about assets you or your spouse owned in the past 60 months." See Exh. 3(b) p. 14. Under the section pertaining to "assets," Appellant, through his daughter/POA, answered "no" in response to the question "Are you or your spouse the grantor/donor, trustee, or beneficiary of any trusts?" Id. at 16. Additionally, Appellant answered "no" in response to the question "[h]as any property that was available or belonged to you or your spouse been transferred into or out of a trust?"¹ Id. at 23.

On 12/17/2022, MassHealth sent Appellant a request for information (RFI) seeking verification of information MassHealth needed to determine whether Appellant was eligible for benefits. The notice provided an itemized list of documents that were due by 1/16/23, including, in relevant part, the following:

- Income from Other Unearned FINANCIAL ACCTS
For all financial accts/resources send statements 01/01/20 to present, proof source of ALL deposits any amount and explain/send proof for all disbursements \$1000 and over and any recurring payments /withdrawals. Proofs should follow the corresponding statement.
- Income from Other Unearned CLOSED ACCOUNTS

¹ In response to this question, it is noted the "yes" box was initially checked and crossed out. Id.

All financial resources/accts closed/sold/transferred after 12/01/17 send proof closing date, withdrawal, disbursement of funds,-0- balance This includes bank accts, CDs, stock, cashed bonds, IRAs, retirement. portfolios, surrendered life insurance policies, etc.

.....

- [Savings Account]

Follow instructions for all financial resources/accounts (first paragraph on list of requested verifications)

For [savings account] you deposited approximately \$10,000 Aoril [sic] and July 2019. Send 3/1/19 to 10/1/19 ONLY and provide proof source of all deposits.

- [Checking Account #1]

Follow instructions for all financial resources/accounts (first paragraph on list of requested verifications)

.....

See Exh. 3(d).

In addition, the RFI included requests for verification of burial contract, income from private pension, completed application pages, PNA statements, income from property sale with proof of how/where funds disbursed and spent down. Id.

Appellant did not provide MassHealth with all requested verifications by the deadline of 1/16/23. Accordingly, through a notice dated 1/23/23, MassHealth denied the application based on its determination that Appellant “did not give MassHealth the information it need[ed] to decide [his] eligibility within the required timeframe. 130 CMR 515.008” See Exh. 1. The denial notice identified the list of verification that had not been timely submitted, which included the items listed above. Id.

After receiving the denial, Appellant retained Appellant’s representative to assist with the application process. Appellant’s representative filed a timely request for a fair hearing to appeal the 1/23/23 notice. Prior to the hearing, a re-application was logged prompting MassHealth to send Appellant a second RFI. The second RFI, listed the same verifications and explicitly sought proof of the source of the following three deposits: \$1,872.45 on 2/7/22, \$10,170 on 4/23/19, and \$12,000 on 7/2/19. See Exh. 10, p. 8. On March 24, 2023, MassHealth denied the re-application for failure to provide verifications within the required timeframe. Id.

At hearing on April 27, 2023, the MassHealth representative testified that many of the items remained outstanding, including verification of Appellant’s pension, disbursement from the sale of property with proof of how funds were spent down, and the proof of the source of the following deposits/disbursements into and from Appellant’s savings account:

Proof source of deposits:

\$1,872.45 2/7/22

\$10,170 4/23/19

\$12,000 7/02/19

Explanation/proof all disbursements \$1000 and over:

\$14,670 check 1012 10/26/20

\$10,395 check 1016 11/30/20

\$15,692 50 check 1018 01/07/21

\$9702 check 1005 02/03/21

\$10,741 50 check 1006 03/04/21

See Exh. 3(a), p.1

MassHealth indicated that it received, that morning, a 98-page submission from Appellant which would need to be reviewed.

At hearing, Appellant was represented by a Medicaid specialist. Appellant's representative testified that the 98-page submission satisfied several of the items listed as outstanding by MassHealth, including pension information and income from the property sale. Appellant's representative requested the hearing record be extended to allow more time to obtain verification for the source of deposits in question. As grounds therefore, the representative explained Appellant was declining and unable to contribute to the process, leaving his daughter as the only family member capable of assisting, and who was reportedly having difficulty accessing this information from the bank.² Pursuant to Appellant's request, an initial record open period was granted to allow Appellant to submit all outstanding verifications by 5/25/23, and for MassHealth to review and respond by 6/8/23. See Exh. 4.

On 5/22/23, Appellant submitted a partial production of records consisting of deposit slips for the transactions in question, but which did not verify the source of the deposits. Pursuant to Appellant's request, an additional three-week extension was granted.³ See Exh. 6. P. 1. On 6/22/23, Appellant entered another partial production of verifications, which revealed that the source of Appellant's \$12,000 deposit on 7/2/19 was from a separate bank account named as

² Appellant's representatives had been retained by Appellant a month prior to the hearing.

³ Appellant's representative initially requested a BOH issued subpoena to obtain the bank information that Appellant was unable to obtain. See Exh. 5. Given that Appellant's daughter had power of attorney with full access and authority over Appellant's finances, and absent evidence of bank refusal, BOH deferred its ruling on the subpoena and alternatively granted Appellant an extension of the record to make and document all additional requests and responses by the bank. See Exh. 6. In the subsequent record open period, Appellant's daughter successfully received two of the three deposits, but demonstrated the bank refused to release information to her regarding a mobile deposit made on 2/7/22. Accordingly, BOH granted the request for a subpoena for the limited purpose of obtaining the source of the 2/7/22 deposit. See Exh. 7.

the “[...] Family Trust.” See Exh. 6(a) p. 51.

On June 30, 2023, MassHealth provided the following response relating to the 7/2/19 deposit:⁴

Source of deposit \$12,000 on 7/02/19:

Source of this deposit disclosed unknown trust – “[...]Family Trust” – for which MassHealth requires verifications. Applicant must provide copy of all trust documents, amendments and schedule of beneficiaries.

Applicant must also provide signed and dated letter from the Trustee with the following:

Send signed and dated letter from Trustee and list the following:

1. All assets in trust and value on 12/01/17. (If none, say none)
2. All assets transferred in/out of trust on/after 12/01/17 and dates of transfers (not individual bank transactions) (If none, say none)
3. All assets currently in trust and current value (if none, say none)
4. Send proof of value on 12/01/17 AND proof current value. List each account by financial institution and last 4 of acct numbers. For property send copy RECORDED deed and proof current assessed value.

If applicant is grantor/donor, Trustee or beneficiary of any trust, send revised/corrected application pages 14/15 and disclose all trust information.

See Exh. 8.

Pursuant to MassHealth’s response, Appellant’s representatives requested an extension to obtain the trust documents, or, in the alternative, that MassHealth issue a new RFI. In response, MassHealth argued that the requested information was not “new” as MassHealth sought this information in the application and requested “proof of source of all deposits” in the two prior RFI’s. In support of the request for extension, Appellant’s representatives asserted that the existence of the trust was unknown to appellant’s daughter prior to the 6/22/23 production, that they were committed to obtaining the verifications, the daughter had since enlisted an attorney, and was “pleading” with Appellant’s brother, the trustee, to get the required documents. See Exh. 10, p. 3; see also Exh. 12. A final extension of the record was granted to allow Appellant the opportunity to obtain the trust documents.

On August 17, 2023, Appellant submitted a copy of the irrevocable family trust that was established in 2006 by Appellant’s father and named Appellant and his two brothers as beneficiaries. See Exh. 11. The submission included a letter dated 7/29/23 and signed by the Trustee, Appellant’s brother, which stated that his and Appellant’s parents were the grantors of

⁴ MassHealth also noted that the production showed the \$10,000 deposit was a check the Appellant made payable to himself, and therefore requested further verification of the source of the cash and how it was disbursed. Id.

the trust and that on 6/30/19, the trust distributed the sum of \$12,000.00 to Appellant “which reflects his interest as a beneficiary of the trust our parents created for their estate [and that] [c]urrently the trust has no assets and does not expect any residual assets going forward.” See Exh. 11(a), p. 2.

On 9/21/23 Appellant submitted a selection of trust account statements, including the statement from July 2019 reflecting the \$12,000 withdrawal that went to Appellant, as well as a \$24,000 withdrawal, which left a remaining balance of \$9,061.92 as of 7/29/19. See Exh. 13, p. 4. Appellant’s representative explained that the \$24,000 withdrawal went to Appellant’s two brothers as their portion of trust assets. Id. An account closing statement from February 2022 showed a withdrawal of \$550.18, the remaining balance of the account, on the account close date of February 24, 2022. Id.

On October 10, 2023, MassHealth provided the following response regarding verification of trust documents:

A letter from the Trustee for the irrevocable family trust remains outstanding for [Appellant].

A letter was submitted which was incomplete and did not provide a full accounting of assets and assets moved into or out of the trust within the five-year lookback period.

The appellant was a beneficiary of the Trust and the Trustee had full discretion to distribute principal to the Appellant.

Without the Trustee letter and verifications of trust assets, MassHealth is unable to account for all potential assets and/or resources transfers and is, therefore, unable to determine eligibility.

See Exh. 14, p. 2.

Appellant declined the opportunity to provide a final response to MassHealth’s position. Id. at 1.

Findings of Fact

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

1. On December 1, 2022, MassHealth received an application on behalf of Appellant, a single individual, seeking coverage for LTC benefits with a requested start date of 12/1/2022.
2. At the time of application, Appellant was over the age of 65 and a current resident of the

nursing facility. (Testimony; Exhibit 3(b)).

3. In his application, Appellant reported to MassHealth that he was not a grantor/donor, trustee, or beneficiary of any trusts, and that he did not have any property that was available to him or belonged to him that was transferred into or out of a trust. (Exhibit 3(b)).
4. On 12/17/2022, MassHealth sent Appellant an RFI seeking verification of information including proof of source of all deposits of any amount and explanation/proof for all disbursements \$1,000 and over, including proof of the source of deposits into Appellant's savings account in April and July of 2019 with the corresponding bank statements. (Exhibit 3(d)).
5. MassHealth did not receive the requested verifications by the deadline of 1/16/23. (Testimony).
6. Through a notice dated 1/23/23, MassHealth denied the application based on its determination that Appellant "did not give MassHealth the information it need[ed] to decide [his] eligibility within the required timeframe. 130 CMR 515.008." (Exhibit 1).
7. At hearing on April 27, 2023, the MassHealth representative testified that many of the items remained outstanding, including proof of the source of deposits, \$1,872.45 2/7/22; \$10,170 4/23/19; \$12,000 7/02/19. (Testimony; Exhibit 3(a)).
8. Through the fair hearing process, Appellant's representative was granted several extensions to submit the outstanding verifications to establish eligibility. (Exhibit 4-10).
9. On 6/22/23, Appellant provided documents from his savings account which showed that the source of the \$12,000 deposit on 7/2/19 was from an irrevocable family trust. (Exhibit 6(a)).
10. On June 30, 2023, MassHealth responded that the source of the deposit disclosed an unknown trust that needed to be verified, with instructions for Appellant to provide a copy of all trust documents, amendments, schedule of beneficiaries, and a signed/dated letter from the trustee that identified all trust assets and value of 12/1/17, all assets transferred in and out of the trust on/after 12/1/17, all assets currently in trust and current value, listing each account by financial institution, and deed and current assessed value for any property held in trust. (Exhibit 8).
11. On August 17, 2023, Appellant submitted documents including (1) a copy of the irrevocable family trust that was established in 2006 by Appellant's father and named Appellant and his two brothers as beneficiaries, and (2) a letter dated 7/29/23 signed by the Trustee, Appellant's brother, which stated that his and Appellant's parents were the grantors of the trust and that on 6/30/19, the trust distributed the sum of \$12,000.00 to Appellant "which reflects his interest as a beneficiary of the trust our parents created for their estate [and that]

[c]urrently the trust has no assets and does not expect any residual assets going forward.” (Exhibit 11).

12. On 9/21/23 Appellant submitted a trust account statement from July 2019 reflecting the \$12,000 withdrawal that went to Appellant, as well as a \$24,000 withdrawal, which left a remaining balance of \$9,061.92 as of 7/29/19; as well as a closing statement from February 2022 showing a withdrawal of \$550.18, the remaining balance of the account, on the account close date of February 24, 2022. (Exhibit 13).
13. On October 10, 2023, MassHealth responded that a letter from Trustee for the irrevocable family trust remained outstanding; and that the letter submitted was incomplete and did not provide a full accounting of assets and assets moved into or out of the trust within the five-year lookback period, leaving MassHealth unable to account for all potential assets and/or resources transfers and thus, unable to determine eligibility. (Exhibit 14).

Analysis and Conclusions of Law

This appeal concerns whether MassHealth correctly denied Appellant’s application for MassHealth long-term care (LTC) benefits because Appellant failed to provide verification to establish his eligibility for benefits. Once an application is received, MassHealth requests all corroborative information necessary to determine the individual’s eligibility, including information relating to income, assets, residency, citizenship, immigration status, and identity. See 130 CMR 516.001; see also 130 CMR 516.003 (listing eligibility factors that require verification). MassHealth outlines the verification process, in relevant part, as follows:

(C) Request for Information Notice. If additional documentation is required, including corroborative information as described at 130 CMR 516.001(B), a Request for Information Notice will be sent to the applicant listing all requested verifications and the deadline for submission of the requested verifications.

(D) Time Standards. The following time standards apply to the verification of eligibility factors.

(1) The applicant or member has 30 days from the receipt of the Request for Information Notice to provide all requested verifications.

(2) If the applicant or member fails to provide verification of information within 30 days of receipt of the MassHealth agency’s request, MassHealth coverage is denied or terminated.

(3) A new application is required if a reapplication is not received within 30 days of the date of denial.

See 130 CMR 516.003.

To qualify for MassHealth coverage of LTC services, nursing facility residents must verify that their assets do not exceed \$2,000, *and* that they have not made any disqualifying transfers or resources within the five-year look back period.⁵ See 130 CMR 520.006(A), 130 CMR §§ 520.018, 520.019. It is the responsibility of the applicant or member to “cooperate with MassHealth in providing information necessary to establish eligibility... and to comply with all the rules and regulations of MassHealth.” See 130 CMR 515.008.

In the present case, Appellant applied for MassHealth LTC benefits on 12/1/22. Pursuant to the verification process outlined above, MassHealth issued a request for information (RFI) on 12/17/22, listing necessary verifications Appellant needed to produce by 1/16/23, including the source of all deposits of any amount; disbursements \$1,000 and over; all financial resources closed, sold, or transferred after 12/1/17; and savings account statements between 3/1/19 to 10/1/19 with proof of the source of all deposits including two deposits in April and July of 2019 of approximately \$10,000. See Exh. 3(d). MassHealth did not receive the necessary documentation by the 1/16/23 deadline. Accordingly, on 1/23/23, MassHealth appropriately denied Appellant’s application for LTC benefits for failure to “provide verification of information within 30 days of receipt of the MassHealth agency’s request.”⁶ See Exh. 1 and 130 CMR 516.003(D)(2).

At the hearing on 4/27/23, numerous verifications remained outstanding, including proof of the source of deposits in question. Through the fair hearing process, Appellant was granted several extensions to submit proof of eligibility. On 6/22/23, six-months following the initial RFI, Appellant produced documents showing the \$12,000 deposit on 7/2/19 was a disbursement Appellant received as a beneficiary of an irrevocable family trust. See Exh. 6(a). Given the trust had not been disclosed or verified prior, MassHealth was unable to determine Appellant’s eligibility until all trust documents were provided, including a signed/dated letter from the Trustee listing all trust assets and value on 12/1/17, all assets transferred in/out of the trust from that date, all current assets and value of trust, and the recorded deed and assessed value of any property held in the trust.⁷

Appellant’s representatives requested additional time to produce the trust documents. On 7/29/23, Appellant submitted a copy of the irrevocable family trust, as well as a letter signed by

⁵ Under MassHealth’s financial eligibility regulations, an applicant who is “otherwise eligible” may incur a period of disqualification if their asset history reveals that they (or their spouse) transferred resources for less than fair market value. See 130 CMR §§ 520.018, 520.019.

⁶ The 1/23/23 denial listed the requested documents that remained outstanding, which included, among other items, proof of the source of all deposits, including the large deposits in April and July of 2019.

⁷ As MassHealth explained during the record open period, the requested trust documents did not constitute a new request for information. MassHealth previously sought this information via the questions in the LTC application that directly related to trust assets, as well as through two prior RFI’s which sought, broadly, proof of source of all deposits, including the July 2019 deposit. If produced timely, this would have disclosed the existing trust prior to MassHealth’s 1/23/23 denial.

one of Appellant's two brothers in his capacity as trustee. See Exh. 11. The trustee letter, however, failed to provide a full accounting of the trust assets or description of assets moved into or out of the trust within the five-year lookback period. Absent such information, MassHealth was unable to account for all potential assets and/or resource transfers and therefore, unable to determine Appellant's eligibility for LTC benefits. Based on the foregoing, MassHealth did not err in denying Appellant's application for LTC benefits and this appeal is DENIED.

Order for MassHealth

None.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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

Appellant Representative: [REDACTED]