

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2302660
<b>Decision Date:</b>	2/12/2024	<b>Hearing Date:</b>	05/09/2023
<b>Hearing Officer:</b>	Alexandra Shube	<b>Record Open to:</b>	01/11/2024

**Appearance for Appellant:**

*Via telephone:*



**Appearance for MassHealth:**

*Via telephone:*

Jamie Lapa, Springfield 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	LTC – Over Assets
<b>Decision Date:</b>	2/12/2024	<b>Hearing Date:</b>	05/09/2023
<b>MassHealth’s Rep.:</b>	Jamie Lapa	<b>Appellant’s Rep.:</b>	██████████
<b>Hearing Location:</b>	Springfield MassHealth Enrollment Center Remote	<b>Aid Pending:</b>	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 December 14, 2022, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that she was over the allowable asset limit (see 130 CMR 520.003 and Exhibit 1). The appellant filed this appeal in a timely manner on April 3, 2023 (see 130 CMR 610.015(B) and Exhibit 2).<sup>1</sup> Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

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<sup>1</sup> 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.

The Public Health Emergency did not end until May 11, 2023, after the filing of this appeal.

## Action Taken by MassHealth

MassHealth denied the appellant MassHealth benefits because she was over the allowable asset limit.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, in determining that the appellant was over assets to qualify for MassHealth benefits.

## Summary of Evidence

The representatives for MassHealth and the appellant both appeared at hearing telephonically. The MassHealth representative testified as follows: the appellant is a single individual over the age of [REDACTED]. On July 30, 2022, MassHealth received a long-term care application on behalf of the appellant, requesting a coverage start-date of April 7, 2022. On December 14, 2022, MassHealth denied the application for being over the allowable asset limit. There is a home that the appellant was not living in prior to her admission which was assessed at \$322,900. Additionally, there was a life insurance policy with a cash surrender value of \$5,932.08, and a bank account with \$334.07. Combined, her assets are \$329,166.15, putting her \$327,166.15 over the \$2,000 asset limit. The appellant had provided an affidavit saying that the home was in foreclosure; however, MassHealth needed verifications showing as much. The only information MassHealth could find regarding foreclosure was documentation showing a [REDACTED] pre-foreclosure. MassHealth needed verification of the foreclosure and mortgage, including the mortgage balance. If the current mortgage value was greater than the assessed value, MassHealth would not need proof of the foreclosure. MassHealth also required proof that the life insurance ownership and beneficiary had been assigned to the funeral home.

The appellant's representative, who works for the facility, believed that the home had been foreclosed, but she did not have the mortgage. The life insurance is going to be used for a burial contract. She stated that the appellant's guardian was working on getting the foreclosure and mortgage information, but she asked for a record open period to get the information.

The record was initially held open until June 23, 2023 for the appellant to submit the requested verifications and until June 30, 2023 for MassHealth to review and respond. On June 22, 2023, the appellant's representative informed this hearing officer and MassHealth that there was a delay because she learned there was an additional owner of the property. The record open period was extended until July 14, 2023 for the appellant and July 21, 2023 for MassHealth. Ultimately, the record open period was extended five more times to accommodate the appellant. The appellant's representative stated that the guardian was not helpful, and she was having issues accessing the

mortgage information due to the second owner listed, who is deceased.

On November 30, 2023, based on the information received, MassHealth stated that the documents sent in did not verify that the home was foreclosed and did not show the mortgage balance. The documents were addressed to the appellant and two other people, who were listed as the other owner's heirs). She stated if the home is co-owned, it could potentially be non-countable, but there was no deed showing co-ownership, and the MassHealth representative did not have a copy of the will of the deceased owner. The most recent deed MassHealth has showed the appellant and the other, now deceased, owner as owners. The appellant's representative did not believe that the appellant and other owner were married. MassHealth stated that if they weren't married and they had a joint tenancy, the other owner's portion would automatically go to the appellant upon his death as the joint tenant. If they weren't married and had a tenancy in common, then the other owner was able to give or sell his portion to whomever he wished. He would also be able to get a mortgage without the appellant signing off on it, which seems to be the case here as the appellant's representative stated they were having trouble getting mortgage information because the other owner is the one who signed off on it. In a joint tenancy, all owners would have to sign off on a mortgage. If it is a tenancy in common, the house would still be countable.

By the close of the record open period on January 11, 2024, the appellant had submitted the following documentation regarding the life insurance policy: a statement of funeral goods and services; policy update from the insurance company showing the funeral home as a beneficiary; and a pre-need funeral contract. MassHealth stated that was sufficient to make the life insurance policy a non-countable asset. MassHealth also received the following regarding the property: Commonwealth of Massachusetts Land Court Order of Notice to the appellant and the other owner's heirs informing them of the bank's filing of a complaint for determination of the defendant's service member status in foreclosure proceedings; a statement of claims dated [REDACTED] and [REDACTED] from the city naming the appellant and the other owner's heirs as owners of the property, charging them for removal of overgrowth; a deed from [REDACTED] showing the appellant and the other owner as owners; the mortgage in both the appellant and other owner's name from [REDACTED]; and a Black Knight Sitex Report dated [REDACTED], showing the appellant as the owner of the property, pre-foreclosure recorded on [REDACTED], and assignment of mortgage to the appellant and the other owner on [REDACTED].

The MassHealth representative stated that she could not use any of the documents because they do not show the current mortgage balance or that the foreclosure actually occurred. They only show that a mortgage was taken out in 2006. The appellant stated that the facility's attorney tried to get the mortgage but the mortgage company would not give him any information because it needs to come directly from the court-appointed guardian, who said she could not help them. The appellant stated she had exhausted all her options to get the needed information.

## Findings of Fact

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

1. The appellant is a single individual over the age of ■ who is a resident of a nursing facility (Testimony and Exhibit 4).
2. On July 30, 2022, MassHealth received a long-term care application on behalf of the appellant, requesting a coverage start-date of April 7, 2022 (Testimony and Exhibit 5).
3. By notice dated December 14, 2022, MassHealth denied the application for being over the allowable asset limit (Testimony and Exhibit 1).
4. The appellant had \$329,166.15 in assets, putting her \$327,166.15 over the \$2,000 asset limit (Testimony and Exhibit 1).
5. On April 3, 2023, the appellant timely appealed the notice (Exhibit 2).
6. There is a home that the appellant was not living in prior to her nursing facility admission, which was assessed at \$322,900. Additionally, there was a life insurance policy with a cash surrender value of \$5,932.08 and a bank account with \$334.07 (Testimony and Exhibits 1 and 5).
7. The record was held open and extended multiple times until January 11, 2026 (over 7 months from the date of hearing) for the appellant's representative to submit the following to show that she was under the asset limit: verification of the foreclosure and mortgage, including the mortgage balance. If the current mortgage value was greater than the assessed value, MassHealth would not need proof of the foreclosure. MassHealth also required proof that the life insurance ownership and beneficiary had been assigned to the funeral home. (Testimony and Exhibit 6).
8. The appellant was unable to provide verification of the mortgage, foreclosure, or other documentation that could potentially make the house non-countable or bring it within the asset limit (Exhibit 7).
9. The appellant did provide the needed documentation to make the life insurance non-countable (Testimony and Exhibit 7).

## Analysis and Conclusions of Law

Pursuant to 130 CMR 520.003(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 \$2,000 for an individual. Furthermore, 130 CMR 520.004 states the following regarding asset reduction:

(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...

MassHealth denied the appellant's application for being over the allowable asset limit. At hearing, MassHealth testified that the appellant was \$327,166.15 over the allowable asset limit due to real estate (assessed at \$322,900) and life insurance (with a cash surrender value of \$5,932.08). The appellant did not live in the home prior to admission, and while the appellant stated it was foreclosed, the foreclosure was not proven. The record was held open and extended multiple times for the appellant's representative to provide verification of the foreclosure and mortgage balance, and proof that the life insurance ownership and beneficiary had been assigned to the funeral home. At the close of the record open period (over seven months from the hearing date), the appellant was not able to provide sufficient mortgage documentation, or any evidence of foreclosure. All documentation provided continues to show that the appellant owns the property and the mortgage is still assigned to her. The appellant did provide sufficient proof that the life insurance had been assigned to the funeral home; however, with the home in her name, it is still countable to her, and she is still over the allowable asset limit.

For these reasons, the 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.

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Alexandra Shube  
Hearing Officer  
Board of Hearings

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