

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied in part	Appeal Number:	2309648
Decision Date:	01/04/2024	Hearing Date:	11/14/2023
Hearing Officer:	Paul C. Moore	Record Closed:	12/19/2023

Appellant Representative:



MassHealth Representatives:

Yuos Khieu for Eileen Smith, Charlestown
MassHealth Enrollment Center (by telephone)



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

APPEAL DECISION

Appeal Decision:	Denied in part	Issue:	Excess Assets
Decision Date:	01/04/2024	Hearing Date:	11/14/2023
MassHealth Reps.:	Yuos Khieu for Eileen Smith	Appellant Rep.:	
Hearing Location:	Board of Hearings (remote)		

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 notified the appellant that he is eligible for Senior Buy-In effective May 1, 2023 (Exhibit 1). On October 12, 2023, the appellant timely filed an appeal and requested a fair hearing with the Board of Hearings (BOH) (Exhibit 2). Determinations regarding the scope or amount of MassHealth assistance is a valid ground for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant for Senior Buy-In.

Issue

Did MassHealth correctly approve the appellant for Senior Buy-In, or is the appellant instead eligible for MassHealth long-term care coverage?

Summary of Evidence

A MassHealth representative from the Charlestown MassHealth Enrollment Center (MEC) testified by telephone that appellant, who is over age 65, filed a MassHealth application seeking long-term care coverage June 2, 2023. The appellant entered a nursing facility on August 25, 2023, and is seeking coverage for MassHealth long-term care services beginning August 28, 2023. The MassHealth representative testified that, by notice dated September 12, 2023, MassHealth approved the appellant for Senior Buy-In effective May 1, 2023, under which MassHealth will pay the cost of the appellant's Medicare Part B premium monthly. According to the MassHealth representative, the appellant is not eligible for long-term care services due to excess assets (Testimony, Exh. 1).

The MassHealth notice states the appellant's bank account assets, at [REDACTED] bank, totaled \$2,936.40 as of June 30, 2023; in order to be eligible for long-term care services, the appellant's assets may not exceed \$2,000.00. The MassHealth representative stated that the appellant must submit evidence of an asset spenddown for MassHealth to approve the appellant for long-term care services (Testimony).

The hearing officer pointed out that the relevant MassHealth notice does not contain a reference to a long-term care application being filed on the appellant's behalf, and that the notice appears to be an approval for Senior Buy-In, which is a community benefit. The hearing officer stated that MassHealth should issue a new notice specifically apprising the appellant that he is not eligible for MassHealth long-term care services, and why he is not eligible.

The appellant was represented at hearing by his "limited" attorney-in-fact, who testified by telephone. He stated that he filed an appeal of the September 12, 2023 approval notice because he never received a long-term care denial notice. He noted that the appellant is seeking long-term care coverage on August 28, 2023 (Testimony).

At the close of the hearing, the hearing officer left the record of this appeal open, notifying the parties by email dated November 14, 2023 as follows:

[T]he notice under appeal appears to be a community MassHealth notice. There is no reference in this notice to the appellant seeking long-term care coverage, or to the relevant long-term care application date. In addition, at the outset of the hearing, I did not have an itemization of the assets. . . Also, I had no exhibits from MassHealth prior to the hearing.

[MassHealth representative], is MassHealth willing to issue a hand-generated long-term care denial notice? The appellant would then have 60 days to appeal this notice. Please respond via e-mail to me and to [the appeal representative] by Monday, November 20. [Appeal representative], you may then have until

Wednesday, November 23 to respond, if MassHealth chooses not to issue a new denial notice.

(Exh. 5)

On November 17, 2023, the MassHealth representative responded to the hearing officer and to the appeal representative as follows:

I do not see a reason to send out a manual excess assets notice on this case. The facility information had not been received when the denial went out. Regardless of that issue, the case was over assets either way. It is not a spousal case where the asset total will matter.

On another note, MassHealth cannot calculate eligibility for long term care when a case is over assets. Once they are over assets, the case falls down to a community determination which is what happened here for his approval for Buy-In. The [notice] states we will reconsider the case if the assets are reduced within the (*sic*) days and that includes long term care services.

(Exh. 6)¹

On November 21, 2023, the hearing officer sent the following e-mail correspondence to the parties:

[T]he excess assets amount identified in the notice at issue is \$936.40. For the ease of the appellant, I will hold the record open for the appellant to show a spenddown of excess assets, and to produce a nursing facility screening notification, and SC-1 Form, by thirty days from today, or by **December 19, 2023**.

MassHealth may then have until **December 29, 2023** to respond when assets were reduced, and with the coverage start-date, if known.

(Exh. 7) (bolded in original)

Both parties apprised the hearing officer, by e-mail, that they received and understood his correspondence of November 21, 2023 (Exhs. 8 & 9).

No evidence of an asset spenddown, nor any other documentation, was received by the hearing officer from the appellant on or before December 19, 2023.

¹ The MassHealth representative who testified at hearing was not the MassHealth representative who issued the approval notice under appeal; following the hearing, the original MassHealth representative responded to all of the hearing officer's correspondence and requests.

Findings of Fact

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

1. The appellant, who is over age 65, filed an application for MassHealth long-term care benefits in June, 2023 (Testimony)
2. The appellant was admitted to a nursing facility in August, 2023, and is seeking coverage for his nursing home stay beginning on August 28, 2023 (Testimony).
3. Through a notice dated September 12, 2023, MassHealth notified the appellant that he is eligible for Senior Buy-In effective May 1, 2023 (Exhibit 1).
4. On October 12, 2023, the appellant timely filed an appeal and requested a fair hearing with the Board of Hearings (BOH) (Exhibit 2).
5. The September 12, 2023 MassHealth notice apprised the appellant that he has excess assets of \$936.40, as of June 30, 2023 (Exh. 1).
6. Following the appeal hearing, the record was left open until December 19, 2023 for the appellant to submit evidence of an asset spenddown, a nursing facility screening form, and a completed SC-1 Form (Exh. 7).
7. No further documentation was received from the appellant.

Analysis and Conclusions of Law

A MassHealth applicant or member must cooperate with MassHealth in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of the MassHealth program including recovery (130 CMR 515.008(A)). Once an application for benefits is received, MassHealth requests all corroborative information necessary to determine eligibility, advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information (130 CMR 516.001(B)). If the requested information is not received, MassHealth benefits may be denied (130 CMR 516.001(C)).

In particular, MassHealth regulation 130 CMR 516.001(A), "Filing an Application," states:

(1) Application. **To apply for MassHealth**

(a) for an individual living in the community, an individual or his or her authorized representative must file a Senior Application online at

www.MAHealthConnector.org, complete a paper application, complete a telephone application, or apply in person at a MassHealth Enrollment Center (MEC).

(b) for an individual in need of long-term-care services in a nursing facility, a person or his or her authorized representative must file a complete paper Senior Application and Supplements or apply in person at a MassHealth Enrollment Center (MEC).

(Emphasis added)

Pursuant to 130 CMR 520.002, "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.

...

Here, the appellant filed an application for long-term care services in June, 2023. MassHealth determined that, as of June 30, 2023, the appellant had excess assets of \$936.40, and thus was only eligible for Senior Buy-In.

There is no dispute that the appellant is eligible for Senior Buy-In (a community benefit), now called MSP-QMB. *See*, 130 CMR 510.010.

However, as of the hearing date, the appellant did not live in the community. The notice under appeal apprises the appellant that he has excess assets to qualify for MassHealth Standard. The notice does not, unfortunately, specifically refer to the long-term care regulations at 130 CMR 515.001 *et seq.*

While the notice under appeal could have, and should have, been clearer, it does inform the appellant of the excess asset amount. Pursuant to 130 CMR 520.004, "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.

(Emphasis added)

The notice at issue was dated September 12, 2023, the appeal hearing was held on November 14, 2023, and the record was left open for the appellant to submit evidence of an asset spenddown until December 19, 2023. When viewed in its entirety, I conclude that the appellant was afforded due process, and was aware of what he needed to do in order to qualify for MassHealth long-term care coverage.

He did not do so within the time limits set by the hearing officer.

For all of these reasons, the appeal as to long-term care eligibility is DENIED.

Order for MassHealth

Pay the appellant's Medicare Part B premium retroactive to May 1, 2023.

If the appellant submits evidence of an asset spenddown under 130 CMR 520.004(A)(1)(b) within thirty days of the date of this decision, reconsider the long-term care application filed on June 2, 2023.

If evidence of a spenddown is received within thirty days of the date of this decision, make a new eligibility determination for the appellant based on the June application. Send the appellant notice of his long-term care eligibility, with further appeal rights.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Nga Tran, Appeals Coordinator, Charlestown MEC