

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



**Re-hearing Appeal
Decision:**

Denied

Appeal Number:

2309578

**Re-hearing Decision
Date:**

6/24/2024

Re-Hearing Date:

06/03/2024

Hearing Officer:

Patricia Mullen
BOH Deputy Director

Record Open to:

06/17/2024

Appearance for Appellant:



Appearance for MassHealth:

Jonathan Gonzalez, Charlestown MEC



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

RE-HEARING APPEAL DECISION

Re-hearingAppeal Decision:	Denied	Issue:	Over 65-community, financial eligibility
Re-hearing Decision Date:	6/24/2024	Re-Hearing Date:	06/03/2024
MassHealth's Rep.:	Jonathan Gonzalez, Charlestown MEC	Appellant's Rep.:	
Hearing Location:	Charlestown MassHealth Enrollment Center (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 21, 2023, MassHealth approved the appellant for Senior Buy-In with a start date of January 1, 2023, and denied the appellant for MassHealth Standard because her assets exceed the limit for MassHealth Standard. (Exhibit 1; 130 CMR 505.003; 519.010). Through a notice dated September 23, 2023, MassHealth terminated the appellant's Senior Buy In as of her date of death. (Exhibit 2). The appellant filed a timely appeal on October 11, 2023 (Exhibit 3). By notice dated October 12, 2023, the Board of Hearings (BOH) requested authority from the appellant's estate. (Exhibit 4). On October 19, 2023, a copy of the appellant's will was submitted to BOH, noting the executor. (Exhibit 5). Because a will appointing an executor does not meet the criteria for an appeal representative, the appeal was placed on hold to give the attorney time to file a petition for voluntary administrator of the estate; the attorney updated BOH by letter received November 13, 2023. (Exhibit 6). On both November 13, 2023 and December 8, 2023, the attorney submitted a copy of the Voluntary Administrator decree approved by the probate court. (Exhibits 6, 7). On December 12, 2023, the attorney submitted an appeal request from the voluntary administrator of the appellant's estate, authorizing the attorney

to represent the estate at the appeal hearing. (Exhibit 8). A fair hearing was held on January 9, 2024. (Exhibit 10). On March 4, 2024, BOH issued a fair hearing decision upholding MassHealth's action and denying the appeal (Exhibit 11). On or about March 20, 2024, the appellant's estate, through the authorized representative, requested a rehearing of the BOH decision (Exhibit 13). On May 1, 2024, the Medicaid Director notified the parties that he had found good cause to order a rehearing per 130 CMR 610.091 (Exhibit 14). BOH scheduled the rehearing for June 3, 2024 (Exhibit 15).¹

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth Standard in the community; the appellant was approved for Senior Buy In with a start date of January 1, 2023.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, in determining that the appellant's assets exceed the limit for MassHealth Standard in the community for persons age [REDACTED] and older.

Summary of Evidence

The appellant's estate (hereinafter referred to as "the appellant") was represented telephonically by its attorney. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Charlestown. In the request for hearing dated October 11, 2023, the appellant's representative writes "disagree with MassHealth decision" as the reason for appeal, and nothing else. (Exhibit 2). At both the hearing in January, 2024 and the present re-hearing, the appellant's attorney could not articulate the basis for the appeal or what the appellant was looking for. In the hearing decision dated March 4, 2023, the hearing officer addressed the MassHealth notice dated September 21, 2023 and upheld MassHealth's determination that the appellant was eligible for MassHealth Senior Buy In. (Exhibit 11). At that January, 2024 hearing, the appellant's attorney stated that the appellant was appealing a denial due to excess assets relative to a long term care application. (Exhibit 11, p. 2). It was noted at that hearing, that a long term care application from 2022 was changed to an application for a waiver in January, 2023 and was then denied based on excess assets by notice dated January 11, 2023. (Exhibit 11, p. 2). The hearing officer for the January, 2024 appeal noted that the January 11, 2023 notice was not timely appealed and not at issue in the hearing. (Exhibit 11, p. 2). The hearing officer determined that the appellant timely appealed the September 21, 2023 notice and upheld MassHealth's approval for Senior Buy In and denial for MassHealth Standard. (Exhibit 11, p. 3).

¹ Per 130 CMR 610.091(A), the BOH Director appointed this deputy director to conduct the rehearing.

The appellant's attorney sent a request for re-hearing dated March 20, 2024 to the Medicaid Director. (Exhibit 13). In the request, the appellant's attorney writes that on January 11, 2023, MassHealth issued a decision denying the appellant for a Home and Community Based Services Waiver. (Exhibit 13). The appellant's attorney wrote further that the appellant submitted additional documentation to MassHealth on February 8, 2023 and MassHealth requested further information on March 15, 2023 and again on April 1, 2023. (Exhibit 13). The appellant's attorney writes that additional information was submitted to MassHealth on June 12, 2023 and on August 31, 2023, the appellant's attorney contacted MassHealth and was told all necessary information had been submitted and a determination was pending. (Exhibit 13). The appellant's attorney wrote that on September 7, 2023, he sent a letter to MassHealth requesting an update. (Exhibit 13). The appellant's attorney writes that the appellant received a termination notice dated September 22, 2023 stating that her benefits would cease due to the passing of household member. (Exhibit 13). The appellant's attorney neglected to note that the appellant was approved for Senior Buy In by notice dated September 21, 2023, and the September 22, 2023 termination notice was not due to the death of any "household member", but rather due to her death. (Exhibits 1, 2). The appellant's attorney writes that an appeal was filed on October 4, 2023. The appellant's attorney acknowledges that BOH informed him that a will is not sufficient to establish authority as an appeal representative and that BOH advised him to petition for a voluntary administrator of the estate. (Exhibit 13). The October, 2023 appeal remained on hold at BOH pending the appointment of the voluntary administrator and authorization from such voluntary administrator. (Exhibit 13). Upon receipt of the approved voluntary administrator and authorization, BOH scheduled the hearing. (Exhibit 13). The appellant's attorney writes that during the hearing on January 9, 2024, confusion arose regarding the timeliness of the fair hearing request as the initial denial was issued on January 11, 2023. (Exhibit 13). The attorney writes that it is essential to note that the hearing decision overlooks the mutual agreement between the appellant and BOH to suspend the appeal until the estate could be probated, as well as the numerous communications between the offices. (Exhibit 13). The appellant's attorney then writes that he asks the Director to consider the extenuating circumstances and seeks a reconsideration that takes into account these inadvertent challenges and misunderstandings on the timeliness of the appeal. (Exhibit 13). It should be noted that the communications between the attorney's office and BOH pertained to the appeal filed on October 11, 2023², which was a timely appeal of the notices dated September 21, 2023 and September 22, 2023, and had nothing to do with the notice dated January 11, 2023, as implied by the appellant's attorney's letter requesting the re-hearing. There was no timely appeal of a MassHealth notice dated January 11, 2023 and no agreement between the appellant's attorney and BOH regarding such notice.

By letter dated May 1, 2024, the Medicaid Director approved the appellant's request for a rehearing based on a demonstration of good cause. (Exhibit 14). The Director notes that it is clear the appellant's October 4, 2023³ hearing request was timely filed following receipt of the

² The appeal was signed on October 11, 2023 and faxed to BOH on that date, not October 4, 2023 as indicated by the attorney in his re-hearing request. (Exhibit 13).

³ The appellant's hearing request was received at BOH on October 11, 2023. (Exhibit 3).

MassHealth notice dated September, 2023 and “[i]nquiry at the hearing wherein reference to a January 11, 2023 notice is made appears to have been a misstatement on the part of counsel, which should not deprive your client of a hearing on the merits.” (Exhibit 14). The Director ordered a rehearing for the purpose of BOH’s fact finding and analysis based on the September, 2023 notice approving the appellant for Buy In and the subsequent termination notice based on the appellant’s death. (Exhibit 14). The Director notes that neither of these notices were introduced or discussed at the hearing. (Exhibit 14). Although the September, 2023 notices were in fact addressed in the fair hearing decision 2309578 dated March 4, 2024, a re-hearing was nonetheless scheduled per the order of the Medicaid Director. (Exhibits 11, 14).

At the re-hearing, the Deputy Director pointed out the misleading statements made by the appellant’s attorney in the request for the rehearing, in which he states that the January, 2023 notice was “on hold” pending appointment of a voluntary administrator. This statement is not correct. BOH agreed to put the timely October 11, 2023 appeal of the September, 2023 notices on hold pending appointment of a voluntary administrator. Had the appellant attempted to appeal the January 11, 2023 notice in October, 2023, such appeal would have been dismissed as not timely, regardless of whether an administrator of the estate had been appointed or not.

At the re-hearing, the MassHealth representative stated that the appellant was over age [REDACTED] and living in a household of one in the community when she filed an application for MassHealth Standard for long term care residents on November 10, 2022. MassHealth sent the appellant a request for information on November 17, 2022 with a due date of December 17, 2022. (Testimony). The MassHealth representative stated that the appellant or appellant’s representative then notified MassHealth that the appellant would not be continuing with the long term care application and asked that the application be switched to an application for MassHealth Standard in the community under a Home and Community Based Services waiver, also known as the Frail Elder Waiver (FEW). The appellant’s attorney confirmed that the appellant was not in a skilled nursing facility at that time and the attorney believed the appellant was looking for MassHealth through the waiver program. The MassHealth representative stated that appellant’s application was switched to a FEW application on December 15, 2022. The MassHealth representative later stated that there was no actual application date because it was never entered into the system. The MassHealth representative stated that the FEW application was denied by notice dated January 11, 2023. (Exhibit 18). The January 11, 2023 notice stated that the appellant was not eligible for the FEW because her assets exceed the MassHealth limit. (Exhibit 18). The January 11, 2023 notice listed the cash surrender value of life insurance policies totaling \$16,466.04, bank account balances totaling \$45.01, and minimal trust assets for total assets of \$16,515.05. (Exhibit 18). The January 11, 2023 notice stated further that verification of trusts, some bank accounts, personal needs allowance, and a FEW clinical eligibility notice remained outstanding. (Exhibit 18). The MassHealth representative testified that the appellant did not appeal the January 11, 2023 notice. The MassHealth representative stated further that the appellant was never found clinically eligible for the FEW. The appellant passed away on [REDACTED] [REDACTED] (Exhibit 6, p. 2).

The MassHealth representative stated that the appellant's attorney sent MassHealth a letter on February 14, 2023 answering some, but not all, of the verification questions. On March 13, 2023, MassHealth sent the appellant a request for information stating that MassHealth had received the appellant's application or review and needed more information to make a determination of eligibility. (Exhibit 19). The request sought verification of various trusts and bank accounts, due by April 14, 2023. (Exhibit 19). On April 1, 2023, MassHealth sent a request for information seeking the same documentation listed in the March 13, 2023 request, but increasing the time by which to submit verifications to July 13, 2023 based on a change in MassHealth regulations. (Exhibit 20, testimony). The MassHealth representative stated that the appellant's attorney submitted documentation on June 12, 2023. The MassHealth representative could not speak to the controlling application date, but noted that the original application date was not honored. The MassHealth representative stated further that MassHealth never restamped the application. The MassHealth representative stated that trust documentation was sent to MassHealth Legal for review on June 29, 2023 and MassHealth Legal replied in September, 2023 noting that the trusts were not funded.

The MassHealth representative stated that by notice dated September 21, 2023, the appellant was approved for Senior Buy In because her assets were under the asset limit for Senior Buy In, which at that time was \$18,180.00, and her income was under the income limit of 300% of the federal benefit rate, or \$2,742.00 for a household of one. (Exhibit 1). The MassHealth representative stated that the appellant was not eligible for MassHealth Standard because her assets exceeded the limit for MassHealth Standard, \$2,000.00 for a household of one. (Exhibit 1). The MassHealth representative stated that at the time of the September 21, 2023 MassHealth notice, the appellant's life insurance policies had a cash surrender value totaling \$16,466.04 and her bank account balances totaled \$576.07, for total assets of \$17,044.11. (Exhibit 1). The appellant's countable assets exceeded the MassHealth limit by \$15,044.11 and she was determined not financially eligible for MassHealth Standard. (Exhibit 1, testimony). The appellant's countable income of \$1,566.00 (\$1,586 -\$20 allowable deduction) also exceeded the MassHealth Standard income limit of 100% of the federal poverty level, and she would have had a 6 month deductible once the assets were reduced. (Exhibit 1). By MassHealth notice dated September 23, 2023, the appellant's Senior Buy In benefits were terminated as of [REDACTED] the date of her death. (Exhibit 2).

The MassHealth representative could not explain how MassHealth arrived at the January 1, 2023 start date for Senior Buy In, but he believed anyone approved for Senior Buy In in 2023 was approved for a January 1, 2023 start date.

The appellant's attorney stated that she⁴ believed the life insurance policies were paid out to the appellant's son upon her death. The appellant's attorney stated that she was not sure if the life

⁴ The attorney at the hearing is a colleague of the attorney who filed the re-hearing request.

insurance company sent the disbursement paperwork to the voluntary administrator of the estate. The appellant's attorney noted that the appellant was seeking MassHealth Standard in the community with the earliest possible start date. The appellant's attorney requested a record open period to give her time to submit proof of spend down of assets. The Deputy Director pointed out that the appellant had a year and a half since the January 11, 2023 asset denial notice to submit proof of spend down and questioned why this had not been done sooner. The appellant's attorney stated that they only recently got in touch with the appellant's son to whom the life insurance proceeds were paid. The Deputy Director noted further that the life insurance proceeds would have been disbursed to the beneficiary after the appellant's death and thus there'd be no way to evidence a spend down of excess assets prior to the appellant's death. Nonetheless, the record was left open until June 17, 2024 to give the appellant's attorney the opportunity to submit documentation regarding the appellant's life insurance policy or policies cash out and spend down. (Exhibit 21). Nothing was submitted during the record open period.

Findings of Fact

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

1. The appellant was over age [REDACTED] living in a household of one in the community when she filed an application for MassHealth Standard for long term care residents on November 10, 2022.
2. MassHealth sent the appellant a request for information on November 17, 2022 with a due date of December 17, 2022.
3. The appellant or appellant's representative then notified MassHealth that she would not be continuing with the long term care application and asked that the application be switched to an application for MassHealth Standard in the community under a Home and Community Based Services waiver, also known as the Frail Elder Waiver (FEW).
4. The appellant's attorney stated that the appellant was never in a skilled nursing facility and was not seeking MassHealth Standard for long term care residents.
5. The appellant's MassHealth application was switched to a MassHealth FEW application on December 15, 2022.
6. MassHealth denied the appellant's FEW application by notice dated January 11, 2023, because her assets exceeded the MassHealth limit of \$2,000.00.
7. The January 11, 2023 MassHealth notice lists the appellant's cash surrender value of life insurance policies totaling \$16,466.04, bank account balances totaling \$45.01, and minimal trust assets for total assets of \$16,515.05; the notice states further that verification of trusts, some bank accounts, personal needs allowance, and a FEW clinical eligibility notice remained

outstanding.

8. The appellant did not appeal the January 11, 2023 notice.
9. The appellant was never found clinically eligible for the FEW.
10. The appellant passed away on [REDACTED]
11. The appellant's attorney sent MassHealth a letter on February 14, 2023 answering some, but not all, of the verification questions.
12. On March 13, 2023, MassHealth sent the appellant a request for information stating that MassHealth had received the appellant's application or review and needed more information to make a determination of eligibility; the request sought verification of various trusts and bank accounts, due by April 14, 2023.
13. On April 1, 2023, MassHealth sent a request for information seeking the same documentation listed in the March 13, 2023 request, but increasing the time by which to submit to July 13, 2023 based on a change in MassHealth regulations.
14. The appellant's attorney submitted documentation to MassHealth on June 12, 2023.
15. The trust documentation was sent to MassHealth Legal for review on June 29, 2023 and MassHealth Legal replied in September, 2023 noting that the trusts were not funded.
16. By notice dated September 21, 2023, the appellant was approved for Senior Buy In because her assets were under the asset limit of \$18,180.00 for Senior Buy In, and her income was under the income limit of 300% of the federal benefit rate, or \$2,742.00 for a household of one; the start date for the Senior Buy In was January 1, 2023.
17. MassHealth determined that the appellant was not eligible for MassHealth Standard because her assets exceeded the limit of \$2,000.00 for MassHealth Standard, and her income exceeded 100% of the federal poverty level for a one person household.
18. The September 21, 2023 MassHealth notice listed the appellant's life insurance policies with a cash surrender value totaling \$16,466.04 and her bank account balances totaling \$576.07, for total assets of \$17,044.11.
19. The record was left open until June 17, 2024 to give the appellant's attorney the opportunity to submit documentation regarding the appellant's life insurance policy or policies cash out and spend down; nothing was submitted during the record open period.

Analysis and Conclusions of Law

Reactivating the Application

The MassHealth agency will reactivate the application after a denial of eligibility for failure to provide requested verifications.

(A) If the requested information is received within 30 days of the date of denial, the date of receipt of one or more of the verifications is considered the date of reapplication.

(B) The date of reapplication replaces the date of the denied application. The applicant's earliest date of eligibility for MassHealth is based on the date of reapplication.

(C) If the reapplication is subsequently denied and not appealed, the applicant must submit a new application to pursue eligibility for MassHealth. The earliest date of eligibility for MassHealth is based on the date of the new application.

(D) If the denial is due to excess assets, the date of reapplication is described at 130 CMR 520.004: Asset Reduction.

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

(130 CMR 516.002).

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 520.004).

Although the MassHealth January 11, 2023 notice was based on excess assets, and the appellant never reduced the assets pursuant to 130 CMR 520.004, the denial notice also listed outstanding verifications and thus MassHealth must have also considered such notice a denial for verifications, thereby allowing it to reopen the appellant's application upon receipt of additional information on February 14, 2023. The MassHealth representative's statement that MassHealth never reopened or restamped the appellant's application cannot be accurate

because MassHealth continued to send requests for information after the January 11, 2023 denial and, in fact, issued an approval notice on September 21, 2023, therefore there had to be an open MassHealth application in MassHealth's system. It is presumed that the application was restamped on February 14, 2023, upon receipt of additional documentation after the January 11, 2023 denial.

Asset Limit

(A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits:

- (1) for an individual — \$2,000; and
- (2) for a couple living together in the community where there is financial responsibility according to 130 CMR 520.002(A)(1) — \$3,000.

(B) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Senior Buy-In for Qualified Medicare Beneficiaries (QMB) as described in 130 CMR 519.010: MassHealth Senior Buy-In (for Qualified Medicare Beneficiaries (QMB)) or MassHealth Buy-In for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-In for Qualifying Individuals (QI), both as described in 130 CMR 519.011: MassHealth Buy-In, may not exceed the amount equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website.

(C) The treatment of a married couple's assets when one spouse is institutionalized is described in 130 CMR 520.016(B).

(130 CMR 520.003).

Cash-surrender Value of Life-insurance Policies.

(1) The cash-surrender value of a life-insurance policy is the amount of money, if any, that the issuing company has agreed to pay the owner of the policy upon its cancellation. An individual may adjust the cash-surrender value of life insurance to meet the asset limit. The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset during the adjustment period.

(2) If the total face value of all countable life-insurance policies owned by the applicant, member, or spouse exceeds \$1,500, the total cash-surrender value of all policies held by that individual is countable. The MassHealth agency does not count the face value of burial insurance and the face value of life-insurance policies not having cash-surrender value (for instance, term insurance) in determining the total face value of life-insurance policies. Burial insurance is insurance whose terms specifically provide that the proceeds can be used only to pay the burial expenses, funeral expenses, or both of the insured.

(130 CMR 520.007(E)).

The cash surrender value of the appellant's life insurance policies totaled \$16,446.04, both at the time of the January 11, 2023 denial notice and the September 21, 2023 approval notice. (Exhibits 1, 18). The appellant also had bank account balances, but it is the cash surrender value of the life insurance policies that resulted in assets exceeding the \$2,000.00 limit for MassHealth Standard.

Funeral or Burial Arrangements.

(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)).

The appellant did not have a prepaid irrevocable burial contract funded by her life insurance policies.

The cash surrender value of the appellant's life insurance policies exceeded the MassHealth limit of \$2,000.00 at the time of the MassHealth denial notice dated January 11, 2023. The appellant died on [REDACTED] and presumably the proceeds from her life insurance policies were paid out to the appointed beneficiaries. During the year and half period between the January, 2023 notice and the present hearing, the appellant did not submit verification of a spend down of these assets. Even after a record open period, the appellant did not submit verification of a spend down of her assets to the MassHealth limit of \$2,000.00. MassHealth's determination that the appellant is not financially eligible for MassHealth Standard is upheld. Because the appellant's assets would need to be spent down before the six month deductible period would begin, there's no need to address MassHealth's deductible calculation and dates.

Begin Date. The begin date for MSP (Senior Buy In) coverage is the first day of the calendar month following the date of the MassHealth eligibility determination.

(130 CMR 519.010(C)).

The start date for the appellant's Senior Buy In, should have been the first day of the calendar month following the date of the MassHealth eligibility determination, or in this case, October 1,

2023. The MassHealth representative explained that there were still some Covid 19 Public Health Emergency (PHE) protections in place in 2023 that must have allowed MassHealth to approve the appellant's January 1, 2023 start date for Senior Buy In. I will not overturn a MassHealth determination that is more generous than one I could determine based on the regulations.

The re-hearing appeal is 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.

Patricia Mullen
Hearing Officer
Board of Hearings

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