

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2310677
Decision Date:	2/15/2024	Hearing Date:	11/29/2023
Hearing Officer:	Marc Tonaszuck	Record Open to:	12/22/2024

Appearance for Appellant:



Appearance for MassHealth:

Patricia Lemke, Springfield 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:	Denied	Issue:	Long Term Care – Start Date
Decision Date:	2/15/2024	Hearing Date:	11/29/2023
MassHealth’s Rep.:	Patricia Lemke	Appellant’s Rep.:	[REDACTED]
Hearing Location:	Springfield MassHealth Enrollment Center	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 09/13/2023, MassHealth notified appellant that he was eligible for MassHealth long term care coverage effective 06/14/2023 with a monthly patient paid amount (PPA) of \$4,984.20 (see Exhibit 1A). Through a notice dated 10/06/2023, MassHealth notified appellant that MassHealth would change his PPA to \$2,527.20 on 06/01/2024 because of a change in his circumstances (see 130 CMR 520.025, 520.026; Exhibit 1B). On 10/31/2023 timely appeal to both notices was filed by the appellant’s power of attorney (POA)¹, appointing [REDACTED] as the appeal representative. In the request for a fair hearing, the POA states that “[r]equested start date for coverage for [the appellant] is April 25, 2023” (see 130 CMR 610.015 and Exhibits 2 and 4). A challenge to the eligibility date is valid grounds for appeal (see 130 CMR 610.032).

A fair hearing took place before the Board of Hearings on 11/29/2023 (see Exhibit 3). At the fair hearing, the appellant’s attorney requested additional time to submit evidence in support of his request for an earlier start date. His request was granted and the record remained open in this matter until 12/08/2023 for the appellant’s submission and until 12/22/2023 for MassHealth’s

¹ See Exhibit 4.

response (see Exhibit 7).

Action Taken by MassHealth

MassHealth notified the appellant that he is eligible for MassHealth long term care benefits effective 06/14/2023.

Issue

The appeal issue is whether MassHealth was correct in determining that the appellant is eligible for MassHealth long term care benefits effective 06/14/2023.

Summary of Evidence

The MassHealth representative testified that the appellant's application for long term benefits was received by MassHealth on 07/27/2023, requesting an eligibility date of 04/25/2023. An earlier application was submitted to MassHealth in October 2022. There was a final denial issued on the October application (Exhibit 5). The appellant, a nursing home resident, is married and his wife lives in the community.

On 09/13/2023, MassHealth informed the appellant that it had conducted a review of his countable assets and determined that he and his wife had \$185,515.00. The asset limit for the appellant is \$2,000.00 and for his community spouse is \$148,620.00. MassHealth determined that the couple had excess assets of \$34,895.00. The MassHealth representative testified that on 06/14/2023, the appellant's spouse reduced her assets by purchasing an annuity. MassHealth usually calculates a date of eligibility using a "Haley Calculation"; however, in this case, MassHealth could provide the appellant with an earlier date by using the date the couples' assets were reduced to be under the limit for Long Term Care benefits.² As a result, MassHealth approved the appellant's benefits with a start date of 06/14/2023, the date the appellant and his wife verified the assets were within the program guidelines.

Appellant was represented by an attorney who appeared telephonically at the fair hearing. He argued that the appellant "was under a conservatorship until May 2023. This conservatorship was in effect during the period for which he is seeking coverage, including the requested start date of coverage of 04/25/2023. He and his spouse did not have control over his assets during this time" (Exhibit 5). Counsel argued that "the proceeds of bank accounts and financial products including cash surrender values of life insurance products including annuities during the period that they are being collected are clearly determined to be inaccessible assets in the regulations. The process for

² See 130 CMR 520.004.

accessing an IRA is substantially similar and should be treated same" (Exhibit 6).

MassHealth responded that if a person is under a conservatorship, the assets can be considered inaccessible; however, in this case, the appellant was under a conservatorship, not the community spouse whose assets were reduced for the appellant's eligibility. MassHealth stated that the appellant's spouse reduced her assets and purchased an annuity on 06/14/2023. The appellant's name does not appear on the spouse's account, and therefore she could have accessed this asset at any time. MassHealth presented copies of the spouse's [REDACTED] brokerage account statement showing that on 06/13/2024, a disbursement was made to her in the amount of \$65,000.00. On 06/14/2024, the spouse funded an annuity from [REDACTED] in the amount of \$65,000.00 (Exhibit 5).

The hearing officer asked the appellant's attorney if he would like to submit an affidavit from the spouse attesting to her attempts at reducing the couple's assets. Counsel requested an opportunity to submit the affidavit. His request was granted and the record remained open in this matter until 12/08/2023 for the appellant's submission and until 12/22/2023 for MassHealth's response (Exhibit 7).

On 12/08/2023, Appellant's counsel submitted an affidavit from the spouse that states, in part,

Appellant fell ill suddenly in September 2022. An application was submitted in the Fall of 2022 to MassHealth for community benefits. At the time, the appellant was not in need of long-term care services. A conservator was appointed by the Court as the appellant's conservator until May 2023. Until the termination of the conservatorship, neither he nor the spouse had control of and complete information regarding his finances. The conservator failed to communicate the status of the appellant's insurance coverage and his transition to needing long-term care coverage in May. Upon information and belief, the Conservator took no measures to cause the appellant to be eligible. Appellant's lack of insurance coverage was not disclosed to the spouse until his file was turned over after the conservatorship ended. Appellant is currently in a skilled nursing facility and has limited ability to communicate, which makes it impossible to effectively inquire about and manage his assets. It was only in May that he was weaned from a ventilator. When the conservatorship ended, in addition to monitoring his care, visiting him, and managing our finances, the spouse made significant efforts to access our IRA accounts and, upon eventual receipt of said assets, spent down the excess to maintain MassHealth eligibility for the appellant. Also contributing to delays, the mail was not properly forwarded by the Conservator, requiring in-person visits to the post office more than once. The couple did not have immediate access to their assets with [REDACTED] and [REDACTED] during the period from April 25, 2023 to June 13, 2023, or forty-nine days. As soon as the conservatorship appointment ended, the couple took steps to liquidate their IRA accounts at [REDACTED] and [REDACTED]. Within a day of receiving confirmation that the

conservatorship was terminated, the spouse coordinated the signing of a power of attorney for the appellant. In addition to dealing with the IRAs, the spouse had to coordinate his long-term disability payments, including several checks that were never deposited by his conservator. His benefit payments were also incorrect and the spouse was required to return funds based on his approval from Social Security. The funds from these accounts that the couple owned were not transferred to us until June 8, 2023 and June 13, 2023, respectively, so while we were the owners of these assets, we did not have immediate access to them in April as MassHealth suggests.

(Exhibit 8).

On 12/12/2023, MassHealth responded, “MassHealth is standing by their decision of the 6/14/2023 start date. The information presented does not provide proof that the assets were inaccessible during the time in April that the nursing home is looking for coverage” (Exhibit 9).

Findings of Fact

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

1. Appellant is a nursing home resident. He is married and his spouse lives in the community (Testimony; Exhibit 5).
2. On 07/27/2023, Appellant submitted to MassHealth an application for Long Term Care (LTC) benefits, requesting an eligibility start date of 04/25/2023. An earlier application was submitted to MassHealth in October 2022. There was a final denial issued on that application (Testimony; Exhibit 5).
3. On 09/13/2023, MassHealth informed the appellant that it had conducted a review of his assets as of the date he was seeking eligibility. MassHealth determined that the appellant and his wife had \$185,515.00 in countable assets. The asset limit for the appellant is \$2,000.00 and for his community spouse is \$148,620.00. MassHealth determined that the couple had excess assets of \$34,895.00 (Testimony; Exhibit 5).
4. On 06/14/2023, the appellant’s spouse reduced her assets by purchasing an annuity with \$65,000.000 in funds disbursed from her [REDACTED] account (Testimony; Exhibits 5 and 8).
5. Only the appellant’s spouse’s name appears on the [REDACTED] account, not the appellant’s (Testimony; Exhibit 5).
6. The appellant’s wife has provided no evidence that she was under a conservatorship during

the pendency of the appellant's application period (Testimony).

7. Appellant has not shown that the spouse's [REDACTED] account was the subject of legal action.
8. Through a notice dated 09/13/2023, MassHealth notified appellant that he was eligible for MassHealth long term care coverage effective 06/14/2023 (Testimony; Exhibit 1A).

Analysis and Conclusions of Law

Regulations at 130 CMR 520.016 address the treatment of assets when one member of a couple is institutionalized.

Treatment of Assets 130 CMR 520.016 describes the treatment of countable assets when one member of a couple is institutionalized, the post-eligibility transfer of assets, and the allowable income deductions for applicants and members who are residents of a long-term-care facility.

(A) Institutionalized Individuals. The total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000.

(B) Treatment of a Married Couple's Assets when One Spouse is Institutionalized.

(1) Assessment.

(a) Requirement. The MassHealth agency completes an assessment of the total value of a couple's combined countable assets and computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse.

(b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request the MassHealth agency to make this assessment, even if the institutionalized spouse is not applying for MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days. (c) Right to Appeal. The MassHealth agency must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or authorized representative) applies for MassHealth Standard.

(2) Determination of Eligibility for the Institutionalized Spouse. At the time that the institutionalized spouse applies for MassHealth Standard, the MassHealth agency

must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows. The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.

(a) Deduct the community spouse's asset allowance, based on countable assets as of the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse, from the remaining assets. The community spouse's asset allowance is the greatest of the following amounts:

1. the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$109,560;
2. a court-ordered amount; or
3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(b) Compare the amount of the remaining assets to the MassHealth asset standard for one person, which is \$2,000. When the amount of the remaining assets is equal to or below \$2,000, the institutionalized spouse has met the asset test of eligibility.

(3) Post-eligibility Transfer of Assets.

(a) To meet the needs of the community spouse and to allow the continuing eligibility of the institutionalized spouse, the MassHealth agency allows the institutionalized spouse, after he or she has been determined eligible for MassHealth Standard, to transfer assets to or for the sole benefit of the community spouse in accordance with 130 CMR 520.016(B)(1) and (2).

(b) The institutionalized spouse must transfer any of his or her assets that are part of the community spouse's asset allowance no later than 90 days immediately after the date of the notice of approval for MassHealth Standard. During this 90-day period, the MassHealth agency

1. will continue to exclude these assets in the determination of continuing eligibility; and
2. will not apply the transfer rules in 130 CMR 520.018 and 520.019 to the assets transferred to the community spouse.

(c) The MassHealth agency may extend the 90-day period if any of the following conditions exist: 1. the court is involved in assigning the couple's property through support actions; 2. an appeal of the asset allowance has been filed with the Office of Medicaid Board of Hearings; or 3. the condition of the institutionalized spouse requires the appointment of a conservator or guardian to act on his or her behalf.

(d) The amount of the transferred assets added to the assets owned by the community spouse cannot exceed the community spouse's asset allowance as defined in 130 CMR 520.016(B)(2).

- (e) After the initial 90-day period or the extension is over, the MassHealth agency counts all assets that remain in the institutionalized spouse's name in determining his or her eligibility.
- (4) Retroactive Eligibility. In determining the eligibility of the institutionalized spouse for the three-month retroactive period before application in a continuous period of institutionalization, the MassHealth agency deducts the amount defined in 130 CMR 520.016(B)(2) from the couple's total countable assets.
- (5) Eligibility of the Community Spouse. The amount defined in 130 CMR 520.016(B)(2) must be counted in determining the community spouse's eligibility for MassHealth.

Regulations at 130 CMR 520.006 address inaccessible assets as follows:

- (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.

MassHealth approved the appellant for LTC benefits with a benefit start date of 06/14/2023. Appellant seeks to have his benefits made effective on 04/25/2023. MassHealth based its determination on the date the appellant and his wife reduced their assets below the program guidelines. Appellant did not dispute the amount of the assets or the date the appellant and his wife reduced the assets to be below the program limits.

MassHealth determined that as of the date the appellant was seeking benefits, 04/25/2023, the appellant and his spouse had \$185,515.00 in countable assets. The asset limit for the appellant is \$2,000.00 and for his community spouse is \$148,620.00. MassHealth determined that the couple had excess assets of \$34,895.00 and the appellant was therefore not eligible for LTC benefits as of the date he was seeking benefits.

On 06/14/2023, the appellant's spouse verified that the couple's assets were below the program limits. MassHealth approved the LTC benefits for the date the couple's assets were below the program limits.

Appellant argued that the appellant was under a conservatorship and it was not until the conservatorship dissolved that he was able to reduce the couple's assets. Counsel for appellant argued that the assets were inaccessible during that time and MassHealth should have approved him for the earlier start date.

MassHealth responded that the verifications provided by the appellant to show that the couple's assets had been reduced show that the assets were not inaccessible. MassHealth provided a copy of the [REDACTED] statement showing a disbursement of \$65,000.00 on 06/13/2023 and a corresponding payment made for an annuity the following day. The Vanguard statement shows that the account is owned by the spouse only, not the appellant. Since the spouse has provided no evidence that she was under a conservatorship, she has not shown that the assets were inaccessible pursuant to the above regulation. Additionally, although she asserted that she was not able to access the assets any earlier than the 06/13/2023 date, she provided no evidence of why she was not able to withdraw the funds from her own Vanguard account. No correspondence was submitted to show when she first requested that the disbursement be made or that [REDACTED] was not responsive to her request.

Accordingly, the appellant has not shown how the regulations support an earlier start date of the MassHealth LTC benefits. MassHealth's determination is supported by both the material facts in the hearing record as well as the regulations. This appeal is therefore 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

cc:

[REDACTED]