

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2307305
Decision Date:	1/4/2024	Hearing Date:	11/27/2023
Hearing Officer:	Susan Burgess-Cox	Record Open to:	12/11/2023

Appearance for Appellant:



Appearance for MassHealth:

Rachel Manzi



*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
Decision Date:	1/4/2024	Hearing Date:	11/27/2023
MassHealth's Rep.:	Rachel Manzi	Appellant's Rep.:	[REDACTED]
Hearing Location:	All Parties Appeared by Telephone		

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 31, 2023, MassHealth denied the appellant's application for long-term care benefits due to having more countable assets than MassHealth benefits allow. (130 CMR 520.000; Exhibit 1). An appeal was filed on August 22, 2023. (Exhibit 2). The party signing the request for hearing was an attorney. (Exhibit 2). Through a notice dated August 22, 2023, the Board of Hearings dismissed the appeal as the individual who signed the request for hearing did not demonstrate that the party filing the appeal was a MassHealth applicant/member or appeal representative. (130 CMR 610.004; 130 CMR 610.034; 130 CMR 610.035; Exhibit 3).

On October 4, 2023, the Board of Hearings received correspondence from counsel for the appellant stating that he sent in a request to vacate the dismissal on August 31, 2023 which was within the required 10 day period for such submission. (Exhibit 4). This submission included a facsimile transmittal sheet dated August 31, 2023 and an authorized representative designation (ARD) form certifying that the appellant could not provide written designation and did not otherwise have an individual who could act on her behalf. (Exhibit 4). The individual signing the form worked for the law office of the attorney who appeared at the hearing. (Exhibit 5).

On November 1, 2023, the Board of Hearings received correspondence from counsel for the appellant inquiring about the status of the appeal as well as letter noting that the attorney who

signed the ARD was no longer working at the firm, and he would now serve as the appeal representative. (Exhibit 5). The Board of Hearings scheduled a hearing for November 27, 2023. (Exhibit 6). At the request of counsel for the appellant, the record was held open until December 11, 2023. (Exhibit 8).

Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant has more countable assets than MassHealth benefits allow.

Issue

Whether MassHealth was correct in determining that the appellant has more countable assets than MassHealth benefits allow.

Summary of Evidence

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 7.

MassHealth received an application for long-term care in March 2023. On March 21, 2023, MassHealth sent a request for information. On April 1, 2023, MassHealth issued a new request for information giving the appellant 90 days to provide information necessary to determine eligibility pursuant to an agency decision issued through a March 2023 Eligibility Operations Memorandum that extended the number of days for individuals to provide information necessary to determine eligibility from 30 days to 90 days to align timelines for Modified Adjusted Gross Income (MAGI) and non-MAGI populations. (Testimony; Exhibit 7; Eligibility Operations Memo 23-09). On April 19, 2023, MassHealth received some of the information necessary to determine eligibility. On May 25, 2023, MassHealth issued a new request for information. (Testimony; Exhibit 7). After the issuance of the second information request, MassHealth received the information necessary to make an eligibility determination.

On July 31, 2023, MassHealth issued a notice denying coverage for long-term care services as the appellant had more countable assets than MassHealth benefits allow. (Testimony; Exhibit 1; Exhibit 7). The assets at issue included a life insurance policy totaling \$7,942.89 and two bank accounts. (Testimony; Exhibit 1; Exhibit 7). One bank account had a balance of \$207,269.17 and the second had a balance of \$2,320.72. (Testimony; Exhibit 1; Exhibit 7). Total bank account balances of \$209,589.89 along with the value of the life insurance policy

(\$7,942.89) gave the appellant total countable assets of \$217,531.78. (Testimony; Exhibit 1; Exhibit 7). After deducting the allowable asset limit of \$2,000, MassHealth determined that the appellant had excess assets in the amount of \$215,532.78. (Testimony; Exhibit 1; Exhibit 7).

The MassHealth representative testified that the appellant's son sent the agency a document regarding the proceeds from the sale of a home in [REDACTED], Massachusetts. (Exhibit 7). The copy of the document submitted into the hearing record by the MassHealth representative does not have a signature or any notarization indicating that it is a sworn statement. (Exhibit 7).

The document states that property in [REDACTED], Massachusetts was transferred from the appellant individually to the appellant, her son and her daughter in 1994. In 2005, title to the property was transferred to the appellant and her daughter alone. In 2013, title to the property was transferred to the appellant's daughter alone. The document states that in 2013 there was a verbal agreement that if the property was sold, proceeds would be divided between the parties giving the appellant 25% interest, her son 25% interest and her daughter 50% interest. The appellant's daughter sold the home in 2017 for \$610,000 and 50% of the proceeds went into a joint account held by the appellant and her son. The document states that the balance was to be split between the appellant and her son. The MassHealth representative cited regulations governing the countability of a joint bank account which state that when the applicant or member is a joint owner of a bank account, the entire amount on deposit is considered available to the applicant or member except when assessing assets in accordance with 130 CMR 520.016 which describes the treatment of countable assets when one member of a couple is institutionalized. The MassHealth representative noted that if an applicant or member claims partial ownership of a joint account, he or she must verify the amount owed by each depositor. MassHealth determined that the appellant did not meet this requirement so considered the entire balance as countable. (Testimony; Exhibit 1; Exhibit 7).

At hearing, counsel for the appellant noted that the appellant took action to surrender the life insurance policy and he was working to put funds into an annuity. It was noted that the notice on appeal was issued in July 2023. Counsel for the appellant did not challenge the fact that the appellant had excess assets. Even with the division of assets in the bank accounts in question, the appellant's assets would total more than \$2,000. Counsel noted that the case was initially being handled by an associate who was no longer working with the firm and family members were claiming ownership of some of the funds at issue making it difficult to spend down the assets. Counsel requested additional time to present evidence of an asset spenddown. The Board of Hearings granted the request to keep the record open for a period. (Exhibit 8). On December 7, 2023, counsel requested an extension of the record open period as he learned that the appellant passed away and her son wanted to proceed with the application so the facility would be paid for services rendered.

While the total time requested was denied, counsel was provided some additional time to present evidence regarding the matter at issue. (Exhibit 9). No additional evidence was presented. As

evidence and testimony regarding the matter at issue were presented while the appellant was alive, this decision is based on what was presented prior to and at hearing.

Findings of Fact

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

1. MassHealth received an application for long-term care in March 2023.
2. On March 21, 2023, MassHealth sent a request for information.
3. On April 1, 2023, MassHealth issued a new request for information providing the appellant 90 days to provide information necessary to determine eligibility.
4. On April 4, 2019, MassHealth received some of the information necessary to determine eligibility.
5. On May 25, 2023, MassHealth issued a notice requesting additional information.
6. MassHealth received information necessary to make an eligibility determination.
7. On July 21, 2023, MassHealth determined that the appellant was not eligible for MassHealth due to having more countable assets than MassHealth benefits allow.
8. MassHealth determined that the appellant had assets totaling \$217,532.78.
9. The assets at issue included:
 - a. A life insurance policy totaling \$7,942.89;
 - b. A bank account with a balance of \$207,269.17; and
 - c. A bank account with a balance of \$2,320.72.
10. The bank account with a balance of \$207,269.17 is in the name of both the appellant and her son.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Countable assets are all assets that must be included in the determination of eligibility. (130 CMR 520.007). Countable assets include assets to which the applicant or member or his or her spouse 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. (130 CMR 520.007). 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).

Assets that MassHealth considers countable include bank accounts. (130 CMR 520.007(B)). Bank accounts are defined as deposits in a bank, savings and loan institution, credit union, or other financial institution. (130 CMR 520.07(B)). Bank accounts may be in the form of savings, checking, or trust accounts, term certificates, or other types of accounts. (130 CMR 520.007(B)(1)). MassHealth considers funds in a bank account available only to the extent that the applicant or member has both ownership of and access to such funds. (130 CMR 520.007(B)(2)). MassHealth determines the ownership of and access to the funds in accordance with 130 CMR 520.005 and 520.006. (130 CMR 520.007(B)(2)). The regulations at 130 CMR 520.005 speak to ownership and the regulations at 130 CMR 520.006 speak to accessibility.

Pursuant to 130 CMR 520.005(C)(2), when an applicant or member is a joint owner of a bank account, the entire amount on deposit is considered available to the applicant or member, except when assessing assets in accordance with 130 CMR 520.016. The regulations at 130 CMR 520.016 speak to the treatment of countable assets when one member of a couple is institutionalized. The appellant is a single individual so any exception under that section of the regulations is not applicable to this case.

If the applicant or member claims partial ownership of the funds in the joint account, he or she must verify the amount owned by each joint depositor. (130 CMR 520.005(C)(3)). When such a partial ownership is verified, the countable value of the assets is attributed to each owner in proportion to the ownership interest. (130 CMR 520.005(C)(3)). The applicant or member may transfer the funds owned by him or her into an account that accurately reflects his or her ownership interest. (130 CMR 520.005(C)(4)). MassHealth does not consider such a transfer of assets to make oneself eligible for MassHealth if the transfer is completed within 30 days after

written notification by MassHealth of this requirement, except in the case of a community spouse as described at 130 CMR 520.016 who is allowed 90 days to make the transfer. (130 CMR 520.005(C)(4)).

Individual or joint ownership of any countable asset must be verified by a written document providing reasonable evidence of ownership. (130 CMR 520.005(D)). MassHealth determines whether a verification is acceptable in accordance with 130 CMR 520.007(B)(3) and 130 CMR 520.005(D). Pursuant to 130 CMR 520.005(D), acceptable verification includes, but is not limited to, the following:

- (1) a title;
- (2) a purchase contract;
- (3) documents establishing ownership of joint bank accounts that demonstrate the following:
 - (a) the origin of the funds in a joint bank account, who opened the account, or whose money was used to open the account;
 - (b) federal and state tax records as to which joint account holders pay the tax on interest credited to the account as income;
 - (c) records of who makes deposits and withdrawals and, if appropriate, how withdrawn funds are spent;
 - (d) any evidence of written or oral agreements made between the parties at the time of the creation of the account;
 - (e) evidence of age, relationship, physical or mental condition, or place of residence of the co-holders when the applicant or member states that he or she does not own the account but is listed as a co-holder solely as a convenience to the other co-holder to conduct bank transactions on his or her behalf; and
 - (f) why the applicant or member is listed on the account;
- (4) certification of ownership;
- (5) financial-institution records indicating the establishment of an account that accurately reflect the ownership interest of funds from the joint account;
- (6) other documentation that indicates ownership, asset value, and restrictions on access;
- (7) a notarized affidavit, sworn to under penalty of perjury, signed by all owners of the asset, and attesting to the distribution of ownership; or
- (8) the self-declaration of the individual who is applying solely for MassHealth Senior Buy In for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: MassHealth Senior Buy-In (for Qualified Medicare Beneficiaries (QMB)) or MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-In for Qualifying Individuals (QI) both as described in

130 CMR 519.011: MassHealth Buy-In, provided that the MassHealth agency may use electronic data sources to verify eligibility, and at its discretion, request additional verification from the individual.

The only document presented by the parties was a statement presented by the agency that did not indicate any type of notarization and was not signed by all owners of the asset attesting to the distribution of ownership. This is not sufficient to demonstrate a distribution of ownership. Additionally, even if the appellant had a partial ownership of this one account, the statement by her son stating that the funds in the account were “split” between the appellant and her son could still provide the appellant with an interest of over \$100,000.

In addition to funds in a bank account, countable assets include the cash-surrender value of a life-insurance policy. (130 CMR 520.007(E)). This 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)). An individual may adjust the cash-surrender value of life insurance to meet the asset limit and MassHealth will consider the cash-surrender-value amount an inaccessible asset during the adjustment period. (130 CMR 520.008(E)). Counsel for the appellant did not provide any evidence of the appellant taking such action. The value of the life insurance policy alone places the appellant at an asset amount over the allowable \$2,000 limit listed in the regulations at 130 CMR 520.003(A)(1)).

During the time of the application and the course of the appeal, the appellant had more than six months to spend down assets below the allowable limit of \$2,000. Counsel for the appellant did not demonstrate that any proactive steps were taken to spend down the assets at issue or that the agency made any errors in their eligibility decision. The fair hearing process is an administrative, adjudicatory proceeding where dissatisfied applicants, members, and nursing facility residents upon written request, obtain an administrative determination of the appropriateness of certain actions or inactions by the MassHealth agency. (130 CMR 610.012(A)(1)). The hearing process is designed to secure and protect the interests of both the appellant and, as appropriate, the MassHealth agency or its personnel and to ensure equitable treatment for all involved. (130 CMR 610.012(B)). The hearing process is not an extension of the application process.

MassHealth acted within its discretion to deny the appellant’s application for long-term care coverage due to the appellant having excess assets. (130 CMR 520.001(C)). The decision made by MassHealth was correct.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Worcester MEC, Attn: Michael Rooney, 55 SW Cutoff Suite 1A,
Worcester, MA 01604

Appellant Representative: [REDACTED]
[REDACTED]