

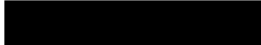
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in part Approved in part	Appeal Number:	2308044
Decision Date:	10/27/2023	Hearing Date:	09/20/2023
Hearing Officer:	Thomas J. Goode	Record Open to:	10/18/2023

Appearance for Appellant:



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

Appeal Decision:	Dismissed in part Approved in part	Issue:	130 CMR 520.006, 520.018, 520.019
Decision Date:	10/27/2023	Hearing Date:	09/20/2023
MassHealth's Rep.:	Karen Ryan	Appellant's Rep.:	
Hearing Location:	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 August 30, 2023, MassHealth denied Appellant's application for MassHealth benefits because it determined that Appellant had given away or sold assets to become eligible for MassHealth long-term care services (130 CMR 520.018, 520.019 and Exhibit 1). Appellant filed this appeal in a timely manner on September 8, 2023 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

Through a notice dated August 30, 2023, MassHealth denied Appellant's application for MassHealth benefits because it determined that Appellant had given away or sold assets to become eligible for MassHealth long-term care services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018, 520.019, in determining that Appellant had given away or sold assets to become eligible for MassHealth long-term care services, and whether MassHealth correctly deemed assets accessible pursuant to 130 CMR 520.006.

Summary of Evidence

Appellant was admitted to a skilled nursing facility on [REDACTED] 2023. An application for long-term care benefits was submitted on her behalf on May 8, 2023, seeking eligibility effective April 2, 2023. The application was denied on August 30, 2023 due to a transfer of resources pursuant to 130 CMR 520.018, 520.019 involving the purchase of two annuities with beneficiary language that did not comply with requirements of 130 CMR 520.007(J). A period of ineligibility from May 23, 2023 through July 17, 2024 was calculated by dividing \$179,844.30 transferred to the annuities by the private pay facility rate of \$422 per day. Prior to the hearing, Appellant submitted revised annuities that comply with MassHealth beneficiary requirements, which resolved the resource transfer. However, MassHealth maintained that the otherwise eligible date for coverage to begin is May 23, 2023 based on the date \$34,730.83 of Appellant's funds were deposited into a Medicaid-approved pooled trust that was signed by Appellant on May 17, 2023, and signed by the administrator of the trust on May 25, 2023 (Exhibit 7). On May 23, 2023, a bank check for \$19,730.83 from the [REDACTED] was sent electronically to the pooled trust, and deposited on May 23, 2023. A bank check for \$15,000 dated March 29, 2023 was sent to the pooled trust company, and deposited into the pooled trust on May 23, 2023. MassHealth considered the funds available to pay for Appellant's nursing home care from the date of requested eligibility until the funds were deposited in the pool trust on May 23, 2023.

Appellant's attorney explained that resources from the [REDACTED] were inaccessible to Appellant prior to being deposited in the pooled trust. On March 29, 2023, Appellant contacted the director of the club with instructions to close her account and have the funds totaling \$19,730.83 paid to her so she could transfer the funds to a pooled trust. The Club director informed Appellant that resources were not available for distribution without a Club meeting and agreement to sell securities to raise enough cash to pay Appellant the value of her investments. It took several weeks to arrange the meeting which occurred on April 15, 2023, after which a decision was made to disband the Club. It took several weeks to liquidate Club holdings and initiate the distribution to the pooled trust. The director electronically transferred a bank check to the pooled trust on May 23, 2023 (See Exhibits 7, 11, 12, 13). Appellant's attorney explained that \$15,000 from Appellant's credit union was transferred to the pooled trust company by bank check dated March 29, 2023, which Appellant's attorney mailed to the pooled trust company on or about April 4, 2023 (Exhibit 7, p. 4). The resources were not distributed to Appellant and were sent directly to the trust company, which began a standard review process by its attorney and required a signature by its president to establish the trust. Appellant's attorney argued that effective March 29, 2023, the funds were inaccessible to Appellant under 130 CMR 520.006 because they were already irrevocably committed to funding the pooled trust.

The hearing record remained open to allow Appellant to submit additional documentation including an affidavit from the director of the [REDACTED] (Exhibit 12). The hearing

officer ordered the parties to submit legal memoranda briefing their respective arguments.¹ After reviewing the additional documentation submitted by Appellant's attorney concerning the [REDACTED] MassHealth determined, pursuant to 130 CMR 520.006, that from the date of requested eligibility, \$19,730.83 transferred to the pooled trust from the [REDACTED] was inaccessible to Appellant (Exhibit 14). The MassHealth legal memorandum does not address the remaining issue involving \$15,000 transferred from the [REDACTED] to the pooled trust, stating that issue is left to the Board of Hearings to decide (Id.)

Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility on [REDACTED] 2023.
2. An application for long-term care benefits was submitted on May 8, 2023 seeking eligibility effective April 2, 2023.
3. The application was denied on August 30, 2023 due to a transfer of resources involving the purchase of two annuities with beneficiary language that did not comply with requirements of 130 CMR 520.007(J). A period of ineligibility from May 23, 2023 through July 17, 2024 was calculated by dividing \$179,844.30 transferred to the annuities by the private pay facility rate of \$422 per day.
4. Prior to the hearing, Appellant submitted revised annuities that comply with MassHealth beneficiary requirements which resolved the annuity resource transfer.
5. MassHealth maintained that the otherwise eligible date for coverage to begin is May 23, 2023 based on \$34,730.83 of Appellant's funds deposited into a Medicaid-approved pooled trust.
6. The pooled trust was signed by Appellant on May 17, 2023, and by the administrator of the trust on May 25, 2023.
7. A bank check dated May 23, 2023 for \$19,730.83 from the [REDACTED] was electronically deposited to the pooled trust on May 23, 2023.
8. During a hearing record-open period, MassHealth determined that from the date of requested eligibility, \$19,730.83 electronically transferred to the pooled trust from the [REDACTED] was inaccessible to Appellant.

¹ See 130 CMR 610.065(B)(12).

9. A bank check for \$15,000 dated March 29, 2023 was mailed to the pooled trust company on April 4, 2023, and deposited into the pooled trust on May 23, 2023.

Analysis and Conclusions of Law

130 CMR 520.004(A): 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.

130 CMR 520.006: Inaccessible Assets

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

(1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and

(2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

(1) from the date of application or acquisition, whichever is later, if the

applicant or member does not meet the conditions of

130 CMR 520.006(C)(2)(a) or (b); or

(2) from the period beginning six months after the date of application or acquisition, whichever is later, if

(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

An application for long-term care benefits was submitted on May 8, 2023, seeking eligibility effective April 2, 2023. The application was denied on August 30, 2023 due to a transfer of resources involving the purchase of two annuities with beneficiary language that did not comply with requirements of 130 CMR 520.007(J). A period of ineligibility from May 23, 2023 through July 17, 2024 was calculated by dividing \$179,844.30 transferred to the annuities by the private pay facility rate of \$422 per day. Prior to the hearing, Appellant submitted revised annuities that comply with MassHealth beneficiary requirements, which resolved the annuity resource transfer. MassHealth maintained that the otherwise eligible date for coverage to begin is May 23, 2023 based on \$34,730.83 of Appellant's funds deposited into a Medicaid-approved pooled trust signed by Appellant on May 17, 2023, and by the administrator of the trust on May 25, 2023.

Pursuant to 130 CMR 610.051(B) the MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. All issues regarding resource transfers related to the purchase of two annuities with beneficiary language that did not comply with requirements of 130 CMR 520.007(J) and the period of ineligibility from May 23, 2023 through July 17, 2024 have resolved to Appellant's favor. Further, issues related to \$19,730.83 in assets from the [REDACTED] electronically deposited to a pooled trust on May 23, 2023 have resolved to Appellant's favor as MassHealth determined the resources were inaccessible to Appellant during from the date of requested eligibility (130 CMR 520.006). Therefore, the appeal is DISMISSED as it relates to these issues.

Regarding the \$15,000 bank check dated March 29, 2023, mailed to the pooled trust company on

or about April 4, 2023, and deposited into the pooled trust on May 23, 2023, the delay in depositing the check to the pooled trust was credibly explained by Appellant's attorney as involving standard internal processing requirements by the pooled trust company which delayed the deposit date, but did not allow Appellant access to the funds once committed to the pooled trust company. Examples of inaccessible assets are not limited to those provided at 130 CMR 520.006(B); and the facts here are analogous to 520.006(B)(2). Therefore, pursuant to 130 CMR 520.006, the funds were committed to the pooled trust on March 29, 2023, and inaccessible to Appellant from the date of requested eligibility. In this regard, the appeal is APPROVED.

Order for MassHealth

Rescind the August 30, 2023 notice. Treat as inaccessible from the date of requested eligibility \$19,730.80 and \$15,000 transferred to the pooled trust, and redetermine eligibility.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Appeals Coordinator Sylvia Tiar, Tewksbury MEC