

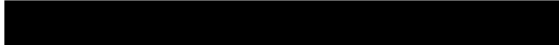
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2302509
Decision Date:	6/9/2023	Hearing Date:	04/27/2023
Hearing Officer:	Marc Tonaszuck	Record Open to:	05/12/2023

Appearance for Appellant:



Appearance for MassHealth:

Patricia Lemke for Katie LaDuke, Springfield
Intake Unit



*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 in part; Denied in part	Issue:	Long Term Care
Decision Date:	6/9/2023	Hearing Date:	04/27/2023
MassHealth's Rep.:	Patricia Lemke for Katie LaDuke, Springfield MEC	Appellant's Rep.:	[REDACTED]
Hearing Location:	Springfield MassHealth Enrollment Center		

Authority

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

Jurisdiction¹

Through a notice dated 03/02/2023, MassHealth approved the appellant's application for MassHealth Long-Term Care ("LTC") Benefits with an effective date of 09/30/2022. MassHealth also calculate a monthly patient paid amount ("PPA") of \$3,826.26 (Exhibit 1). On 03/29/2023, a timely appeal was filed on the appellant's behalf by her attorney in fact (130 CMR 610.015(B); Exhibits 2 and 4). A challenge to benefit start date and PPA constitutes valid grounds for appeal (130 CMR 610.032).

A fair hearing took place before the Board of Hearings on 04/27/2023, at which time the hearing

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

officer asked both parties for additional information. The record remained open until 05/03/2023 for MassHealth's submission and until 05/12/2023 for the appellant's submission. Both parties made post-hearing submissions (Exhibits 3 and 5 - 8).

Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth LTC Benefits with an eligibility start date of 09/30/2022 and with a PPA of \$3,826.26.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulations to accurate facts when it determined the eligibility start date and PPA when it approved the appellant's application for MassHealth LTC Benefits.

Summary of Evidence

The MassHealth representative from the Springfield MassHealth Enrollment Center testified telephonically that the appellant was admitted to the skilled nursing facility in [REDACTED]. She applied for MassHealth long term care ("LTC") benefits on 08/31/2022 seeking an eligibility start date of benefits of 05/05/2022. This is a summary of all the evidence in the hearing record, including the post-hearing submissions of both parties (Exhibits 5-8).

At the time that she was admitted to the skilled nursing facility, the appellant owned a property, located in [REDACTED] ("property" or "former home"). On 08/11/2022, the appellant signed an "agreement to sell" the property; however, she never provided proof to MassHealth that the property was listed for sale for fair market value. Thus, MassHealth argued it could not deem this property as inaccessible, as the conditions for inaccessibility were not met. The property sold on 09/29/2022, while the appellant was still in the process of providing documentation to prove eligibility to MassHealth. The appellant received \$86,878.98 proceeds from the sale of her former home. The appellant initially put the sale proceeds into an IOLTA account. The appellant removed the funds from the IOLTA account on 11/18/2022 and set up a pooled trust with Plan of MA and RI, putting her under asset as of this date. According to MassHealth Regulation 130 CMR 520.004, an appellant is eligible for MassHealth LTC benefits on the date she is under the asset limit. A Haley Calculation was completed to give the appellant a more favorable start date for MassHealth. Rather than approving the appellant the day she spent down - 11/18/2022 - MassHealth approved the appellant retroactively to 09/30/2022.

MassHealth also stated that, on 10/06/2022, a copy of the HUD closing statement was provided to MassHealth. Despite informing MassHealth that the property sold, the appellant did not provide proof of where the sale proceeds from the sale of this home went. As the sale was reported three days before the due date to submit all verifications, when MassHealth issued a 10/14/2022 denial notice, this information was requested.

In addressing the PPA, MassHealth stated that, due to an error, the short-term allowance was not initially applied to the PPA. Since the date of the appeal, the short-term allowance has been added in. The PPA from September thru November 2022 is \$2,611.26. The PPA will then increase to \$3,826.26 in December 2022 and this will be the continuous monthly PPA.

The appellant was represented in these proceedings by her attorney in fact and an attorney who represents the appellant. Counsel argued that MassHealth contends that the appellant never provided proof that the property at issue was listed for sale. The Agreement to Sell was signed on 08/11/2022 and was submitted to MassHealth along with the initial application for benefits on 08/31/2022. The Agreement to Sell indicates that the appellant must “provide evidence, upon request from the Division, that [they] are trying to sell at no less than fair-market value . . .” MassHealth contends that the appellant neglected to inform MassHealth that the property was under contract when the application was received on 08/31/2022, which, in turn, did not allow MassHealth to request the verification needed for a property that sells on the initial information request.

The property was not under contract to sell at the time of the application. Counsel cited to an affidavit of the realtor who listed this property for sale, which states that an initial cash buyer terminated their offer to purchase prior to the application due to health issues. A second potential buyer also terminated their offer to purchase prior to the application (on 08/24/2022) due to property condition. Thus, on 08/31/2022, the date the application was submitted, the property was not under contract to sell, but the appellant was in agreement with selling it for fair market value. In the request for information dated 09/09/2022, MassHealth requested proof of the property being listed. Prior to the due date of this request on 10/09/2022, the second potential buyer revived their offer to purchase due to a price reduction, as also set forth in the Affidavit of the realtor. The closing took place on 09/29/2022, and the check for the appellant’s proceeds was dated that same day. The Settlement Statement was submitted to MassHealth timely on 10/06/2022, in response to the Request for Information that was due by 10/09/2022.

Counsel argued that regulations at 130 CMR 520.007(G)(5) provide:

Proceeds from the Sale of Real Estate - the proceeds from the sale of the real estate, after the payment of loans, liens, or other encumbrances, and expenses of sale such as taxes,

fees, and advertising costs, are a countable asset in the month received and in subsequent months.

Counsel asserted that MassHealth has inappropriately counted these proceeds as of the requested date of eligibility (05/05/2022) using a Haley calculation, which essentially deems said proceeds countable as of 05/05/2022. Said proceeds should not be the subject of a Haley calculation as they were not received until 09/29/2022, months after the initial requested date of eligibility. Counsel further argued that the appellant should be approved for MassHealth beginning 05/05/2022 until her receipt of the real estate proceeds on 09/29/2022, at which time she would have been over asset. The appellant funded a pooled trust with said proceeds on 11/18/2022, at which time she again met the asset limit and her benefits should have resumed on that date (Exhibit 8).

Findings of Facts

By a preponderance of the evidence, I find the following:

1. The appellant, a single individual, was admitted to the skilled nursing facility in [REDACTED].
2. The appellant applied for MassHealth long term care (LTC) benefits on 08/31/2022, seeking a benefit start date of 05/05/2022.
3. The appellant is an unmarried individual.
4. The asset limit for an unmarried individual is \$2,000.00.
5. At the time the appellant was admitted to the skilled nursing facility she owned a home, located in [REDACTED] (former home).
6. On 08/11/2022, the appellant signed an "agreement to sell" the property; however, she never provided proof to MassHealth that the property was listed for sale for fair market value.
7. The appellant's former home sold 09/29/2022 and the appellant received \$86,878.98.
8. The appellant initially put the sale proceeds into an IOLTA account.
9. On 11/18/2022, the appellant removed the funds from the IOLTA account and set up a pooled trust with Plan of MA and RI, putting her under asset as of this date.

10. The asset limit for a single individual who applies for LTC benefits is \$2,000.00.
11. MassHealth determined that the appellant had excess assets totaling \$76,206.00.
12. MassHealth performed a “Haley Calculation,” by subtracting the \$2,000.00 allowable assets, the prepaid funeral contract of \$15,047.00, her monthly income of \$4,157.36, medical expenses of \$10,877.22, health insurance of \$258.30 from the excess assets, leaving \$43,866.12.
13. The adjusted excess asset amount of \$43,866.12 was divided by the private rate of the nursing home (\$443.00) to calculate 101 days.
14. The appellant was determined to be eligible for MassHealth LTC benefits effective on 09/30/2022, 101 days after the date she requested MassHealth payment, 05/05/2022.
15. Through a notice dated 03/02/2023, MassHealth approved the appellant’s application for MassHealth Long-Term Care (LTC) Benefits with an effective date of 09/30/2022. MassHealth also calculate a monthly patient paid amount (PPA) of \$3,826.26.
16. During the record open period, MassHealth informed the parties that it had adjusted the PPA to allow for the short-term housing allowance. The PPA from September thru November is \$2,611.26. The PPA will then increase to \$3,826.26 in December and this will be the continuous monthly PPA.

Analysis and Conclusions of Law

Regulations at 130 CMR 520.003 address the asset limit for long term care benefits as follows:

(A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits:

- (1) for an individual — \$2,000; and
- (2) for a couple living together in the community where there is financial responsibility according to 130 CMR 520.002(A)(1) — \$3,000.

Regulations at 130 CMR 520.004 address Asset Reduction (“Haley calculation”):

(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.

Regulations at 130 CMR 520.006 address inaccessible assets as follows:

(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.

Regulations at 130 CMR 520.007(G)(8) address former home of an institutionalized individual as a countable asset, as follows:

Former Home of an Institutionalized Individual. If an applicant or member moves out of his or her home to enter a medical institution, the MassHealth agency considers the former home a countable asset that is subject to 130 CMR 520.007(G)(2), provided all of the following conditions are met. If the former home of a nursing-facility resident as defined in 130 CMR 515.001: Definition of Terms is placed in a trust, the MassHealth agency will apply the trust rules in accordance with 130 CMR 520.021 through 520.024.

(a) The individual is institutionalized as defined in 130 CMR 515.001: Definition of Terms.

(b) None of the following relatives of the individual is living in the property:

1. a spouse;

2. a child who is younger than 21 years old or who is blind or permanently and totally disabled;

3. a sibling who has a legal interest in the home and who was living there for a period of at least one year immediately before the applicant's or member's admission to the medical institution;

4. a son or daughter who was living in the applicant's or member's home for

a period of at least two years immediately before the date of the applicant's or member's admission to the medical institution, and who establishes to the satisfaction of the MassHealth agency that he or she provided care to the applicant or member that permitted him or her to live in the home rather than in a medical institution; or

5. a dependent relative. A dependent relative is any of the following who has any kind of medical, financial, or other dependency: a child, stepchild, or grandchild; a parent, stepparent, or grandparent; an aunt, uncle, niece, or nephew; a brother, sister, stepbrother, or stepsister; a half brother or half sister; a cousin; or an in-law.

(c) The applicant or member (and spouse, if any) moves out of his or her home without the intent to return.

(d) The applicant or member does not own long-term-care insurance with coverage that meets the requirements of 130 CMR 515.014: Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions and the Division of Insurance regulations at 211 CMR 65.09(1)(e)2.

At the time the appellant applied for MassHealth benefits, she owned real estate located in Agawam, MA. In order for MassHealth to determine that the former home of an applicant is temporarily non-countable, MassHealth must receive both an agreement to sell the property and proof that the property is listed for sale for fair market value. MassHealth received only an agreement to sell, not the proof that the property was listed for sale for fair market value, as requested by MassHealth. Neither the home as countable asset prior to its sale nor the proceeds from the sale of the home meet the above regulatory definition of "inaccessible." Accordingly, MassHealth correctly determined that the appellant's assets exceeded the \$2,000.00 asset limit for a single individual.

On 09/29/2022, the appellant sold her former home and the appellant received \$86,878.98. The appellant initially put the sale proceeds into an IOLTA account. The appellant removed the funds from the IOLTA account on 11/18/22 and set up a pooled trust with Plan of MA and RI, putting her under the asset limit as of this date².

Instead of approving the appellant's benefits for the date she demonstrated that her assets were below the asset limit - 11/18/2022 - MassHealth utilized a Haley Calculation in accordance with 130 CMR 520.004(A), above. Using uncontested amounts³ in the asset reduction, MassHealth determined that the appellant was eligible for LTC benefits effective on 09/30/2022.

² See 130 CMR 520.008(1).

³ Figures used in the Haley calculation consist of, but are not limited to, medical expenses, income, health insurance premiums, and private pay rate of the skilled nursing facility. None of these figures that was used by MassHealth in the Haley Calculation was disputed by the appellant.

Appellant's attorney cited to regulations at 130 CMR 520.007(G)(5), which provides:

Proceeds from the Sale of Real Estate. The proceeds from the sale of the real estate, after the payment of loans, liens, or other encumbrances, and expenses of sale such as taxes, fees, and advertising costs, are a countable asset in the month received and in subsequent months.

Counsel for the appellant argued that MassHealth inappropriately counted the proceeds from the sale of the former home as of the requested date of eligibility (05/05/2022) using a Haley calculation, which essentially deems said proceeds countable as of that date. Said proceeds should not be the subject of a Haley calculation as they were not received until 09/29/2022, months after the initial requested date of eligibility. Counsel asserted that the appellant should be approved for MassHealth beginning 05/05/2022 until her receipt of the real estate proceeds on 09/29/2022, at which time she would have been over asset. She funded a pooled trust with said proceeds on 11/18/2022, at which time she again met the asset limit and her benefits should have resumed on that date.

Counsel's argument is based on the former home not being a countable asset due to it being "inaccessible" or for another reason. I disagree. Since the appellant did not provide the required documentation to MassHealth within the time limit, the former home was a countable asset until the assets were spent down to meet the \$2,000.00 asset limit. Additionally, the home did not meet any of the other requirements in the above regulation that would have rendered the asset "inaccessible." MassHealth's determination and calculation is supported by the above regulations and the facts in the hearing record. Accordingly, this portion of the appeal is denied.

At the fair hearing, appellant's counsel also argued that MassHealth erroneously did not apply the former home allowance deduction to the PPA. During the record open period, MassHealth agreed that it had not and agreed to adjust the PPA. Accordingly, this portion of the appeal is approved.

For the foregoing reasons, this appeal is approved in part (for the PPA); and denied in part (the eligibility start date).

Order for MassHealth

Adjust the appellant's PPA from September 2022 through November 2022 to \$2,611.26. For December 2022 and subsequently, increase the PPA to \$3,826.26. Send notice of implementation only. Do not include appeal rights.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

Appellant Representative: [REDACTED]