

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2306186
<b>Decision Date:</b>	5/21/2024	<b>Hearing Date:</b>	12/18/2023
<b>Hearing Officer:</b>	Thomas Doyle	<b>Record Closed:</b>	05/16/2024

**Appearance for Appellant:**  
Michael Montefiore, Esq.

**Appearance for MassHealth:**  
Karen Ryan, 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>	Excess Assets
<b>Decision Date:</b>	5/21/2024	<b>Hearing Date:</b>	12/18/2023
<b>MassHealth's Rep.:</b>	Karen Ryan	<b>Appellant's Rep.:</b>	Micheal Montefiore, Esq.
<b>Hearing Location:</b>	Remote (phone)	<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 July 11, 2023, MassHealth denied the appellant's application for long term care services because MassHealth determined that appellant had excess assets. (Ex. 1). Through a notice dated July 12, 2023, MassHealth learned of the death of appellant. (Ex. 2). A Voluntary Administrator was appointed (Ex. 4), who filed this appeal on November 22, 2023. (Ex. 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied long term-care services because appellant had excess assets.

### Issue

The appeal issue is whether MassHealth was correct in denying long-term care services because appellant had excess assets.

### Summary of Evidence

The MassHealth worker (worker) and the appeal representative, an attorney (“appeal rep”), both appeared by phone. The hearing began, both parties were sworn and exhibits were marked. The worker testified that appellant was admitted to the facility on [REDACTED] 2022, and the facility is seeking a coverage start-date of January 1, 2023. The worker stated appellant passed away on [REDACTED] 2023. The worker stated appellant’s spouse (“spouse”) was admitted to the facility on [REDACTED] 2022. For the purposes of the notice under appeal, individual assets and life insurance were applied to individual owners. Any bank accounts jointly held were counted in their entirety to each owner (Testimony). The worker stated MassHealth received an application for long-term care for appellant on February 1, 2023, and it was denied on July 11, 2023 for excess assets pursuant to 130 CMR 520.003 and 004. The worker stated the assets found countable to appellant were 4 [REDACTED] life insurance policies ending in [REDACTED], [REDACTED], [REDACTED] and [REDACTED] respectively, and 2 [REDACTED] bank accounts ending in [REDACTED] and [REDACTED] respectively, totaling \$211,160. (Testimony; Ex. 13).<sup>1</sup> She subtracted \$2000 for the individual limit and found appellant was in excess of the asset limit by \$209,160. (Testimony; Ex. 13).

The appeal rep testified and stated he had no questions for the worker. He stated that “MassHealth numbers match up with what I had previously.” (Testimony). He stated all [REDACTED] policies had been surrendered, and that the assets in the bank accounts were used to purchase an annuity for appellant’s wife. He requested the record be left open to spend down appellant’s assets to the limit of \$2000. (Testimony).

The record was left open for the appeal rep to provide documents showing the surrender of the [REDACTED] policies and spend down of bank accounts. (Ex. 8). The record-open period was extended several times due to the illness of the appeal representative. (Ex. 9 and 11). On February 6, 2024, the appeal rep provided information regarding the 4 [REDACTED] accounts and the 2 checking accounts. (Ex. 10). On February 16, 2024, the appeal rep provided information regarding an annuity that had been purchased for appellant’s wife. (Ex. 12).

On April 11, 2024, this hearing officer reopened the record for the submission of briefs from the parties, due by May 16, 2024. (Ex. 15). A reply was received by MassHealth on May 14, 2024 and was marked as Exhibit 16. The appeal rep replied on May 16, 2024 and his brief was marked as Exhibit 17.

In his brief, the appeal representative describes the annuity purchased for appellant’s spouse following the appellant’s death (*Id.*).

## Findings of Fact

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

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<sup>1</sup> One of the [REDACTED] Bank accounts was an Individual Retirement Account (IRA).

1. Appellant was admitted to the facility on [REDACTED] 2022, and the facility is seeking a start date of January 1, 2023. Appellant's spouse was admitted to the facility on the same day. (Testimony).
2. MassHealth received an application for long-term care for appellant on February 1, 2023 and it was denied by notice dated July 11, 2023 for excess assets. (Testimony; Ex. 1).
3. Appellant died on [REDACTED] 2023. (Testimony; Ex. 4, p. 1).
4. Assets countable to the appellant at the time of his death were 4 [REDACTED] life insurance accounts with a total cash surrender value of \$25,185 and 2 [REDACTED] bank accounts totaling \$185,974, for a total asset amount of \$211,160. (Testimony; Ex. 13).
5. MassHealth subtracted the individual limit of \$2000 and found appellant had excess assets totaling \$209,160 before his death. (Testimony; Ex. 13).
6. Appellant did not provide any verified burial or funeral expenses, or evidence of medical payments made on the appellant's behalf, to support asset spenddown. (Ex. 13 and 16).
7. Appeal representative does not dispute the calculations submitted by MassHealth regarding the amount of excess assets. (Appeal Rep Testimony).

## Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

The issue is whether appellant had excess assets to qualify for long term benefits. There is no dispute appellant had 4 [REDACTED] accounts and 2 [REDACTED] bank accounts totaling \$211,160.00. Subtracting the \$2000 limit (130 CMR 520.003(A)(1)), appellant was over assets by \$209,160.00 at the time of his death on [REDACTED] 2023. The appeal representative did not dispute the amount appellant was over assets. The record was left open for the appeal representative to spend down appellant's assets. The response is included in Exhibits 10 and 17. Any and all actions taken regarding the 4 [REDACTED] policies and [REDACTED] accounts were taken after appellant died. Appeal representative writes that the [REDACTED] policies were "surrendered for their cash value." (Ex. 17).

"The cash-surrender value of a life-insurance policy is the amount of money, if any, that the issuing company has agreed to pay the owner of the policy upon its cancellation." 130 CMR

520.007(E)(1). Appellant was the owner of the 4 policies, but unfortunately, he died before being able to surrender them. The appeal representative writes that appellant's [REDACTED] IRA account ending in [REDACTED] was withdrawn, and the proceeds distributed to his wife as beneficiary after appellant died. (Ex. 17). Again, at his time of death, this [REDACTED] IRA was an asset countable to the appellant. The appeal representative writes that all the money from the 4 [REDACTED] accounts and the [REDACTED] IRA account were deposited in the [REDACTED] account ending in [REDACTED] (Ex. 17). Account [REDACTED] is a jointly held account by appellant and his spouse (Ex. 16), which is countable in full to appellant pursuant to 130 CMR 520.005(C)(2). This money in account [REDACTED] was used to purchase an annuity for appellant's spouse (Ex. 17). All the money used to purchase the annuity was an asset available to appellant on the date of his death. (see 130 CMR 520.007 (C)(1), "Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.").

In his brief, the appeal representative describes the annuity purchased for appellant's spouse. However, this annuity is for the benefit of the spouse, established by using the assets available to appellant before he died. The appeal representative did not provide copies of any medical expenses, or burial or funeral expenses, spent by the appellant during the record-open period to accomplish the spend down of the appellant's assets at the time of his application for MassHealth coverage. (Exs. 10, 17).

The appeal representative had requested additional time to accomplish a spend down of the appellant's assets. The record was left open for submissions on behalf of the appellant. The appeal representative submitted no documentation to show that the spend down had been accomplished in accordance with MassHealth regulations. (see 130 CMR 520.008). No evidence of payment for medical expenses was submitted in this administrative record. No evidence of payment for burial or funeral expenses was submitted in this administrative record. This administrative record is bereft of any submissions that would demonstrate that any of the appellant's assets, as they existed at the time of his death, were non-countable pursuant to 130 CMR 520.008.

Based upon this administrative record, the appellant's estate, through the representative, has not met the burden, by a preponderance of evidence, to show, the invalidity of the MassHealth determination that the appellant's assets exceeded the limit for MassHealth coverage. In fact, at hearing the appeal representative concurred with the figures about which MassHealth testified.

Accordingly, 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 c30A 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.

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Thomas Doyle  
Hearing Officer  
Board of Hearings

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

Appeal Representative: Michael Monteforte, Esq., 300 TradeCenter, Suite 5640, Woburn MA 01801