

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2307856
Decision Date:	3/11/2024	Hearing Date:	12/12/2023
Hearing Officer:	Casey Groff, Esq.	Record Closed:	03/01/2024

Appearance for Appellant:



Appearance for MassHealth:

Andrea Pelczar and Kristin Boisvert, 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; LTC; Verifications
Decision Date:	3/11/2024	Hearing Date:	12/12/2023
MassHealth's Rep.:	Andrea Pelczar; Kristin Boisvert	Appellant's Rep.:	
Hearing Location:	Board of Hearings (Remote)	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 7/28/2023, MassHealth denied Appellant's application for long-term-care benefits because MassHealth determined that Appellant did not submit verifications to determine his eligibility within the required timeframe. See Exh. 1; 130 CMR 515.008. A timely appeal was filed with BOH on Appellant's behalf on 9/5/23. See 130 CMR 610.015(B) and Exhibit 2. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032. The appeal was initially dismissed by BOH because the fair hearing request did not include documentation to establish legal authority to appeal on Appellant's behalf. See Exh. 3. On 10/20/2023, Appellant's representative responded to the dismissal by submitting his authority as durable power of attorney (PoA) and Health Care Proxy.¹ See Exhs. 4 and 5. BOH vacated the dismissal and scheduled a hearing for 11/24/23. See Exh. 6. The hearing was subsequently rescheduled to 12/12/23 at Appellant's request. See Exh. 7-9. After the hearing, the record remained open until 1/31/24 for Appellant to submit additional evidence. See Exh. 13-16. In addition, the record was re-opened from 2/26/24 through 3/1/24 to solicit additional information from the parties. See Exh. 23.

¹ Although the representative was designated as Appellant's HCP, there was no accompanying documentation to show the HCP had been invoked by a physician. See Exh. 4. In addition, Appellant's POA explained there was a previous effort to file for a conservatorship, however it was ultimately decided not to pursue this avenue.

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth LTC benefits for failure to provide necessary verifications to determine his eligibility within the required timeframe.

Issue

The appeal issue is whether MassHealth was correct in denying Appellant's application for LTC benefits for failure to submit necessary verifications to establish eligibility within the designated timeframe.

Summary of Evidence

A representative from MassHealth appeared at the hearing and testified as follows: On 12/13/22, MassHealth received an application on behalf of Appellant, a non-married individual over the age of [REDACTED], seeking coverage for long-term care (LTC) benefits with a requested start date of 12/16/2022. The LTC application, which was completed and signed by Appellant's PoA, [REDACTED], who is also his appeal representative (hereinafter "A.R."), indicated that Appellant received Social Security income of \$1,200 per-month with yearly income of \$14,400. See Exh. 12(B), pp. 7-25. No bank accounts or financial resources owned by, or associated with, Appellant were identified in the application. See id. Through data matching, MassHealth received information showing that Appellant's Social Security payments were deposited into a [REDACTED] account, and that Appellant was linked to another account through [REDACTED]

On 12/21/22 and 3/24/23, MassHealth issued Requests for Information (RFIs) listing items that Appellant needed to submit for MassHealth to determine Appellant's eligibility for LTC benefits, including: "all financial accounts, both open and closed [with] monthly statements 09/01/21 to present, all activity and daily balances, [and to] explain and send proof of all transactions \$1,000 and over, including the source of deposits, [including] copies of the check(s), copy of invoice(s) showing funds paid, deposit slips, etc." See Exh. 12(D) and Exh. 21. The RFI's specifically identified that it would need these items in relation to Appellant's [REDACTED] account and a [REDACTED] account. See id. The verification deadlines, as identified in the RFI's, were 1/20/23 and 4/23/23, respectively.² See id.

² On 2/6/23, before the second RFI was issued, MassHealth denied Appellant's application for failure to submit verifications. See Exh. 22. The denial notice listed the verifications that remained outstanding, including all requested account information, including the documents related to both of the identified accounts. See id. This denial was appealed timely and MassHealth agreed to honor the original application date on the next determination.

During the application process, MassHealth received a written Certification by A.R., signed and dated 4/3/23, stating he had been unable to access the [REDACTED] account information where Appellant's Social Security was deposited. The Certification states, in relevant part, the following:

2... (b) [Appellant] has been receiving SS since he turned [REDACTED] years old. His son...was stealing his money from April 2022 until September 2022 and [a hospital social worker] had the account closed for fraud in October 2022. I have NO access to this account.

3. There are NO bank accounts of any kind in Appellant's name and there was never any [REDACTED] accounts in his name, which was confirmed by Reps of [REDACTED] and which [a nursing facility employee] was a witness to the call and can attest to.

See Exh. 7, p. 12.

On 7/28/2023, MassHealth denied the application under 130 CMR 515.008 for failure to submit the requested verifications by the deadline. See Exh. 1. The denial notice listed the verifications that remained outstanding, including all requested account information, including the documents related to both the [REDACTED] and [REDACTED] accounts. Id.

Following the 7/28/23 denial, MassHealth received information indicating that Appellant's [REDACTED] account lacked substantial funds and had no activity since 2019. MassHealth stated it was therefore willing to waive verifications for this account so long as it received verification of Appellant's [REDACTED] account, and any other account owned by Appellant or that was receiving his Social Security benefits.

The MassHealth representative testified that it never received the requested [REDACTED] information or any verification that Appellant's account had been frozen. On 12/11/23, the day prior to hearing, A.R. provided MassHealth a "Certification of No Assets" which indicated that he had been appointed Appellant's Social Security Rep Payee and stated the following:

1. [Appellant's] back Social Security payments have finally been received and deposited into an attorney account.
2. By this Certification I attest [Appellant] has no assets.

See Exh. 10.

The MassHealth representative testified that the Certification was not sufficient verification to determine eligibility, and that per the RFI, Appellant would need to submit statements from the "attorney account" and any other account that had received Appellant's Social Security deposits. The representative summarized that, to date, MassHealth had not received documentation of any account owned by or associated with Appellant.

Appellant's representative (A.R.) appeared at the hearing by telephone and provided the following testimony and background information: Appellant is a former professional boxer turned actor and comedian. A.R. explained that he is a longtime friend of Appellant and has known him for decades, including through his work as an entertainment and sports agent.

In August 2022, A.R. was contacted by an employee from a hospital where Appellant was being treated after he was found assaulted and kicked out of his son's home. Shortly thereafter A.R. was appointed as Appellant's power of attorney (PoA) and health care proxy (HCP). See Exhs. 4 and 5. Appellant has short-term memory problems from his work as professional boxer. A.R. testified that the hospital employee who initially contacted him, had Appellant's [REDACTED] account frozen because his son was stealing his Social Security benefits.³

Appellant testified that for over 15 months he has been trying to obtain [REDACTED] account documents without success. The nursing facility has tried to call [REDACTED] with Appellant on the phone and each time has been unsuccessful. A.R. testified that he has also called [REDACTED] dozens of times but they refuse to speak with him as PoA, and would only disclose information if he became Appellant's Social Security representative payee ("rep-payee"). This process has taken months, as his application to become rep-payee was initially denied.⁴ During a second attempt, in May 2023, A.R. was officially appointed as rep-payee.⁵

Once he requested the statements as rep-payee, [REDACTED] told him that they could only provide account information *following* his May 2023 appointment, but nothing prior. A.R. testified that he has not provided MassHealth with documentation from [REDACTED] because he cannot gain access to his account, even as rep-payee, and there is nothing to provide.

A.R. testified that he did, however, get [REDACTED] to release Appellant's Social Security back-pay by working with an attorney through [REDACTED], which is affiliated with [REDACTED] [REDACTED] finally allowed Appellant's frozen [REDACTED] funds go back into Social Security, where it was held for 60 days before resuming payments. A.R. confirmed that he now had access to the balance of funds that had been held in the [REDACTED] account. Once the funds were released, he directed Social Security to transfer the monies to an account of a "high profile entertainment attorney in L.A." who Appellant knows well and has worked with in past endeavors. When asked about the amount of funds released, A.R. stated that there was approximately "\$10,000 in back-pay from the time the card was frozen until payments were made" which was now sitting in the attorney account. A.R. testified that he intends to use Appellant's Social Security funds to pay for a burial account. Because the money is earmarked for this purpose, Appellant has no money or assets.

³ A.R. testified that he intends to file a criminal complaint, as PoA, but has not yet done so.

⁴ A.R. noted that the nursing home wanted to become rep-payee, but he was "able to talk [Appellant] out of that" so that he could use the money for a proper burial.

⁵ A.R. explained that he was initially prevented from becoming rep-payee because a background report incorrectly identified him as someone else with the same name. On a second attempt, he brought a friend of Appellant to Social Security to become rep-payee, however the officer did not encounter the same background problem and told A.R. he should be appointed as the rep-payee.

A.R. explained that it would be unlikely he could obtain statements showing Appellant's funds in the attorney account because it is an [REDACTED] account, comingled with other clients' money, and would breach attorney/client privilege. In addition, A.R. testified that Appellant's money has since been transferred into another account that was created when the attorney's office changed locations. A.R. was not sure of the exact date the new account opened or when the funds were transferred but estimated that this event took place a couple of months or six weeks ago.

In response, MassHealth reiterated that it has not received any information from [REDACTED] or Social Security to substantiate that A.R. could not access the account/funds; nor has it received any bank statements for the accounts now being referenced. Appellant's money, even if held in an [REDACTED] account, is fully countable and MassHealth would need an accounting from the attorney documenting Appellant's share of the [REDACTED] funds from inception to present, the amount deposited, the source of the deposits, verification of disbursements, and the total running balance. MassHealth also needs this information for any other existing accounts, such as PoA accounts, or any account where his Social Security has been received.

At Appellant's request, the record was left open to submit the outstanding verifications discussed at hearing and reflected in the RFIs. See Exh. 13

On 12/13/23, the day following the hearing, A.R. informed MassHealth that he intended to perform a spend-down of Appellant's funds, noting that in addition to funeral costs and a reasonable life insurance policy, he had "engaged a writer for [Appellant's] life story" and signed an agreement on his behalf as PoA. See Exh. 14. A.R. noted that the writer fee is \$275,000.00, the cost to write a script up-front is \$69,000.00, budgets are \$5,000, and decks are \$1,000. Id. He concluded stating "that said, [Appellant] will have no funds to his name before the [record open] deadline." Id.

On 1/21/24, A.R. submitted the following documents, entered into evidence as Exhibit 17:

- A written declaration signed by [REDACTED] ("P.M." or "the attorney"), Esq., dated 1/18/24 stating that he is a licensed attorney in California and has "*in the past represented [Appellant] in connection with some of his entertainment endeavors.*" The attorney further declared that he was provided with Appellant's back Social Security payments in the amount of \$10,700 and that "*It was placed in my legal client trust account, until I was to open a separate bank account for [Appellant]. It was subsequently deposited into that new account.*"
- A one-page bank statement for September 2023 for [REDACTED] showing a deposit of \$10,771.21 on 9/15/23 entered as "[REDACTED] *BE*[Appellant]." This amount was subsequently transferred out of the [REDACTED] account on 9/18/23, via check [REDACTED]. The statement also shows a 9/6/23 withdrawal from the [REDACTED] account of \$16,898.34 via check [REDACTED], leaving the [REDACTED] account with a \$0 balance until the Social Security deposit on 9/15/23.

- A December 2023 statement for a different bank account in the name of "P.M." that shows a beginning balance of \$21,056.68 with total deposits of \$1,440.28, the sources of which were redacted, and a total monthly withdrawal of \$100.00, leaving the account with an ending balance of \$17,396.96.

A.R. provided a written Certification accompanying the 1/21/23 production in which he states that he intends to make expenditures "from [Appellant's] funds" for funeral/burial/cremation, the budget for film/life story of Appellant; PoA expenses/fees, attorney fees, and Cigna costs and other costs to maintain his care properly. See Exh. 17 p. 1.

On 1/25/24, A.R. submitted copies of the following three checks written from the attorney's IOLTA account, and which were entered as Exhibit 19:

- 1) 9/6/23 check [REDACTED] paid to the order of P.M. for \$16,898.34;
- 2) 9/18/23 check [REDACTED] paid to the order of [REDACTED] in the amount of \$10,771.21; and
- 3) 10/9/23 check [REDACTED] paid to the order of "P.M." in the amount of \$1,338.00.

A.R. certified that the enclosed documents were all he could provide without infringing on the sanctity of attorney/client privilege. See Exh. 19. He also reiterated that he could not provide anything related to Appellant's accounts prior to becoming rep-payee in May 2023 and therefore had no [REDACTED] account information to produce. See id.

MassHealth responded that it could not determine eligibility based on the documentation submitted. See Exh. 20. MassHealth specifically questioned whether the 9/18/23 transfer of \$10,771.21 from the [REDACTED] account to [REDACTED] was a payment made on behalf of Appellant, and if so, noted that Appellant had not provided an itemized bill of services to substantiate the transaction. Id. Alternatively, if the \$10,771.21 was subsequently deposited into an account opened for Appellant, as the attorney asserted, there were no documents to show the existence of this account. Id. MassHealth also noted that it was unclear how the other checks from the [REDACTED] account, in the amounts of \$16,898.34 and \$1,338.00, which were deposited into a separate account for "P.M.," related to Appellant. Further, MassHealth pointed to the absence of documents to verify where Appellant's Social Security income for October 2023 going forward was/is being deposited, as well as evidence that the [REDACTED] account was frozen, or proof of Appellant's efforts to obtain the requested [REDACTED] account information.

A.R. wrote a lengthy response, refuting MassHealth's position that it could not make an eligibility determination. See Exh. 20. In his objection, which was outside the parameters of the record-open agreement, A.R. writes that MassHealth "CAN make the simple determination and approve [Appellant for LTC benefits] because [it is certain] that "[Appellant] has no assets..." Id. A.R. also elaborated on previously raised arguments stating that there was no statutory or legal authority for "MassHealth to compel [him] to violate the Fourth Amendment or attorney/client privilege." Id. He further asserted that the documents being sought "have

nothing to do with [Appellant's] back Social Security, and since no checks were written from that money, there is nothing to offer but what we have." Id.

On 2/26/24, the record was reopened to solicit comments relating to a document Appellant submitted to BOH with the fair hearing paperwork. See Exh. 11. The document consisted of a 10/4/23 letter addressed to A.R. by an agency in an unrelated matter,⁶ requesting bank statements for [REDACTED] account [REDACTED] in the names of both "[Appellant]" and "[A.R.], PoA" (hereinafter the "PoA account"). Id. A copy of a voided check for this account is included with the agency's request. Id. On the letter is a handwritten note, which appears to be written by A.R., objecting to the request, stating: "we are not required to provide monthly statements for an account that is not my account" and that the account in question is "clearly a Power of Attorney Acct and NOT my Money" (emphasis in original). Id.

In response to the 2/26/24 request for additional information, A.R. explained that the PoA account in question was "just an account I set up to send [Appellant] snacks, buy his clothes and in general make his life at [the nursing facility] a little easier. It's my money in there." See Exh. 23.

Findings of Fact

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

1. On 12/13/22, MassHealth received an application on behalf of Appellant, a non-married individual over the age of [REDACTED], seeking coverage for LTC benefits with a requested start date of 12/16/2022. (Testimony; Exh. 12(B)).
2. Appellant has received Social Security income of \$1,200 per-month since 2021, which was initially deposited into a [REDACTED] account. (Testimony; Exh. 12(B)).
3. On 12/21/22 and 3/24/23, MassHealth requested verifications including: all account information including, but not limited to, Appellant's [REDACTED] account, that were "both open and closed [with] monthly statements 09/01/21 to present, all activity and daily balances, [and to] explain and send proof of all transactions \$1,000 and over, including the source of deposits, [including] copies of the check(s), copy of invoice(s) showing funds paid, deposit slips, etc." (Testimony; Exh. 12; Exh. 21).
4. The verification deadlines, as identified in both RFI's, were 1/20/23 and 4/23/23, respectively. (Testimony; Exh. 12; Exh. 21).
5. During the application process, A.R. submitted a written certification on 4/3/23 stating that he could not access Appellant's [REDACTED] account and that the account had been frozen. (Exh. 7, p. 12).

⁶ The request is from an out-of-state agency and appears to be related to a personal matter involving AR only and not Appellant.

6. A.R. became Appellant's Social Security rep-payee in May 2023. (Testimony; Exhibits 17 and 19).
7. Following his appointment as rep-payee, A.R. went through [REDACTED] to have Appellant's [REDACTED] account funds released back to Social Security where they were subsequently held for a period of time. (Testimony; Exhibits 10; 17; and 19).
8. On 7/28/2023, MassHealth denied the application under 130 CMR 515.008 for failure receive verifications to determine eligibility, including all requested account information. (Testimony; Exh. 1).
9. Once released into Social Security, A.R., as rep-payee, directed a transfer of \$10,771.21 into an [REDACTED] account held by an out-of-state attorney. (Testimony; Exhibit 17).
10. No documents from [REDACTED], [REDACTED], Social Security have been provided to MassHealth.
11. On 9/15/23, a transfer of \$10,771.21 was made into the [REDACTED] account. (Exhibit 17).
12. On 9/18/23, the \$10,771.21 was transferred out of the [REDACTED] account via check [REDACTED] and paid to [REDACTED] (Exhibits 17 and 19).
13. Through a written declaration, the attorney certified that he was provided with Appellant's back Social Security payments, which was placed his is legal client trust account until he "was to open a separate bank account for [Appellant]" and that the funds were "subsequently deposited into that new account." (Exhibit 17).
14. To date, Appellant has not provided any verification to show where his \$10,771.21 in retro Social Security payments are being held.
15. To date, Appellant has not provided any explanation or verification to show where Appellant's ongoing Social Security payments have been deposited.
16. During the record open period, Appellant sent verification showing two additional transfers from the [REDACTED] account of \$16,898.34 and of \$1,338.00, both of which were paid via checks to "P.M." (Exhibit 19).
17. No documentation has been sent to verify the source and amount of funds held in Appellant's PoA bank account. (Exhibit 10).

Analysis and Conclusions of Law

This appeal concerns whether MassHealth correctly denied Appellant's application for MassHealth long-term care (LTC) benefits because Appellant failed to verify whether he was eligible for benefits. Once an application for benefits is received, MassHealth requests all corroborative information necessary to determine the individual's eligibility, including information relating to income, assets, residency, citizenship, immigration status, and identity.

See 130 CMR 516.001; see also 130 CMR 516.003 (listing eligibility factors that require verification). MassHealth outlines this verification process in 130 CMR 516.003, which states, in relevant part, the following:

(C) Request for Information Notice. If additional documentation is required, including corroborative information as described at 130 CMR 516.001(B), a Request for Information Notice will be sent to the applicant listing all requested verifications and the deadline for submission of the requested verifications.

(D) Time Standards. The following time standards apply to the verification of eligibility factors.

(1) The applicant or member has 30 days from the receipt of the Request for Information Notice to provide all requested verifications.

(2) If the applicant or member fails to provide verification of information within 30 days of receipt of the MassHealth agency's request, MassHealth coverage is denied or terminated.

(3) A new application is required if a reapplication is not received within 30 days of the date of denial.⁷

To qualify for coverage of LTC services, applicants *must* verify that they meet the following eligibility requirements: (1) that their assets do not exceed \$2,000, *and* (2) that they have not made any disqualifying transfers of resources (i.e. transfers for less than fair market value) within the last five years.⁸ See 130 CMR 519.006(A), see also 130 CMR §§ 520.018, 520.019. It is the responsibility of the applicant or member to "cooperate with MassHealth in providing information necessary to establish eligibility... and to comply with all the rules and regulations of MassHealth." See 130 CMR 515.008.

Here, Appellant applied for MassHealth LTC benefits on 12/13/22. MassHealth notified Appellant on 12/21/22, and again on 3/24/23, that he needed to provide, among other items, monthly statements for all financial accounts/resources, including his [REDACTED] account, both open and closed from 9/1/21 through present, showing all activity and daily balances, with additional verification for all transactions \$1,000 and over, including the source of deposits, copies of checks and/or invoices, and deposit slips. See Exh. 12(D). MassHealth did not receive the requested verifications within 90 days of the 3/24/23 RFI. Therefore, on 7/28/23, MassHealth appropriately denied Appellant's application for benefits in accordance with 130 CMR §§ 515.008, 516.003. See Exh. 1.

⁷ The time frame for producing requested verifications was extended from 30-days to 90-days, effective April 1, 2023, See Eligibility Operations Memo 23-09 (March 2023).

⁸ Under MassHealth's financial eligibility regulations, an applicant who is "otherwise eligible" may incur a period of disqualification if their asset history reveals that they (or their spouse) transferred resources for less than fair market value. See 130 CMR §§ 520.018, 520.019.

Throughout the application process, A.R. cited, in support of his non-production of documents, that he could not access Appellant's [REDACTED] account. A.R. admits, however, that he obtained full access to all account information from May 2023 forward when he was appointed rep-payee. In this capacity, he was able to have [REDACTED] release the funds through [REDACTED] and back to Social Security. Appellant's argument fails to explain why he could not provide, at a minimum, the balance and movement of Appellant's funds since May 2023.

On 12/11/23, the day prior to hearing, Appellant submitted a "Declaration of no Assets," stating that Appellant's "back Social Security payments have finally been received and deposited into an attorney account" and that Appellant now "had no assets." See Exh. 10. This statement - which was given to MassHealth three months *after* the deposit was made - neglected to identify the amount of back Social Security "received," the amount that was subsequently directed into the attorney account, and the basis for the transfer. Moreover, the Declaration falsely asserted that Appellant "had no assets," when in fact the evidence later showed Appellant had at least \$10,771.21 that was being held by an attorney and had allegedly not been spent down.

When MassHealth reiterated that it needed statements to verify the movement of Appellant's assets, A.R. objected on grounds that doing so would infringe on attorney/client privilege and Fourth Amendment protections.⁹ Notably, A.R. had been well-aware of his obligation to produce all such verifications, *months before* he opted to transfer Appellant's money into an [REDACTED] account. Choosing to transfer Appellant's assets into an account, knowing they would be comingled with other client funds, does not relieve him of the obligation to verify eligibility when seeking coverage for government funded health care benefits. See 130 CMR 515.008.

The records that Appellant did produce through the record-open period did not provide a complete accounting of Appellant's assets that could be used to determine his eligibility. For example, the single [REDACTED] account statement provided, showed Appellant's retro Social Security of \$10,771.21 being transferred into, and subsequently out of, the account in September of 2023. No documents were provided for the originating account, i.e., where the funds were held prior to being transferred into the [REDACTED] account. The 9/2023 [REDACTED] statement does not, in itself, show how much in Social Security had been held by [REDACTED] or had been subsequently released through [REDACTED] back to Social Security. Because A.R. had rep-payee status in May 2023, there is no apparent reason why he could not provide documentation from [REDACTED], [REDACTED], or Social Security to show the amount of Appellant's accumulated benefits, as well as where his ongoing Social Security payments have been directed.

⁹ This objection fails to recognize that Appellant has not been compelled to produce the requested documents. Specifically, the RFI was generated in *response* to Appellant's application for MassHealth benefits, a process he initiated in order to receive governmental assistance in paying the cost of his LTC expenses. His obligation to produce the account information only exists in relation to his request for benefits. To the extent Appellant challenges the legality of MassHealth's verification process, it cannot be adjudicated in this hearing decision, but may be pursued via judicial review in accordance with M.G.L. c. 30A.

Likewise, Appellant did not provide verification to show where the \$10,771.21 was subsequently deposited. A copy of the check shows the funds were paid to [REDACTED] - an unknown entity. It is unclear whether [REDACTED] is the name of the account the attorney claimed he opened for Appellant and where he claimed to deposit the money; and if not, whether the funds were subsequently transferred from [REDACTED] into an account for Appellant. Additionally, it is unclear why copies of checks paid to P.M. on 9/11/23 for \$16,898.34 and on 10/31/23 for \$1,338.00 would be submitted to MassHealth if they were not relevant to Appellant's assets. If the transfers did include Appellant's money, the sources and location of such funds have not been verified.

Lastly, the evidence raises other questions regarding the existence of additional resources Appellant may have. On several occasions, A.R. informed MassHealth that he intended to complete a "spend-down" of Appellant's assets which involved making substantial purchases on Appellant's behalf, including a movie script for Appellant's life story for \$69,000 not including additional production costs, a "reasonable life insurance policy," attorney's fees, PoA expenses/fees, and funeral/burial arrangements. See Exhs. 14 and 17. The proposed spend-down suggests that Appellant would have assets that far exceed the \$10,000 that had been disclosed to MassHealth. Additionally, paperwork filed with the fair hearing request referenced the existence of a PoA account that A.R. had not been previously addressed or verified. See Exh. 11.

Ultimately, the documentation submitted does not verify the amount, scope, and location of Appellant's countable assets. Such information is necessary for MassHealth to determine whether Appellant qualifies for coverage of LTC benefits. MassHealth did not err in issuing the 7/28/23 denial.

Based on the foregoing, this appeal is DENIED.

Any arguments raised by Appellant regarding the legality of the MassHealth regulations at issue, cannot be adjudicated in this hearing decision, but may be pursued via judicial review in accordance with M.G.L. c. 30A.¹⁰

Order for MassHealth

¹⁰ The hearing officer must not render a decision regarding the legality of federal or state law including, but not limited to, the MassHealth regulations. If the legality of such law or regulations is raised by the appellant, the hearing officer must render a decision based on the applicable law or regulation as interpreted by the MassHealth agency. Such decision must include a statement that the hearing officer cannot rule on the legality of such law or regulation and must be subject to judicial review in accordance with 130 CMR 610.092. See 130 CMR 610.082(C)(2) (emphasis added); see also 130 CMR 450.244.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]