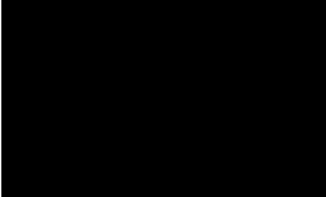


**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305020
Decision Date:	09/01/2023	Hearing Date:	07/19/2023
Hearing Officer:	Sara E. McGrath	Record Open to:	08/18/2023

Appearances for Appellant:



Appearances for MassHealth:

Rachel Manzi, Worcester MassHealth
Enrollment Center



*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:	Eligibility; Assets; Over 65
Decision Date:	09/01/2023	Hearing Date:	07/19/2023
MassHealth's Rep.:	Rachel Manzi	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)		

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 24, 2023, MassHealth denied the appellant's application for long-term care services because it determined that the appellant has excess assets (Exhibit 1). The appellant filed this appeal in a timely manner on June 19, 2023.¹ (Exhibit 1; 130 CMR 610.015(B)). The denial of assistance is valid grounds for appeal (130 CMR 610.032(1)(A)).

A fair hearing was held on July 19, 2023. At the conclusion of the hearing, the record was left open for the appellant to submit additional information. MassHealth timely responded to that information.² Additionally, the Hearing Officer requested that MassHealth submit a legal opinion regarding the countability of jointly held stocks. MassHealth submitted a legal opinion and the record closed on August 18, 2023.

¹ The appellant's son, as her power of attorney, signed the fair hearing request form on her behalf.

² MassHealth reviewed bank information submitted and ultimately determined that the accounts were reduced to within MassHealth's program limits. Accordingly, the only remaining issue in dispute is the countability of the jointly held stocks.

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth long-term care benefits because it determined that the appellant has excess assets.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant's assets exceed MassHealth program limits.

Summary of Evidence

A representative from Worcester MassHealth Enrollment Center appeared at the hearing telephonically and testified that the appellant, a female over the age of 65, is a resident of a skilled nursing facility. On April 6, 2023, an application for MassHealth long-term care services was submitted on her behalf. On May 24, 2023, MassHealth denied the application due to excess assets. In its calculation of the appellant's total assets, MassHealth included securities that appellant jointly owns with her two sons.³ The MassHealth representative testified that securities, such as stocks, are countable assets under 130 CMR 520.007(D). As of December 8, 2022, the stocks at issue, [REDACTED] were valued at \$235,448.31. Under 130 CMR 520.005(B), MassHealth determined that one-third of the stock value, (\$78,482.10), should be included as an asset of the appellant. Accordingly, MassHealth determined that the appellant's assets exceed \$2,000 and she is therefore not eligible for MassHealth benefits.

The appellant was represented at hearing by her attorney. The attorney participated telephonically and argued that MassHealth must consider the jointly owned stock inaccessible under 130 CMR 520.006. She argues in her legal brief that the "[s]tock was placed in their name at least 25 years ago for estate planning purposes and [the appellant's] name was left on the account for convenience only and for tax purposes. Thus[,] she doesn't have an enforceable ownership interest, as it is inaccessible to her" (Exhibit 4, p. 3). She points out that the appellant and her two sons own the stock as joint tenants and, under 31 CFR § 306.56, none of the owners can transfer or sell the stock without the agreement of all the owners. Because the sons refuse to sell the stock (and have signed affidavits to that effect), these assets should be considered inaccessible, and therefore not countable, to her.

In its legal opinion, MassHealth's legal department argues that one-third of the stocks' total value

³ The stock is held by "[Appellant] & [Son] & [Son] JT TEN" (Exhibit 4).

is countable to the appellant under MassHealth regulations and federal law, citing 130 CMR 520.005(B), 130 CMR 520.007(D), 42 CFR § 416.1201(a), and 42 CFR § 416.1208(c). MassHealth further argues that the sons' refusal to sell the stock⁴ constitutes a disqualifying transfer of assets, as the refusal was done "in order to reduce [the appellant's] ownership, control[,] and countability" of the asset (Exhibit 5, p. 5). MassHealth cites to 130 CMR 520.019(H), which states as follows: "The MassHealth agency will consider as a transfer any action taken by any person that reduces or eliminates the nursing-facility resident's ownership or control of the resource. The MassHealth agency then will determine whether the transfer was made at less than fair-market value in accordance with the transfer rules." MassHealth also cites to corresponding federal Medicaid law at 42 USC § 1396p(c)(3), which states:

For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

Findings of Fact

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

1. The appellant is a female over the age of 65 and is a resident of a skilled nursing facility.
2. As of December 8, 2022, the appellant owned jointly with her two sons [REDACTED] [REDACTED] stocks valued at \$235,448.31; the three own the stocks as joint tenants.
3. On April 6, 2023, an application for MassHealth long-term care services was submitted on behalf of the appellant.
4. On May 24, 2023, MassHealth denied the appellant's application due to excess assets.
5. MassHealth included in its calculation of the appellant's assets one-third of the total value of the stocks, or \$78,482.10.
6. The appellant timely appealed MassHealth's denial notice.

⁴ One affidavit is dated February 21, 2023, and the other is dated March 10, 2023 (Exhibit 3).

Analysis and Conclusions of Law

“MassHealth is a cooperative Federal and State undertaking that provides payment for medical services to eligible individuals and families who are unable to pay for their own medical care” *Shelales v. Dir. of the Office of Medicaid*, 75 Mass. App. Ct. 636, 637 (2009). MassHealth is “a needs-based program aimed at maximizing the use of personal funds for long-term care before relying on public funds. Medicaid is, and always has been, a program to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves” *Id.* at 641.

For an individual applying for MassHealth long-term-care benefits, there exists an asset limit of \$2,000 (130 CMR 520.003). In determining eligibility,

Countable assets are all assets that must be included in the determination of eligibility. Countable assets include assets to which the applicant or member . . . would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved.

(130 CMR 520.007).

MassHealth considers securities, such as stocks, countable assets⁵ (130 CMR 520.007(D)). MassHealth, however, will not count “a security for which there is no market value or that is inaccessible in accordance with 130 CMR 520.006” *Id.* Jointly-held assets, other than bank accounts, are treated as follows:

Any asset, other than a joint bank account, jointly owned by two or more individuals, is presumed to be owned in equal shares and counted proportionately unless a different distribution of ownership is verified or unless assets are being assessed in accordance with 130 CMR 520.016. When such a different distribution of ownership is verified, the MassHealth agency attributes the countable value of the assets to the applicant or member or the spouse in proportion to the ownership interest.

(130 CMR 520.005(B)).

⁵ Securities include, but are not limited to, stocks, bonds, options, futures contracts, debentures, mutual funds including money-market mutual funds, and other financial instruments. Tradable securities are valued at the most recent closing-bid price, and nontradable securities are valued at current equity value (130 CMR 520.007(D)).

It is undisputed that the appellant and her sons own the stocks as joint tenants. Because the stocks are owned jointly, MassHealth “presumed [the stocks] to be owned in equal shares and counted [appellant’s interest] proportionately.” The disputed issue, however, is whether the sons’ refusal to sell the stock renders the appellant’s portion inaccessible to her because she has “no legal access” to the shares (130 CMR 520.006(A)).

The MassHealth regulation governing inaccessible assets is set forth below:

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

- (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and
- (2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

- (1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or
- (2) from the period beginning six months after the date of application or acquisition, whichever is later, if
 - (a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or
 - (b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

(130 CMR 520.006).

On this record, the appellant has not met her burden in establishing beyond a preponderance of the evidence that she has no “legal access” to the stocks. The regulations at 130 CMR 520.006(C) state that “all assets to which the applicant . . . is legally entitled” are considered accessible.⁶ The appellant has not provided any evidence to support her argument that she is not legally entitled to a one-third share of the stock holdings. Since the late 1990s, the appellant has held legal title to the stock and chose to add her sons as joint owners at that time. She never relinquished her ownership rights and thus was legally entitled to the stocks at the time of her MassHealth application. The sons’ refusal to sell does not somehow diminish or extinguish her ownership interest in the asset. The record does not include any evidence that the appellant has initiated legal proceedings or taken any action to attempt to access her portion of the stock.

The language of 130 CMR 520.006(B) suggests that inaccessible assets are those where there is some barrier that *temporarily* prevents the applicant from obtaining legal access to the asset, such as the time lag associated with cashing out a life insurance policy or the duration of a legal proceeding to determine the ownership of an asset (e.g., probate and divorce suits). As discussed above, here, there is no legal or otherwise formal proceeding currently pending that bears any similarity to the examples provided in 130 CMR 520.006(B). Rather, the appellant argues that she has no obligation to take any affirmative action to sell her interest because her sons’ refusal to sell is, alone, enough to render the asset “inaccessible.” This argument, without more, falls short and fails to meet the appellant’s burden here.

The appellant has failed to demonstrate that MassHealth incorrectly calculated her countable assets.⁷ For the foregoing reasons, the appeal is denied.

Order for MassHealth

None.

⁶ Additionally, 130 CMR 520.007 provides that “[c]ountable assets include assets to which the applicant . . . would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant . . . or person acting on his or her behalf.”

⁷ In light of the conclusion here (that the stocks are countable), MassHealth’s argument that the sons’ actions constitute a disqualifying transfer of assets need not be addressed.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Worcester MassHealth Enrollment Center

[REDACTED]