

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2308659
<b>Decision Date:</b>	02/29/2024	<b>Hearing Date:</b>	10/23/2023
<b>Hearing Officer:</b>	Mariah Burns	<b>Record Open to:</b>	1/19/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Victoria Ragbir, Charlestown MassHealth  
Enrollment Center



*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>	Approved	<b>Issue:</b>	Over 65; Eligibility; Long-Term Care; Assets; Funeral Arrangements
<b>Decision Date:</b>	02/29/2024	<b>Hearing Date:</b>	10/23/2023
<b>MassHealth's Rep.:</b>	Victoria Ragbir	<b>Appellant's Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<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 September 12, 2023, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the appellant has more countable assets than MassHealth benefits allow. *See* 130 CMR 520.003 and Exhibit 1. The appellant filed this appeal in a timely manner on October 5, 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 benefits.

### Issue

The appeal issue is whether MassHealth was correctly determined that the appellant's life-insurance policy is a countable asset that would result in her financial ineligibility for MassHealth long-term care benefits.

## Summary of Evidence

The appellant is a nursing facility resident over the age of 65 who was represented at hearing by her daughter. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center. The following is a summary of the testimony and evidence provided at hearing and during the record open period:

On April 4, 2023, MassHealth received an application for long-term care benefits filed on the appellant's behalf. The requested MassHealth payment start date is June 17, 2023. On September 12, 2023, MassHealth issued a denial notice determining the appellant to be over assets to qualify for benefits. The appellant's assets were determined to be a life insurance policy with the cash surrender value of \$5347.00 and a bank account balance of \$710.20. Ultimately, MassHealth determined that the appellant was \$4057.20 over the asset limit to qualify for MassHealth long-term care coverage. At hearing, the MassHealth representative reported that MassHealth received a letter from the insurance company indicating that the life insurance policy in question had been transferred to a funeral home with which the appellant entered into a burial agreement. The MassHealth representative reported needing copies of particular bank statements and a statement from the nursing facility. The appellant's representative agreed to provide the requested documents, and the record was kept open to afford her time to do so.

On January 19, 2024, the MassHealth representative reported that the appellant provided all outstanding verifications that would allow a determination to be made and a new notice to generate. On January 30, 2024, the MassHealth representative reported that, because the document from the insurance company suggested that the appellant is still the owner of the policy and it does not indicate that the assignment of beneficiary to the funeral home was irrevocable, that the policy is still considered a countable asset.<sup>1</sup> See Exhibit 8 at 5, Exhibit 6 at 10. That same day, the appellant's representative provided the "Pre-Need Funeral Agreement" executed between the appellant and the funeral home in question on [REDACTED]. The agreement reflects the following language:

Purchaser hereby designates this agreement to be...irrevocable. If the purchaser has elected that this agreement be irrevocable, the Trust Account is fully funded, and the ten (10) day right to rescind time has elapsed, then Purchaser may not alter, amend, or revoke this agreement. All powers to invest and manage funds are vested with the Funeral Director and Trustee. Any attempt to revoke or cancel this agreement may have adverse consequences relating to eligibility for Medicaid or other government benefit programs.

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<sup>1</sup> She also reported needing statements from the burial account to avoid it being considered a disqualifying transfer. However, that is not at issue for this appeal.

Exhibit 7 at 1. The agreement further states that it will be funded by “transferring funds for deposit into a funeral trust account at [REDACTED]...which will act as a trustee for such funeral trust account” and that the agreement will be paid by the life insurance policy at issue, reflecting the same policy number as the Statement of Values provided by the appellant. *See Id.* at 3, 6. Finally, the agreement states that, after ten days post-execution, it cannot be cancelled except by court order. Exhibit 7 at 3.

MassHealth stated that, without a document that shows that the assignment of beneficiary from the appellant to the funeral home is irrevocable, the insurance policy is still a countable asset, putting the appellant over the regulatory limit to qualify for benefits.

## Findings of Fact

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

1. The appellant is a nursing facility resident over the age of 65.
2. On April 4, 2023, MassHealth received an application for long-term care benefits filed on the appellant’s behalf. The requested MassHealth payment start date is June 17, 2023. Testimony, Exhibit 6 at 1, 2.
3. On September 12, 2023, MassHealth issued a denial notice determining the appellant to possess assets \$4057.20 over the regulatory limit to qualify for benefits primarily due to life insurance policy with a cash surrender value of \$5347.00.<sup>2</sup> Exhibit 1.
4. The appellant submitted a timely notice of appeal on October 5, 2023. Exhibit 2.
5. Prior to the hearing date, the appellant submitted a letter from the life insurance company reporting that on [REDACTED] the beneficiary of the life insurance policy at issue changed to a funeral home. Exhibit 6 at 10.
6. At hearing, the MassHealth representative reported needing copies of bank statements and a statement from the nursing facility to resolve the appellant’s case. The appellant’s representative agreed to provide the requested documents, and the record was kept open to afford her time to do so.
7. On January 19, 2024, the MassHealth representative reported that the appellant provided all outstanding verifications that would allow a determination to be made and a new notice to

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<sup>2</sup> That valuation is based on MassHealth’s determination on the September 12, 2023, notice. The appellant submitted documentation during the appeal that seems to indicate that the cash-surrender value as of January 31, 2024, is \$12,502.25. *See* Exhibit 7 at 6.

generate. On January 30, 2024, the MassHealth representative reported that, because the document from the insurance company suggested that the appellant is still the owner of the policy and it does not indicate that the assignment of beneficiary to the funeral home was irrevocable, that the policy is still considered a countable asset. Exhibit 8 at 5-6.

8. The appellant's representative submitted a Pre-Need Funeral Agreement between the appellant and the funeral home who is the beneficiary of the life insurance policy. The agreement was executed on [REDACTED] and states that it is irrevocable and uses the proceeds from the life insurance policy at issue to fund a Trust Account to pay for the appellant's funeral expenses. Exhibit 7 at 1, 3.

9. The appellant is otherwise under the income and asset limits to qualify for MassHealth long-term care benefits. Exhibit 1.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for delivery of healthcare benefits to MassHealth members. See 130 CMR 515.002. Eligibility for MassHealth benefits differs depending on an applicant's age. 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for non-institutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, and certain Medicare beneficiaries. 130 CMR 515.002(B). As the appellant is over 65 years old and an institutionalized person, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

Long-term care residents are eligible for MassHealth Standard coverage if they meet the following requirements:

- (1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;
- (2) be determined medically eligible for nursing facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;
- (3) contribute to the cost of care as defined at 130 CMR 520.026: Long-term-care General Income Deductions;
- (4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, 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
- (5) not have transferred resources for less than fair market value, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of

Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

The MassHealth regulations provide three categories of assets by which an applicant's financial eligibility is evaluated. Those include countable assets, noncountable assets, and inaccessible assets. *See generally*, 130 CMR 520.006-008. An asset is considered inaccessible when the applicant has "no legal access" to it. 130 CMR 520.006(A). This can include instances where ownership of property is subject to legal proceedings such as probate or divorce suits, or when the cash-surrender value of the life insurance has been reassigned for adjustment. *Id.* at 520.006(B).

Countable assets are defined as follows:

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. 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. These can include, but are not limited to, cash, bank account balances, IRAs, Keough plans, pension funds, securities, cash surrender value of life-insurance policies, certain vehicles, certain real estate, certain SSI and RSDI benefits, trust values, and annuities. *Id.* The cash surrender value of life-insurance policies is specifically defined as "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.

Noncountable assets are expressly defined as "those assets exempt from consideration when determining the value of assets." 130 CMR 520.008. The only assets considered noncountable are the applicant's home, assets of an SSI recipient, proceeds from the sale of a home, business and nonbusiness property, any loan or grant, funeral or burial arrangements, veteran's payments, and balances of special-needs, pooled, and/or ICF/MR trusts. *Id.* With respect to funeral or burial arrangements, the regulations provide the following:

- (1) The following funeral or burial arrangements for the applicant, member, or spouse are considered noncountable assets:
  - (a) any burial space, including any burial space for any immediate family member;
  - (b) one of the following:
    1. a separately identifiable amount not to exceed \$1,500 expressly reserved for funeral and burial expenses; or

- 2. life-insurance policies designated exclusively for funeral and burial expenses with a total face value not to exceed \$1,500;
- (c) the cash-surrender value of burial insurance; and
- (d) prepaid irrevocable burial contracts or irrevocable trust accounts designated for funeral and burial expense.

130 CMR 520.008(F). Applicants have an opportunity to show a reduction of assets to the allowable limit to establish eligibility. *See generally* 130 CMR 520.004. In such instances, “MassHealth...requires the applicant to verify that...[their] excess assets were reduced to the allowable asset limit within the required timeframes.” *Id.* at 520.004(D). This reduction of assets is colloquially known as a “spend-down,” and must be done without violating the transfer of resource provisions for nursing facility residents at 130 CMR 520.019(F), or risk incurring a period of ineligibility in accordance with that regulation. *Id.* at 520.004(A)(1). Permissible transfer of benefits include resources transferred “to a separately identifiable burial account, burial arrangement, or a similar device for the nursing facility resident...in accordance with 130 CMR 520.008(F).” 130 CMR 520.019(D)(7).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” For the reasons described, *infra*, I find that the appellant has met that burden of proof in establishing that she is under the asset limit to qualify for MassHealth Standard long-term care benefits.

In this case, MassHealth found that the appellant has \$4057.40 in excess assets due to the existence of a life-insurance policy in her name. They further argued that the appellant’s attempts to show proof of spenddown were unacceptable because the appellant did not provide documentation that the actual assignment of beneficiary of the policy to the funeral home was, itself, irrevocable. However, the regulations do not require this specific method of transferring a life-insurance policy, and documentation provided by the appellant shows that the policy can be considered noncountable pursuant to 130 CMR 520.008(F) in several ways.

First, the Pre-Need Funeral Agreement between the appellant’s representative and the funeral home specifically states that the agreement is irrevocable and further specifies that it is creating a Trust Account on the appellant’s behalf. *See* Exhibit 7 at 1. Second, the agreement states that it is to be funded by the life-insurance policy in question, as the agreement reflects the same policy number as the policy documents provided by the appellant. *See Id.* at 3, 6 and Exhibit 6 at 10. Finally, the agreement states that it “may not be cancelled after ten days by either party except by order of a court” or risk eligibility “for Medicaid or other government benefit programs.” Exhibit 7 at 3. As the agreement was executed on [REDACTED], it cannot be terminated except by court order.

Although MassHealth correctly indicates, the policy assignment letter does not state that the assignment of beneficiary is irrevocable, I am persuaded that the policy should be considered noncountable for several reasons. First, as stated *supra*, the MassHealth regulations do not require an assignment of a life-insurance policy to a funeral home to be irrevocable, only that the creation of the trust account be irrevocable. The appellant has met this requirement. Second, even if the regulations did contain such a requirement, by creating an irrevocable contract with the funeral home that states that the funding method will be with the insurance policy in question, the appellant has shown that, effectively, the transfer of beneficiary is irrevocable, if not through the insurance company, then through the funeral contract itself. Therefore, I find that the appellant has sufficiently shown that the life-insurance policy in question is a noncountable asset pursuant to 130 CMR 520.008(F). As this was the asset that put the appellant over the limit at the time of the generation of the notice on appeal, I further find that the appellant meets the asset requirements to qualify for MassHealth Standard long-term care benefits.

For the foregoing reasons, the September 12, 2023 notice was issued in error, and the appeal is hereby APPROVED.

## **Order for MassHealth**

Rescind the September 12, 2023, notice finding the appellant is over the asset limit. Deem the life insurance policy at issue to be a non-countable asset and proceed with an eligibility determination for the appellant's application.

## **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.

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Mariah Burns  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center