

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304903
Decision Date:	09/21/2023	Hearing Date:	07/24/2023
Hearing Officer:	Christopher Jones	Record Open to:	09/21/2023

Appearance for Appellant:



Appearance for MassHealth:

Alfred Peach – Tewksbury Intake replaced by
Karen Ryan post-hearing



*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:	Over-65; LTC; Intake; Excess Assets
Decision Date:	09/21/2023	Hearing Date:	07/24/2023
MassHealth's Rep.:	Alfred Peach (at hearing); Karen Ryan (post-hearing)	Appellant's Rep.:	
Hearing Location:	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 May 25, 2023, MassHealth denied the appellant's application for MassHealth long-term-care benefits because she had assets in excess of \$2,000. (Exhibit 1; 130 CMR 520.003 - .004.) The appellant filed this appeal in a timely manner on June 15, 2023, but it was dismissed by the Board of Hearings for lack of authority. (Exhibit 2-3; 130 CMR 610.015(B).) The appellant submitted an Authorized Representative Designation Form on June 23, and this matter was scheduled for hearing.¹ (Exhibits 4-5.) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

The hearing record was left open at the appellant's request until August 24, 2023, but the appellant was allowed an extension to September 1. MassHealth was allowed three weeks to review and respond because the case was taken over by another worker after the hearing was held.

¹ The appellant's attorney confirmed that her firm legally represents the appellant, and their authority also stems from that legal representative capacity.

Action Taken by MassHealth

MassHealth denied the appellant's application for long-term-care benefits because her assets were over \$2,000.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.004, in determining that the appellant had not reduced her assets below \$2,000.

Summary of Evidence

The appellant is over the age of 65 and she entered the nursing facility in late Fall 2022. The appellant's husband entered a nursing facility shortly after she did, but he passed away in the Spring of 2023. An application was filed on the appellant's behalf on February 1, 2023, seeking long-term-care coverage as of December 4, 2022.

On May 25, 2023, MassHealth denied the appellant's application for long-term-care benefits based upon two bank accounts, two certificates of deposit, and two life insurance policies. The cash value of these six assets totaled \$154,972.44 as of the date MassHealth benefits were sought. The decision was based upon asset verifications submitted on or before March 13, 2023,² but as of the hearing, no additional verifications had been submitted.

The appellant's attorney testified that they were in the process of spending down the appellant's assets. She explained that the process was complicated because both the appellant and her spouse had been in nursing facilities and applying for MassHealth benefits. They were attempting to pre-pay funeral arrangements for the appellant and cover the funeral expenses of the deceased spouse. They had also been planning to purchase an annuity for both spouses, but these plans needed to be restarted after the spouse's death. She also claimed that there were past-due patient-paid amounts ("PPA") for the deceased spouse that needed to be paid out of the excess assets.

It was pointed out that purpose of the described plan was unclear as a patient-paid amount is typically paid out of income, not assets, and an annuity is not entitled to retroactive reductive treatment. The appellant was allowed until August 24 complete their asset reduction plan and submit it for review, and they needed to "clearly show where this money went." On August 23, the appellant requested an additional week, and the request was granted. On August 31, the appellant submitted copies of two checks written out of an attorney IOLTA account. One check for \$6,802.40 was written to the deceased spouse's nursing facility, with a memo line that identified it as for "PPA." The other check was written to a financial services company for \$152,497.60, and the

² This is before the appellant's spouse died.

memo states that it is for an annuity for the appellant. Also submitted was an invoice from July 26, 2023, for home renovation work that totaled \$17,682.80. No other proof was submitted. The appellant's attorney was immediately informed that they had not submitted a copy of the annuity, which would be necessary to determine if the annuity itself was a permissible purchase or would result in a disqualifying transfer of assets. The appellant's attorney did not respond.

On September 6, MassHealth's representative responded that in addition to the annuity, the appellant would have needed to complete an ANN-3 form and submit proof to show how the money in their bank accounts got into the IOLTA account from which the checks were issued. She also noted that the deceased spouse had four life insurance policies that presumably would have paid out to the appellant, but the proceeds of these policies were never verified. Finally, she noted that the deceased spouse was never on MassHealth, and therefore never had a PPA. The appellant's attorney was offered a week to submit arguments as to why their submission should be considered sufficient.

Nothing was submitted.

Findings of Fact

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

1. The appellant is over the age of 65 and she entered the nursing facility in late Fall 2022. An application for long-term-care benefits was submitted on February 1, 2023, seeking long-term-care coverage as of December 4, 2022. (Exhibit 7.)
2. The appellant's husband entered a nursing facility shortly after she did, but he passed away the Spring of 2023. (Exhibit 7.)
3. As of the appellant's benefits request date, the appellant had countable assets of \$154,972.44, including two bank accounts, two certificates of deposits, and two life insurance policies. The latest submitted financial records were dated March 13, 2023. (Exhibit 7.)
4. At the hearing, the appellant's attorney requested that the hearing record be left open to document asset reduction through funeral arrangements, medical expenses, and the purchase of an annuity. The record was left open for the appellant to "clearly show where this money went." (Testimony by appellant's attorney; Exhibit 8.)
5. After an extension was granted, the appellant submitted two checks from their attorney's IOLTA account. Each check was dated August 31, 2023. One was to a financial services company for \$152,497.60 with "annuity" written in the memo, and the other was to a nursing facility for \$6,802.40 with a memo stating it was for the deceased spouse's PPA. An

invoice was also submitted for a renovation to the appellant's former home dated July 26, 2023. (Exhibit 8A.)

Analysis and Conclusions of Law

MassHealth members must establish financial eligibility, which includes showing that their assets are below a threshold and that they reduced their assets in accordance with state and federal law. (See 130 CMR 520.003 – .004.) To qualify for long-term-care benefits, an applicant must complete an application and cooperate with the MassHealth agency by submitting corroborative information. (See 130 CMR 516.001(B).) If the requested verifications are received within 30 days, “the application is considered complete” and MassHealth continues to “determine the coverage type ... for which the applicant is eligible.” If not, MassHealth may deny the application. (130 CMR 516.001(C).)

Regarding financial eligibility, an individual applying for MassHealth long-term-care benefits must have countable assets below \$2,000. (130 CMR 520.003(A).) If an applicant has assets above this threshold, their earliest eligibility start date is either:

- (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.

(130 CMR 520.004(A)(1).)

The appellant had verified six accounts with a total of \$154,972.44, but the most recent verification of those resources was dated March 13, 2023. The only verification submitted thereafter were two checks totaling \$159,300.00, \$152,497.60 for an annuity purchased on the appellant's behalf, and \$6,802.40 purportedly for medical expenses related to the deceased spouse's nursing facility care. However, there is no evidence as to how this money came into the attorney's IOLTA account. Therefore, I cannot find that the appellant has clearly documented that they have reduced their assets below \$2,000.

Even if I were to accept that the checks written out of the IOLTA account were the appellant's assets that had been documented in March, MassHealth has identified two significant deficiencies. First, the deceased spouse held four life insurance policies that presumably paid out after the last asset verifications were submitted. This raises a serious question as to whether the funding for the annuity came solely from the existing assets that were previously verified.

Second, without an ANN-3 and a copy of the annuity document itself, it is impossible to determine whether the purchased annuity remains a countable asset. “If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset.” (130 CMR 520.007(J)(1).) Nor is it possible to determine if the annuity qualifies as a permissible transfer solely for the benefit of the appellant in accordance with 130 CMR 520.007(J) and 520.019(D).³

For these reasons, this 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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290

Appellant's [REDACTED]

³ Even if the annuity were not a disqualifying transfer, the asset reduction date would remain the day on which the annuity was purchased, at the earliest. As that would be “the date the applicant reduces his or her excess assets to the allowable asset limit” (130 CMR 520.004(A)(1).)