

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



|                  |                 |                 |            |
|------------------|-----------------|-----------------|------------|
| Appeal Decision: | Denied          | Appeal Number:  | 2302854    |
| Decision Date:   | 5/18/2023       | Hearing Date:   | 05/09/2023 |
| Hearing Officer: | Thomas J. Goode | Record Open to: | 5/10/2023  |

Appearance for Appellant:



Appearance for MassHealth:

Gessica Brunot



*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>            | Verifications |
| <b>Decision Date:</b>     | 5/18/2023      | <b>Hearing Date:</b>     | 05/09/2023    |
| <b>MassHealth's Rep.:</b> | Gessica Brunot | <b>Appellant's Rep.:</b> |               |
| <b>Hearing Location:</b>  | 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 March 21, 2023, MassHealth denied Appellant's application for MassHealth long-term care benefits for failure to verify eligibility (130 CMR 516.001 and Exhibit 1). Appellant filed this appeal in a timely manner on April 10, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is a valid ground for appeal (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied Appellant's application for long-term care benefits for failure to verify eligibility.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001, in denying Appellant's application for long-term care benefits for failing to verify eligibility. A second issue is whether Appellant has met criteria to exempt verification due to spousal refusal to cooperate.

## Summary of Evidence

The MassHealth representative testified that an application for long-term care benefits was submitted to MassHealth on January 11, 2023. On February 6, 2023, MassHealth issued a request for verifications due by March 8, 2023. On March 21, 2023, MassHealth denied the application for failure to provide verification of eligibility including current homeowner's insurance, utility and heating bills, mortgage, copy of Social Security cards, and the community spouse's pension (Exhibit 5). The MassHealth representative noted that Appellant was admitted to the nursing facility on [REDACTED] and discharged to her home on [REDACTED].

Appellant's representative testified that the community spouse refuses to provide his Social Security number, his monthly income information, and his monthly household expenses to complete the long-term care application submitted in January 2023. Appellant's representative added that based on her sworn testimony at hearing, the community spouse is declining any spousal home allowance from Appellant's income, and pursuant to 130 CMR 517.011, MassHealth should preserve the application dated January 11, 2023, and begin coverage effective September 8, 2022 (Exhibit 7).

The MassHealth representative submitted a response stating that Appellant is not hospitalized or unable to make decisions and should be able to supply the missing verifications since she has returned home. Further, the spouse has not submitted an affidavit stating that he will not participate in the application process. Therefore, an exemption due to spousal refusal was not allowed under 130 CMR 517.011 (Exhibit 8).

## Findings of Fact

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

1. An application for long-term care benefits was submitted to MassHealth on January 11, 2023.
2. On February 6, 2023, MassHealth issued a request for verifications due by March 8, 2023.
3. On March 21, 2023, MassHealth denied the application for failure to provide verification of eligibility including current homeowner's insurance, utility and heating bills, mortgage, copy of Social Security cards, and the community spouse's pension and Social Security income which has not been submitted to MassHealth.
4. Appellant was admitted to the nursing facility on [REDACTED] and discharged to her home on [REDACTED].

## Analysis and Conclusions of Law

Regulation 515.008 states that a MassHealth applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility and must comply with all the rules and regulations of MassHealth. Regulation 130 CMR 516.001(B) provides that MassHealth may request additional information or documentation, if necessary, to determine eligibility. The request is generally sent to the applicant within 5 days of receipt of the application and provides 30 days to return the needed documents. If the verifications are not submitted within 30 days of the date of the request, MassHealth benefits may be denied (130 CMR 516.001(C) and (D)). Thereafter, if one or more of the documents are submitted within 30 days of the denial, the date of receipt shall be the reapplication date (130 CMR 516.002).

Pursuant to 130 CMR 520.002(B)(2)(b), when one spouse is institutionalized, the countable assets of both spouses must be evaluated and a spousal share established in accordance with 130 CMR 520.016(B).

130 CMR 520.016(B)(2) Determination of Eligibility for the Institutionalized Spouse. At the time that the institutionalized spouse applies for MassHealth Standard, **the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse** as follows (emphasis added). The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.

(a) Deduct the community spouse's asset allowance, based on countable assets as of the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse, from the remaining assets. The community spouse's asset allowance is the greatest of the following amounts:

1. the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$109,560;
2. a court-ordered amount; or
3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(b) Compare the amount of the remaining assets to the MassHealth asset standard for one person, which is \$2,000. When the amount of the remaining assets is equal to or below \$2,000, the institutionalized spouse has met the asset test of eligibility.

Pursuant to 130 CMR 520.009(A)(4), the types of income that are considered in the determination of eligibility are described in 130 CMR 520.009, 520.018, 520.019, and 520.021 through 520.024 and include income to which **the applicant, member, or spouse would be**

**entitled** whether or not actually received when failure to receive such income results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf (emphasis added). Countable unearned income also includes Social Security income and pensions.<sup>1</sup>

Appellant was admitted to the nursing facility on [REDACTED] and discharged to her home on [REDACTED]. An application for long-term care benefits was submitted to MassHealth on January 11, 2023. On February 6, 2023, MassHealth issued a request for verifications due by March 8, 2023. On March 21, 2023, MassHealth denied the application for failure to provide verification of eligibility including current homeowner's insurance, utility and heating bills, mortgage, copy of Social Security cards, the community spouse's pension, Social Security income, and the accounts where the income is deposited. Appellant's representative relies on her own sworn testimony at hearing in asserting that requirements of 130 CMR 517.011 are met, and eligibility should be determined without the outstanding verifications because Appellant's spouse refuses to cooperate. Regulation 130 CMR 517.011 follows:

130 CMR 517.011: Assignment of Rights to Spousal Support

An institutionalized spouse whose community spouse refuses to cooperate or whose whereabouts is unknown will not be ineligible due to:

(A) assets determined to be available for the cost of care in accordance with 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; or

(B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met:

- (1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse;
- (2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or
- (3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.

Appellant has not been determined substantively eligible for MassHealth and assets have not been determined to be available for the cost of care because assets, regardless of the form of ownership between the couple, have not been verified. The community spouse has not verified pension and Social Security income or the accounts into which the income is deposited. Appellant

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<sup>1</sup> See 130 CMR 520.009(D).

was discharged from the facility to her home on [REDACTED] and has not shown her inability to provide information concerning assets of the community spouse. There is no evidence that the institutionalized spouse (Appellant) assigned to the MassHealth agency any rights to support from the community spouse or lacks the ability to assign rights to spousal support as described above, nor has MassHealth determined that the denial of eligibility due to the lack of information concerning assets of the community spouse would result in undue hardship. Appellant's representative's sworn statement at hearing that the community spouse refuses to cooperate does not carry Appellant's burden of proof, nor does purportedly declining any spousal home allowance from Appellant's income have any bearing on the analysis under 130 CMR 517.011.<sup>2</sup> MassHealth denied the application based on lack of verification of the community spouse's assets and income. Such verification is still outstanding, and MassHealth's determination is upheld.

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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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Shelly-Ann Lewis, Chelsea MassHealth Enrollment Center, 80 Everett Avenue, Chelsea, MA 02150

[REDACTED]

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<sup>2</sup> See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002) (burden is on appellant to demonstrate the invalidity of an administrative determination).