

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2309144
Decision Date:	11/13/2023	Hearing Date:	10/31/2023
Hearing Officer:	Mariah Burns		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Jonathan Gonzalez, 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

Appeal Decision:	Denied	Issue:	Over 65; Eligibility; Assets; Annuity
Decision Date:	11/13/2023	Hearing Date:	10/31/2023
MassHealth's Rep.:	Jonathan Gonzalez	Appellant's Rep.:	Pro se
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 September 27, 2023, MassHealth denied the appellant's renewal application for MassHealth benefits because MassHealth determined that the appellant has excess countable assets. *See* 130 CMR 520.003 and Exhibit 1. The appellant filed this appeal in a timely manner on September 29, 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 renewal application for MassHealth senior benefits.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant has more countable assets than MassHealth benefits allow.

Summary of Evidence

The appellant is over the age of 65 and was a MassHealth member prior to the issuance of the

notice on appeal. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of all testimony and evidence provided at hearing.

The appellant submitted her annual renewal application on September 5, 2023. MassHealth issued a request for information on September 7, which was responded to and received on September 25, 2023. MassHealth was able to process the provided documentation and, on September 27, 2023, determined that the appellant was over assets by \$97,692.48 due to her bank account balance and the value of an annuity in her name that she received in 2021.¹

The appellant provided bank documents that show that each of her countable accounts has been spent down to get under the \$2000 limit. With regards to the annuity, she explained that it was granted to her in her divorce from her ex-husband and is, as of September 15, 2023, valued at \$97,044.39. The appellant reported that she has chosen not to draw on the account and is not currently receiving payments from the annuity. She provided documents from [REDACTED] that show the value and that indicate that the annuity is a Retirement Annuity ("RA") Contract. She specifically highlighted the portion of the documents that states "[i]f you do not elect lifetime income and you have an RA contract, you may transfer or withdraw from the [REDACTED] Traditional in 10 annual installments." She argued that this contrasts with a "GRA" or "RC" contract, which states "if you...do not elect lifetime income a full or partial lump sum payment from [REDACTED] Traditional may be available for 120 days after your employment ends..." Exhibit 5 at 9. She provided no documentation from the employer related to the annuity.²

The MassHealth representative responded that, unless the annuity is legally inaccessible, MassHealth considers it to be a countable asset when making their financial eligibility determination.

¹ The MassHealth representative explained that the appellant remained active on MassHealth despite being over assets after [REDACTED] due to the protections put in place for the COVID-19 pandemic pursuant to Eligibility Operations Memo (EOM) 20-09 and its progeny. Those protections came to an end with the issuance of EOM 23-13, and there is no evidence that MassHealth deviated from those guidelines in re-evaluating the appellant's eligibility.

² The appellant also claimed that Massachusetts is joining several other states in eliminating the asset requirement from MassHealth eligibility. As she provided no evidence of any of this, and this hearing officer is unaware of any such drastic changes being made to Medicaid eligibility in the Commonwealth, I do not take this into consideration in my findings and will only follow the regulations as they are currently codified at 130 CMR 520.

Findings of Fact

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

1. The appellant is over the age of 65 and was a MassHealth member prior to the issuance of the notice on appeal. Testimony, Exhibit 4.
2. On September 5, 2023, MassHealth received the appellant's renewal application. A request for information was sent on September 7, 2023, and a response was received on September 25, 2023. Testimony.
3. On September 27, 2023, MassHealth issued a notice determining that the appellant is ineligible for MassHealth benefits for being \$97,692.48 over assets due to her bank account balance and ownership of an annuity in her name. Exhibit 1, Testimony.
4. The appellant provided documentation to support that she spent down her bank accounts to total a balance of approximately \$928.28. Testimony, Exhibit 5.
5. The appellant received the annuity in a divorce settlement back in 2021. It was most recently valued at \$97,044.39. Testimony, Exhibit 5 at 8.
6. The appellant has chosen to not yet receive payments from the annuity. Testimony.
7. The documentation provided by the appellant from [REDACTED] states, in relevant part, "[i]f you do not elect lifetime income and you have an RA contract, you may transfer or withdraw from the [REDACTED] Traditional in 10 annual installments." It further states if you have a GRA or RC contract and do not elect lifetime income a full or partial lump sum payment from [REDACTED] Traditional may be available for 120 days after your employment ends..." Exhibit 5 at 9.
8. Although the documentation provided seems to indicate that the annuity is part of a Retirement Annuity (RA) contract, the appellant provided no additional documentation from the employer that contain the contract or any rules specific to the appellant's annuity. Exhibit 5 at 8.

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, 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(B). As the appellant is over 65 years old, she is subject to the requirements of the provisions of Volume II. 130 CMR 515.002.

To determine a senior's eligibility for MassHealth, the total countable-income amount and countable assets of the individual is compared to an income standard and asset limit. Specifically, with respect to assets, "[t]he total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard" may not exceed \$2000 for an individual and \$3000 for certain couples living together in the community. See 130 CMR 520.003(A).

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 (emphasis added). These can include, but are not limited to, cash, bank account balances, pension plans, securities, cash surrender value of life-insurance policies, certain vehicles, certain real estate, certain SSI and RSDI benefits, trust values, and annuities. *Id.* With respect to annuities and applicants looking for community benefits, the regulations state only that "[p]ayments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset." *Id.* at 520.007(J). The regulations make no other relevant reference to annuities.

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.* The regulations afford no other avenue for assets to be considered noncountable.

Here, the appellant asks for her annuity valued at \$97,044.39 to be considered either noncountable or inaccessible for purposes of determining her eligibility for MassHealth Standard or the Senior Buy-In. The appellant has the burden of proof, by a preponderance of the evidence "to demonstrate the invalidity of the administrative determination." *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2007). In this case, she has failed to do so.

The appellant argues that the document that she provided within Exhibit 5 at 8-9 demonstrates that she has a Retirement Annuity (RA) contract which prohibits her from accepting a lump sum payment. However, the document provided contains little information about the annuity, does not state whether she elected lifetime income, nor is there any information from the employer about the type of contract or a report that the appellant cannot access the total amount of the annuity. Further, the regulations make clear that an asset is considered countable where the failure to receive the assets due to inaction by the applicant. 130 CMR 520.007. That the appellant has chosen not to collect is irrelevant for these purposes. Ultimately, she has legal access to the money, and thus it must be considered countable. It is also notable that the listed countable assets use the language "including but not limited to," while the listed noncountable assets are restricted to what is specifically codified.

Thus, where the appellant has not provided sufficient evidence that the annuity is legally inaccessible to her, and where the regulations defining noncountable assets do not specifically include the balance of an annuity not being drawn on as, the appellant has not met her burden of proof to demonstrate that the annuity should not be considered a countable asset to determine her eligibility for MassHealth. As such, she is over the asset limit, and MassHealth did not issue the September 27, 2023, notice in error. The appeal is hereby 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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129