

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302901
Decision Date:	5/18/2023	Hearing Date:	04/24/2023
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Kristin McMahon, 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:	LTC Eligibility – Assets
Decision Date:	5/18/2023	Hearing Date:	04/24/2023
MassHealth's Rep.:	Kristin McMahon	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center 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 February 28, 2023, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that the appellant 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 11, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term care benefits because she was over the allowable asset limit.

Issue

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

Summary of Evidence

The MassHealth representative appeared at hearing via telephone and testified as follows: the appellant is over the age of 65 and entered a long-term care facility on [REDACTED]. On November 30, 2022, MassHealth received an application for long-term benefits on behalf of the appellant, requesting a start date of December 14, 2022. At the time, she had a spouse living in the community (hereinafter, “the community spouse” or “husband”). On December 5, 2022, MassHealth issued an information request and, on January 17, 2023, the application was denied for lack of verifications. That denial was timely appealed. MassHealth received additional verifications and agreed to honor the original application date when issuing its next determination. On February 28, 2023, MassHealth denied the appellant’s application for being over the allowable asset limit. This is the notice under appeal.

The appellant’s assets are as follows: \$153,343.15 (as of the most recent statement dated November 30, 2022) in a bank account in the appellant and husband’s names; \$0 (when the appellant’s Social Security Income is accounted for) in a checking account; and a trust (hereinafter, “the Trust”) with assets valued at \$138,500. The only asset in the trust is a mobile home. The appellant’s assets totaled \$291,844.15, putting her \$289,844.15 over the allowable asset limit of \$2,000 for an individual. In its notice, MassHealth stated that the appellant must spend down \$141,224.15 of her assets. At the time of the determination, MassHealth was unaware that the community spouse had passed away and the notice reflected the asset limit for a couple of \$3,000. MassHealth was notified on April 14, 2023 that the community spouse had passed away on [REDACTED]

The MassHealth representative stated that she has since received some additional verifications regarding the Trust, which MassHealth still found to be a countable asset. The Trust is a revocable trust and under 130 CMR 520.023(B)(1), the principal of a revocable trust is a countable asset. It also meets the any circumstances test in 130 CMR 520.023(C)(1)(a) if it were to be considered irrevocable. She also explained that there was a letter provided by the appellant’s [REDACTED] attorney, where the mobile home is located. MassHealth explained that letter included a partial copy of the Fourth Amendment and stated that the applicant was removed as grantor from the Trust, but the Fourth Amendment does not state that the applicant was removed as grantor and/or settlor of the Trust. She also argued that the second paragraph of the Fourth Amendment appears to be an attempt to remove the applicant as a lifetime beneficiary of the Trust, but it is vague and does not refer to any specific terms in the Trust.

The Fourth Amendment to the Trust, which was signed on August 29, 2022, states the following in pertinent part:

FIRST: [The appellant] has been determined to be incompetent by two independent physicians effective May 3, 2022 and May 5, 2022. It is directed that,

at the death of [the appellant] no allocation is/has been/will be made to the [REDACTED] Trust (Article 5). All assets are hereby allocated to [husband], surviving competent spouse, and shall hereafter be governed by the Survivors Trust (Article 4).

SECOND: [The appellant] is hereby removed as a lifetime beneficiary of this trust effective the date of this amendment. [Husband] shall be sole lifetime beneficiary hereafter.

The appellant was represented at hearing via telephone by a Medicaid consultant who testified that at the time of the MassHealth decision, she had not been made aware of the community spouse's death. When she received the MassHealth denial dated February 28, 2023, she contacted the appellant's daughter who informed her of the community spouse's death. She argued that the appellant was under the allowable MassHealth asset limit at the time of her husband's death because the husband's assets reverted to the beneficiaries, not the appellant, upon his death. She provided a letter from the appellant's attorney which stated the following in pertinent part:

Please be advised that [appellant] was removed as a lifetime beneficiary and grantor from the above referenced trust... This removal was a transfer between spouses and as such is not subject to the lookback period. All assets of this trust were allocated to [husband] not to exceed \$148,620 or were exempt assets (i.e. Homestead/vehicle/personal property/furnishings) for the purpose of [appellant's] Medicaid qualifications until the death of the Community (non-applicant) spouse.

Upon the death of [husband] (non-applicant spouse) the above trust became irrevocable and is being administered in accordance with the terms of the Trust. Per the terms of the same, [appellant] is not a beneficiary and will not receive any benefit from the same.

The appellant's representative argued that since on the date of the husband's death, the Trust assets were no longer accessible, the appellant would be within the asset limit as of that date, [REDACTED] not the requested start date of December 14, 2022.

The MassHealth representative responded that the appellant needs to be under assets currently in order for MassHealth to be able to determine her assets eligibility as of the requested start date. In addition to the Trust assets totaling \$138,500, the appellant still has the bank account in her name with \$153,344.15.

The appellant's representative at first stated that the family informed her the appellant was no longer on that bank account; however, a review of the most recent bank statements from December 2022 and January and February 2023 by both MassHealth and the appellant's representative showed that the appellant was still an owner of the account with access to it.

Findings of Fact

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

1. The appellant, who entered the facility on [REDACTED], was over the age of 65 with a spouse in the community at the time of the application (Testimony and Exhibit 4).
2. On November 30, 2022, MassHealth received an application for long-term care benefits on behalf of the appellant, requesting a start date of December 14, 2022 (Testimony and Exhibit 4).
3. On February 28, 2023, MassHealth denied the application for having more countable assets than MassHealth benefits allow (Testimony and Exhibit 1).
4. On April 11, 2023, the appellant timely appealed the denial notice (Exhibit 2).
5. MassHealth determined that the appellant had a bank account with \$153,344.15 and a revocable trust containing a mobile home valued at \$138,500 (Testimony and Exhibits 1 and 4).
6. On April 14, 2023, MassHealth was notified that the community spouse had passed away on [REDACTED] (Testimony and Exhibit 4).
7. The Trust was amended for a fourth time on August 29, 2022, transferring all Trust assets to the community spouse and removing the appellant as a beneficiary of the Trust (Testimony and Exhibit 4).
8. The Fourth Amendment to the Trust states the following in pertinent part:

FIRST: [The appellant] has been determined to be incompetent by two independent physicians effective May 3, 2022 and May 5, 2022. It is directed that, at the death of [the appellant] no allocation is/has been/will be made to the [REDACTED] Trust (Article 5). All assets are hereby allocated to [husband], surviving competent spouse, and shall hereafter be governed by the Survivors Trust (Article 4).

SECOND: [The appellant] is hereby removed as a lifetime beneficiary of this trust effective the date of this amendment. [Husband] shall be sole lifetime beneficiary hereafter.

Analysis and Conclusions of Law

At issue is whether MassHealth correctly determined that the appellant is ineligible for MassHealth benefits because she retained assets in excess of the allowable asset limit. In order to be approved for MassHealth benefits, the total value of countable assets or resources owned by or available to an individual may not exceed \$2,000. See 130 CMR 520.003(A)(1). The treatment of a married couple's assets when one spouse is institutionalized is described in 130 CMR 520.016(B) as follows:

(A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

(B) Treatment of a Married Couple's Assets when One Spouse is Institutionalized.

(1) Assessment.

(a) Requirement. The MassHealth agency completes an assessment of the total value of a couple's combined countable assets and **computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse.**

(b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request the MassHealth agency to make this assessment, even if the institutionalized spouse is not applying for MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days.

(c) Right to Appeal. The MassHealth agency must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or authorized representative) applies for MassHealth Standard.

(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. **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 \$[148,620]¹;
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.

(Emphasis added).

Pursuant to 130 CMR 520.023(B)(1), the entire principal in a revocable trust is a countable asset.

At hearing, MassHealth argued that as a revocable trust, the Trust was countable to the appellant, who remained a lifetime beneficiary, despite the Fourth Amendment to the Trust. While I disagree with MassHealth's treatment of the Fourth Amendment of the Trust, it does not affect the outcome of the assessment of the appellant and her spouse's assets.

On August 29, 2022, the husband, as sole competent Trustee, amended the Trust and transferred all assets of the trust to the husband and removed the appellant as a lifetime beneficiary. As a revocable trust, the Trust principal remained countable to the household during the husband's lifetime, even though the appellant no longer had an ownership interest in the property after the Fourth Amendment was signed on August 29, 2022. Upon the husband's death on [REDACTED] [REDACTED] the appellant had no interest or ownership in the Trust, which transferred to their children, the Trust beneficiaries. Therefore, the Trust should not be considered a countable asset belonging to the appellant as of the date of transfer to her husband, August 29, 2022, but it is a countable asset to the household until the community spouse's death.

Pursuant to 130 CMR 520.016(B), MassHealth completes an assessment of the total value of a couple's combined countable assets **at the time that the institutionalized spouse applies for MassHealth** and computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse. As of the beginning of the most recent continuous period of institutionalization (November 17, 2022), MassHealth correctly determined that the household had total assets equaling \$291,844.15 (\$153,344.15 in a bank account and the revocable Trust containing a mobile home valued at \$138,500). Per 130 CMR 520.016(B)(2), when \$148,620 (the community spouse resource

¹ For 2022, the community spouse maximum resource standard is \$137,400 and for 2023, it is \$148,620; as MassHealth appears to have used the 2023 value, I will continue to do so here as it is to the benefit of the appellant. See MassHealth Eligibility Figures for Residents of a Long-Term-Care Facility, found at <https://www.mass.gov/info-details/program-financial-guidelines-for-certain-masshealth-applicants-and-members#eligibility-figures-for-residents-of-a-long-term-care-facility-> (last viewed May 17, 2023).

allowance for 2023) is subtracted from the total assets, \$143,224.15 in remaining resources are countable to the appellant. This is \$141,224.15 over the \$2,000 allowable asset limit, meaning the appellant must spend down that amount to become asset eligible. Thus, while the Trust principal should not be countable to the appellant, it remained countable to the household and the appellant remained over assets at all times, even when accounting for the community spouse resource allowance.

For these reasons, MassHealth's determination was correct and the appeal is denied.

Order for MassHealth

Allow the appellant 30 days from the date of this decision to reduce assets and preserve the original application date.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957