

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2307457
Decision Date:	03/21/2024	Hearing Date:	11/28/2023
Hearing Officer:	Emily Sabo	Record Open to:	3/18/2024

Appearance for Appellant:



Appearance for MassHealth:

Rachel Manzi, 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

Appeal Decision:	Denied	Issue:	Eligibility; Over 65; Over Assets; Frail Elder Waiver
Decision Date:	03/21/2024	Hearing Date:	11/28/2023
MassHealth's Rep.:	Rachel Manzi	Appellant's Rep.:	Attorney
Hearing Location:	Tewksbury MassHealth Enrollment Center (Telephone)	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 July 31, 2023, MassHealth denied the Appellant's application for MassHealth because MassHealth determined that the Appellant had more countable assets than allowed (see 130 CMR 520.003, 130 CMR 520.004, and Exhibit 1). The Appellant's attorney filed this appeal in a timely manner on August 24, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's application for long-term-care services in a nursing facility.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 519.007, 130 CMR 520.003, and 130 CMR 520.004, in determining that the Appellant had more countable assets than

allowed.

Summary of Evidence

The hearing was held telephonically. The MassHealth representative testified as follows: the Appellant is an individual over the age of 65, who submitted an application for MassHealth on February 17, 2023, under the Home-and-Community-Based Services Frail Elder Waiver. MassHealth requested additional information from the Appellant. On July 31, 2023, MassHealth denied the Appellant's application because she had more countable assets than allowed. The MassHealth representative testified that the Appellant's countable assets included \$2,475.89 of stocks and \$22,333 in a bank account. The MassHealth representative explained that the Appellant's countable assets were \$24,808.89, which is \$22,808.89 over the \$2,000 asset limit. The MassHealth representative testified that the Appellant's income was under the income limit for the Frail Elder Waiver.

The Appellant was represented by her attorney who verified the Appellant's identity. The Appellant's representative stated that he agreed with MassHealth's testimony. The Appellant's representative testified that he believed the Appellant's assets had been spent down on medical bills and a prepaid funeral contract, such that the Appellant's countable assets were less than \$2,000.

The record was initially held open until December 19, 2023, for the Appellant to submit additional evidence, and until December 26, 2023, for MassHealth to review and respond. The Appellant requested several extensions, which were granted until March 4, 2024, with MassHealth having until March 18, 2024, to review and respond. On March 18, 2024, the MassHealth representative confirmed that MassHealth had not received any additional information. Exhibit 6.

Findings of Fact

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

1. The Appellant is an individual over the age of 65 (Testimony, Exhibit 4).
2. The Appellant submitted a MassHealth application under the Home-and-Community-Based Services Frail Elder Waiver on February 17, 2023 (Testimony).
3. The Appellant had countable assets of \$24,808.89 (Testimony, Exhibit 5).
4. MassHealth determined that the Appellant was not eligible for MassHealth Standard because she had excess assets of \$22,808.89 (Testimony, Exhibit 5).

Analysis and Conclusions of Law

In evaluating financial eligibility for MassHealth, 130 CMR 519.007(B) provides

(B) Home- and Community-based Services Waiver–Frail Elder.

(1) Clinical and Age Requirements. The Home- and Community-based Services Waiver allows an applicant or member who is certified by the MassHealth agency or its agent to be in need of nursing-facility services to receive certain waiver services at home if they

(a) are 60 years of age or older and, if younger than 65 years old, is permanently and totally disabled in accordance with Title XVI standards; and

(b) would be institutionalized in a nursing facility, unless he or she receives one or more of the services administered by the Executive Office of Elder Affairs under the Home- and Community-Based Services Waiver-Frail Elder authorized under section 1915(c) of the Social Security Act.

(2) Eligibility Requirements. In determining eligibility for MassHealth Standard and for waiver services, the MassHealth agency determines income eligibility based solely on the applicant's or member's income regardless of their marital status. The applicant or member must

(a) meet the requirements of 130 CMR 519.007(B)(1)(a) and (b);

(b) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual; and

(c) have countable assets of \$2,000 for an individual and, for a married couple if the initial Waiver eligibility determination was on or after January 1, 2014, have assets that are less than or equal to the standards at 130 CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and

(d) have not transferred resources for less than fair market value, as described at 130 CMR 520.018: *Transfer of Resources Regardless of the Transfer Date* and 520.019: *Transfer of Resources Occurring on or After August 11, 1993*.

(3) Financial Standards Not Met. Individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.007(B)(2) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: *Asset Reduction*, by meeting a deductible as described at 130 CMR 520.028: *Eligibility for a Deductible* through 520.035: *Conclusion of the Deductible Process*, or by both.

130 CMR 519.007(B).

The MassHealth regulations outline how an individual can reduce assets to qualify for MassHealth:

(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.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility

(1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: Date of Application; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

130 CMR 520.004.

MassHealth denied the Appellant's application for benefits because it determined that the Appellant's assets rendered her financially ineligible. The Appellant had a bank account and stocks totaling \$24,808.89. The asset limit for the program is \$2,000. 130 CMR 519.007(B)(2)(c). The Appellant's countable assets exceeded the MassHealth limit of \$2,000 by \$22,808.89 and the Appellant was not financially eligible for MassHealth.

While the Appellant's attorney testified that he believed the Appellant had reduced her assets, as allowed by 130 CMR 520.004, no supporting evidence was provided during the record open period. Therefore, MassHealth did not err in denying the Appellant's application. Accordingly, the

appeal is denied insofar as the Appellant's assets still exceed the MassHealth limit.

Order for MassHealth

The Appellant shall have 30 days from the date of this decision to submit proof of spend down of the excess assets to MassHealth. If the Appellant submits proof of spend down of assets to MassHealth within 30 days, MassHealth is directed to determine the Appellant's eligibility in accordance with 130 CMR 520.004.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Emily Sabo
Hearing Officer
Board of Hearings

cc:

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

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