

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2305485
<b>Decision Date:</b>	9/1/2023	<b>Hearing Date:</b>	07/31/2023
<b>Hearing Officer:</b>	Alexis Demirjian	<b>Record Open to:</b>	8/21/2023

**Appearance for Appellant:**



**Appearance for MassHealth:**

Janine Monico, 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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Over 65; Asset Spend Down; Insurance Policy
<b>Decision Date:</b>	9/1/2023	<b>Hearing Date:</b>	07/31/2023
<b>MassHealth's Rep.:</b>	Janine Monico	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center Room 1	<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 June 14, 2023, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that appellant had assets in excess of \$2,000. (see 130 CMR 520.003 and 130 CMR 520.004 and Exhibit 3). The appellant filed this appeal in a timely manner on July 6, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal before the Board of Appeals. (see 130 CMR 610.032). A record open period was allowed for the appellant to submit documentation to prove that the asset was spent down.

## Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth coverage because MassHealth determined that the appellant had assets more than \$2,000.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003 and 130 CMR 520.004, in determining that appellant has assets in excess of \$2,000.

## Summary of Evidence

On or about January 30, 2023, MassHealth received a renewal application for the appellant. The appellant is over aged 65 and had applied for a frail elder waiver.

On February 3, 2023, this renewal was processed and MassHealth generated a request for additional information to determine the appellant's eligibility. MassHealth was seeking information related to the appellant's pension and two [REDACTED] life insurance policies ending in [REDACTED] and [REDACTED]. MassHealth requested the verification of the face value and cash surrender value of each policy. The due date for submission of the requested information was March 5, 2023. MassHealth did not receive the requested documentation by the due date.

April 3, 2023, MassHealth received verification of [REDACTED] life insurance policies ending in [REDACTED] and [REDACTED]. Additionally, MassHealth received information related to a third, previously unreported, [REDACTED] life insurance policy ending in [REDACTED]. The previously undisclosed policy had a face value of \$5,560 and an accumulated cash value of \$2,539.76. The discovery of the [REDACTED] life insurance policy ending in [REDACTED], in addition to the appellant's other assets, brought the appellant's assets over \$2,000.

On April 7, 2023, MassHealth issued a termination of the appellant's home and community-based waiver because she did not meet the financial criteria for the program. The appellant was given 30 days to provide proof of asset reduction. The appellant did not provide documentation of the asset reduction within 30 days.

However, on June 5, 2023, the appellant's representative submitted a one-page document from McCabe Funeral Home which stated (see Exhibit 4):

Please be advised that the [funeral home] is in receipt of a life insurance policy on the life of [appellant]. The life insurance policy is with the [REDACTED] Insurance company in the amount of \$5,560.

The [funeral home] has an Irrevocable Pre-Need Funeral Contract with the [appellant] in the amount of \$11,315. The proceeds of the life insurance policy has been assigned towards these future expenses.

MassHealth reviewed the letter from the funeral home and deemed it insufficient documentation of asset reduction, because the appellant did not include the irrevocable burial

contract, nor did it include the account number for the [REDACTED] policy. Additionally, the appellant failed to provide documentation of the transfer of [REDACTED] policy.

At hearing, the appellant, through her daughter, argued that the insurance policy ending in [REDACTED] was no longer an asset because it was assigned to a funeral home for payment of a pre-burial contract. In support of this argument, the appellant's daughter provided the same letter from the funeral home which had previously been submitted to MassHealth and rejected as evidence of transfer of the asset.

In response, MassHealth reiterated that it needed three things to verify the reduction of the asset: 1) an itemized copy of the burial contract; 2) documentation from the funeral home including the policy number of the transferred life insurance; and 3) proof that the insurance policy was transferred to the funeral home.

During the record open period, the appellant's daughter submitted an itemized burial contract, which indicated that the [REDACTED] life insurance policy ending in [REDACTED] was assigned to the nursing home but did not submit any formal documentation assigning or transferring ownership of [REDACTED] policy ending in [REDACTED].

## **Findings of Fact**

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

1. On January 30, 2023, the appellant is over 65 years of age submitted a renewal. (Testimony)
2. On June 14, 2023, MassHealth denied the appellant's application for MassHealth benefits based on an excess of assets. (Testimony; Exhibit)
3. On May 25, 2023, the appellant contracted with a funeral home for a burial contract. (Testimony; Exhibit 4).
4. The burial contract states that the [REDACTED] policy ending [REDACTED] was assigned to the funeral home. (Exhibit 6).
5. The appellant did not submit documentation showing the transfer of the [REDACTED] insurance policy ending in [REDACTED].

## **Analysis and Conclusions of Law**

Pursuant to 130 CMR 520.003(A), 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. Furthermore, 130 CMR 520.004 states the following regarding asset reduction:

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

- (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.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

MassHealth has codified a list of permissible transfers that may be found at 130 CMR 520.019 (D). The regulation requires that transfers of resources made for the sole benefit of a particular person must be in accordance with federal law. The list of permissible transfers allowed by 130 CMR 520.019 (D) are below:

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.
- (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.
- (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.
- (5) Effective until 60 days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), the resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. Effective 60 days after the end of the maintenance of effort and continuous eligibility

provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), this transfer is no longer permissible.

(6) The nursing facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:

(a) the spouse;

(b) the nursing facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled;

(c) the nursing facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing facility resident's home for at least one year immediately before the date of the nursing facility resident's admission to the nursing facility; or

(d) the nursing facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing facility resident's home for at least two years immediately before the date of the nursing facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

**(7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing facility resident or the spouse in accordance with 130 CMR 520.008(F).**

130 CMR 520.008(F), provides that the following funeral and burial arrangements are not considered countable assets:

(1) The following funeral or burial arrangements for the applicant, member, or spouse are considered noncountable assets:

(a) any burial space, including any burial space for any immediate family member;

(b) one of the following:

1. a separately identifiable amount not to exceed \$1,500 expressly reserved for funeral and burial expenses; or

2. life-insurance policies designated exclusively for funeral and burial expenses with a total face value not to exceed \$1,500;

(c) the cash-surrender value of burial insurance; and

(d) prepaid irrevocable burial contracts or irrevocable trust accounts designated for funeral and burial expense.

(2) Appreciated value or interest earned or accrued and left to accumulate on any contracts, accounts, or life insurance is also noncountable. If the applicant, member, or spouse uses any of these assets, including the interest accrued, for other than funeral or

burial arrangements of the applicant, member, or spouse, the MassHealth agency considers the asset available and countable under the provisions of 130 CMR 520.007, 520.018, and 520.019.

(3) The applicant, member, or spouse has the right to establish a burial arrangement or change the designation of his or her funds to a burial arrangement described in 130 CMR 520.008(F). If such arrangement is made within 60 days after the date that the applicant or member was notified of his or her right to do so, then the MassHealth agency considers the arrangement to have been in existence on the first day of the third month before the application.

The appellant and her representative have made a sincere effort to comply with the regulation and to transfer the life insurance policy ending in [REDACTED] however they have repeatedly failed to produce documentation that the life insurance policy was transferred to the funeral home.

This hearing officer searched utilized Google to search the phrase “transfer [REDACTED] Life insurance policy” and found a link to a [REDACTED] company link which shows the form that must be submitted to transfer ownership of the life insurance policy to the funeral home.<sup>1</sup> It is not enough to indicate that the policy has been “assigned” to the nursing home to pay a pre-burial account. The appellant or the appellant’s representatives must effectuate the transfer of the policy and provide proof of that transfer to MassHealth for this asset to be considered noncountable. For those reasons, this appeal is DENIED.

The appellant may submit a new application and provide the outstanding documentation with that application.

## **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.

---

<sup>1</sup> [https://www.mycolonialpenn.com/media/9575/change\\_owner\\_fa26214\\_web.pdf](https://www.mycolonialpenn.com/media/9575/change_owner_fa26214_web.pdf), last viewed on September 1, 2023.

---

Alexis Demirjian  
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 Representative:

[REDACTED]