

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304020
Decision Date:	08/16/2023	Hearing Date:	06/13/2023
Hearing Officer:	Scott Bernard	Record Open to:	08/14/2023

Appearance for Appellant:
[Redacted] *via telephone*

Appearance for MassHealth:
Kelly Souza (Taunton MEC) *via telephone*



*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:	Long Term Care (LTC) Countable Asset Limit
Decision Date:	08/16/2023	Hearing Date:	06/13/2023
MassHealth's Rep.:	Kelly Souza	Appellant's Rep.:	[REDACTED]
Hearing Location:	Taunton MassHealth Enrollment Center		

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 the appellant's application for LTC benefits because he had more countable assets than MassHealth benefits allowed. (See 130 CMR 520.003; 520.004; Exhibit (Ex.) 7). Through notices dated February 7 and February 9, 2023 MassHealth denied the appellant's application for MassHealth Standard with the Executive Office of Elder Affairs Home and Community Based Services (HCBS) Waiver because his countable assets exceeded the asset limit of \$2,000. (See 130 CMR 520.003; 520.004; Ex. 8; Ex. 9). Through notices dated March 5 and May 11, 2023, MassHealth approved the appellant's application for MassHealth CommonHealth benefits effective September 13, 2022. (See 130 CMR 505.004; 506.011; and Ex. 1, pp. 2-4; Ex. 4). The appellant's representative submitted a timely appeal on the appellant's behalf on May 16, 2023. (See EOM 22-10¹; 130 CMR 610.015(B); Ex. 1, p. 5).

After the close of the hearing, the hearing officer reopened the record on August 7, 2023 in order to make inquiries of both parties. (See 130 CMR 610.071(F); 610.081; Ex. 5). The record closed on August 14, 2023, after the parties submitted the requested information. (Ex. 5; Ex. 6; Ex. 7; Ex. 8; Ex. 9).

¹ Individuals had 120 days to request a fair hearing until April 1, 2023, at which time the public health emergency ended. (See EOM 23-11). Thus, the appeal is timely for all five notices MassHealth has issued in 2023 concerning the appellant's eligibility.

Actions Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits in a notice dated January 23, 2023. MassHealth denied the appellant's application for MassHealth Standard with a HCBS Waiver in notices dated February 7 and February 9, 2023. MassHealth approved the appellant for CommonHealth benefits in notices dated March 5 and May 11, 2023.

Issue

The appeal issue is whether the appellant was asset eligible for MassHealth LTC benefits.

Summary of Evidence

At the hearing, the MassHealth representative came prepared to discuss the appellant's approval for his community based MassHealth CommonHealth benefit. She also was prepared to discuss how the appellant could become eligible for his HCBS Waiver. The March 8, 2023 notice stated that the appellant was approved for MassHealth CommonHealth with a premium. (Ex. 1, pp. 2-4). The March 8 notice also states that the appellant's had \$9,783.44 in total assets. (Ex. 1, p. 4). The May 11, 2023 notice also stated that the appellant was approved for MassHealth CommonHealth with a premium. (Ex. 4). The May 11 notice indicates that the appellant's assets totaled \$5,380.85. (Id.).

At the end of the MassHealth representative's testimony, the appellant's representative stated that she was confused because she wished to discuss the appellant's eligibility for LTC. The appellant's representative stated that the appellant applied for MassHealth LTC benefits in the autumn of 2022. On November 7, 2022, MassHealth denied the appellant's LTC application for failure to submit verifications. (See Ex. 6). The appellant's representative stated that she appealed that notice on January 9, 2023. (Ex. 5, Ex. 6). She stated that the Board of Hearings scheduled a hearing for February 7, 2023. (Ex. 5). Prior to the scheduled hearing date, the appellant's representative withdrew the appeal because MassHealth agreed to preserve the application date after she submitted the requested verifications and. (Ex. 5).

The appellant's representative stated that the MassHealth LTC eligibility representative² told her that if she could get the appellant's assets under the asset limit, he would be approved for LTC benefits. The appellant's representative stated that she submitted this evidence to MassHealth in April 2023 but did not hear anything further from MassHealth concerning whether the appellant was eligible for LTC benefits. She then appealed the March 5, 2023, notice in order to discuss the appellant's LTC benefits. The appellant's representative stated that the nursing facility was seeking a benefit start date in September 2022. The appellant's representative stated that the appellant had been discharged from the nursing facility on January 27, 2023.

² This was not the same person as the MassHealth representative at the hearing.

Pursuant to 130 CMR 610.071(F) and 610.081, the hearing officer reopened the hearing record on August 7, 2023, in order for both parties to submit further information by August 14, 2023. (Ex. 5). The requested information was submitted by August 14, at which time the hearing record was closed. (Ex. 5; Ex. 6; Ex. 7; Ex. 8; Ex. 9).

As a result of this inquiry, MassHealth submitted a copy of the November 7, 2022 notice denying LTC benefits because the appellant had not submitted requested verifications. (Ex. 6). The MassHealth representative also submitted a copy of a notice dated January 23, 2023, which stated that MassHealth was denying the appellant's eligibility for LTC benefits because he was \$7,783.44 over the asset limit. (Ex. 7). There were also notices dated February 7 and February 9, 2023, which were both denials of the appellant application for MassHealth Standard with HCBS Waiver because the appellant was \$7,783.44 over the asset limit. (Ex. 8; Ex. 9).

Findings of Fact

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

1. The appellant applied for MassHealth LTC benefits in the autumn of 2022. (Testimony of the appellant's representative).
2. The nursing facility was seeking a benefit start date in September 2022. (Testimony of the appellant's representative).
3. On November 7, 2022, MassHealth denied the appellant's LTC application for failure to submit verifications. (Testimony of the appellant's representative; Ex. 6).
4. The appellant's representative appealed that notice on January 9, 2023. (Testimony of the appellant's representative; Ex. 5, Ex. 6).
5. The Board of Hearings scheduled a hearing for February 7, 2023. (Testimony of the appellant's representative; Ex. 5).
6. Prior to the scheduled hearing date, the appellant's representative withdrew the appeal because MassHealth agreed to preserve the application date after she submitted the requested verifications. (Testimony of the appellant's representative; Ex. 5).
7. On January 23, 2023, MassHealth issued a notice stating that it was denying the appellant's eligibility for LTC benefits because he was over the asset limit by \$7,783.44. (Ex. 7).
8. The appellant was discharged from the nursing facility on January 27, 2023. (Testimony of the appellant's representative).
9. MassHealth issued notices denying the appellant's application for MassHealth Standard with a HCBS Waiver because his countable assets exceeded the asset limit by \$7,783.44. (Ex. 8; Ex. 9).

10. MassHealth approved the appellant for MassHealth CommonHealth coverage with a premium on March 5, 2023, indicating that the appellant's total assets were \$9,783.44. (Ex. 1, pp. 2-4).
11. MassHealth approved the appellant for MassHealth CommonHealth coverage with a premium on May 11, 2023, indicating that the appellant's total assets were \$5,380.85 at that time. (Ex. 8; Ex. 9; Ex. 1, pp. 2-4; Ex. 4).

Analysis and Conclusions of Law

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. (130 CMR 520.003(A)(1)). An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth 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 residents³ or as of the date 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.

The record shows that MassHealth denied the appellant's application for LTC benefits on January 23 because he was over the \$2,000 countable asset limit. The appellant then left the facility four days later. Further MassHealth notices sent on February 7, February 9, and March 11 showed that the appellant continued to have assets that exceeded the \$2,000 asset limit for both LTC benefits and MassHealth Standard. Finally, the May 11 notice indicated that the appellant's total assets had been reduced somewhat but still were in excess of the asset limit for LTC benefits and MassHealth Standard. A preponderance of the evidence shows that the appellant was at no time asset eligible for MassHealth LTC benefits. The appellant's representative submitted no evidence that the appellant was asset eligible for LTC benefits at any point he was still living at the nursing facility.

For the above stated reasons, the appeal is DENIED.

Order for MassHealth

None.

³ See 130 CMR 520.019(F).

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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