

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Approved in part;
Remanded

Appeal Number: 2311802

Decision Date: 12/21/2023

Hearing Date: 12/18/2023

Hearing Officer: Paul C. Moore

Appearance for Appellant:



Appearance for MassHealth:

James Lockwood, Quincy 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:	Approved in part; Remanded	Issue:	Verification of Asset Ownership; Affidavits
Decision Date:	12/21/2023	Hearing Date:	12/18/2023
MassHealth Rep.:	James Lockwood	Appellant Rep.:	Jessica O'Sullivan, consultant
Hearing Location:	Board of Hearings (remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated November 10, 2023, MassHealth notified the appellant that she is not eligible for long-term care coverage because she did not give MassHealth all information needed to decide her eligibility within the required time frame (Exh. 1). The appellant filed a timely appeal of this notice with the Board of Hearings (BOH) on November 20, 2023 (130 CMR 610.015; Exh. 2). Denial of assistance is valid grounds for appeal to the BOH (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant is not eligible for MassHealth long-term care coverage due to missing verifications.

Issue

Did MassHealth correctly determine that the appellant is not eligible for MassHealth due to missing verifications?

Summary of Evidence

A MassHealth representative from the Quincy MassHealth Enrollment Center testified by telephone that the appellant, who is married and over age 65, entered a nursing facility on [REDACTED]. She filed a MassHealth application for long-term care coverage on May 23, 2023. The nursing facility is seeking MassHealth for the appellant's stay on [REDACTED] (Exh. 1, Exh. 5).

The MassHealth representative testified that he processed the appellant's MassHealth application, and requested corroborative information about the appellant's, and the community spouse's, assets and income. Some verifications were timely received from the appellant. The MassHealth representative testified that MassHealth's online asset verification system located two bank accounts with [REDACTED] (Bank #1) owned by the community spouse, which MassHealth deemed countable to the appellant. These two bank accounts were not disclosed on the appellant's MassHealth application, according to the MassHealth representative (Testimony).

One bank account at Bank #1 contains \$3,923.00 (account one), and the other bank account at Bank #1 contains \$58,000.00 (account two), according to the MassHealth representative (Testimony, Exh. 1). These amounts exceed the asset limit for an institutionalized member. He has not received bank statements for these accounts from the appellant. The MassHealth representative did not specify if the community spouse is seeking a spouse-in-home allowance. The MassHealth representative added that while some other verifications are still due to MassHealth from the appellant, the appeal representative asked the MassHealth representative to issue a manual denial of the appellant's application, which he did on November 10, 2023.

The appellant was represented at hearing by a Medicaid consultant, who testified by telephone. She indicated that the appellant and her community spouse have never contributed funds to these bank accounts, and that they were opened approximately eight years ago by the community spouse and his granddaughter, [REDACTED].¹ The consultant explained that when [REDACTED] graduated from high school, she needed a bank account, and that the community spouse agreed to place his name on this account. The bank accounts have been funded solely by [REDACTED] over the years through her employment, according to the consultant. Neither the appellant nor the community spouse have contributed to, or taken disbursements from, these accounts, she testified (Testimony).²

The consultant testified that pursuant to 130 CMR 520.005(D)(7), applicants may verify individual or joint ownership of countable assets, such as bank accounts, by submitting a notarized affidavit, sworn to under penalty of perjury, signed by all owners of the asset, and attesting to the distribution of ownership. In this case, the appellant submitted to MassHealth a notarized

¹ Initials are used to protect confidentiality.

² The consultant stated that she can, if MassHealth wishes, have the community spouse remove his name from accounts one and two.

affidavit of the community spouse, dated October 27, 2023, stating in relevant part:

I, [community spouse], swear under the penalties of perjury that I have never contributed or used any assets held in [Bank #1] [accounts one and two]. When my granddaughter [REDACTED] graduated high school, she asked me for help opening a bank account. When I brought her to the bank, they suggested that I be added as a signor in the event of an emergency.

(Exh. 5C)

In addition, the consultant submitted to MassHealth an October 28, 2023 notarized affidavit of [REDACTED], the appellant's granddaughter, stating in pertinent part:

I, [REDACTED], swear under the penalties of perjury that I am the primary owner and only user of [Bank #1 accounts one and two]. The summer I graduated from high school I asked my grandfather, [community spouse], to help me get my own bank account. The bank suggested that he be added as a signor in the event of an emergency. He has never contributed or withdrawn assets from my accounts.

(Exh. 5D)

The MassHealth representative testified that, per the advice of his supervisor, he cannot accept these affidavits as proof of ownership of the funds in accounts one and two (Testimony).

Findings of Fact

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

1. The appellant is over age 65, has a community spouse, and entered a nursing facility on [REDACTED] (Testimony, Exh. 5).
2. The appellant filed a MassHealth application for long-term care coverage on May 23, 2023 (Exh. 1).
3. The nursing facility is seeking coverage for the appellant's stay effective [REDACTED] (Testimony).
4. While processing the appellant's application, MassHealth learned of two undisclosed bank accounts with Bank #1 in the name of the community spouse (Testimony).
5. MassHealth asked the appellant and her community spouse to verify ownership of Bank #1 accounts one and two (Testimony).

6. The appellant submitted to MassHealth a notarized affidavit of the community spouse, dated October 27, 2023, stating in relevant part: "I, [community spouse], swear under the penalties of perjury that I have never contributed or used any assets held in [Bank #1] [accounts one and two]. When my granddaughter [REDACTED] graduated high school, she asked me for help opening a bank account. When I brought her to the bank, they suggested that I be added as a signor in the event of an emergency" (Exh. 5C)
7. The appellant submitted to MassHealth an October 28, 2023 notarized affidavit of K.R., the appellant's granddaughter, stating in pertinent part: "I, [REDACTED], swear under the penalties of perjury that I am the primary owner and only user of [Bank #1 accounts one and two]. The summer I graduated from high school I asked my grandfather, [community spouse], to help me get my own bank account. The bank suggested that he be added as a signor in the event of an emergency. He has never contributed or withdrawn assets from my accounts" (Exh. 5D).
8. The amounts in these accounts are \$3,923.00 (account one), and \$58,000.00 (account two) (Testimony).
9. MassHealth denied the appellant's application for missing verifications on November 10, 2023 (Exh. 1).
10. The appellant filed a timely appeal of this denial on November 20, 2023 (Exh. 2).

Analysis and Conclusions of Law

Pursuant to 130 CMR 520.016, "Long-Term Care: 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.

Next, pursuant to 130 CMR 520.007, "Countable Assets:"

Countable assets are all assets that must be included in the determination of eligibility. 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.

Bank accounts are countable assets according to 130 CMR 520.007(B), which states:

Bank Accounts.

(1) Definition. Bank accounts are defined as deposits in a bank, savings and loan institution, credit union, or other financial institution. Bank accounts may be in the form of savings, checking, or trust accounts, term certificates, or other types of accounts.

(2) Determination of Ownership and Accessibility. The MassHealth agency considers funds in a bank account available only to the extent that the applicant or member has both ownership of and access to such funds. The MassHealth agency determines the ownership of and access to the funds in accordance with 130 CMR 520.005 and 520.006.

Turning to 130 CMR 520.005(B)(7), "Verifications:"

Individual or joint ownership of any countable asset must be verified by a written document providing reasonable evidence of ownership. The MassHealth agency determines whether a verification is acceptable in accordance with 130 CMR 520.007(B)(3) and 130 CMR 520.005(D). Acceptable verification includes, but is not limited to, the following:

(7) a notarized affidavit, sworn to under penalty of perjury, signed by all owners of the asset, and attesting to the distribution of ownership;

...

In this matter, during the processing of the appellant's application for long-term care coverage, MassHealth located bank accounts bearing the name of the community spouse, which were not disclosed on the appellant's MassHealth application. MassHealth subsequently asked the appellant to verify ownership of these bank accounts. In response, the appeal representative submitted dated, notarized affidavits of the owners of the bank accounts, who are the community spouse and the appellant's granddaughter, [REDACTED] respectively. The affidavits reflected that the community spouse has never deposited funds into these accounts, nor has he withdrawn funds from the accounts. His name was simply added as an "owner" on the accounts at the request of Bank #1.

MassHealth did not accept these affidavits as verification of the ownership of these accounts.

MassHealth's decision not to accept the affidavits as verification was incorrect. As the appeal representative correctly argued, sworn, notarized affidavits are "acceptable verification" to corroborate ownership of assets, as set forth at 130 CMR 520.005(B)(7).

The amounts in accounts one and two at Bank #1 are not countable to the appellant and the community spouse.

This appeal is APPROVED IN PART.

Order for MassHealth

Deem the ownership of accounts one and two to be verified. Do not count the funds in these bank accounts to the appellant or the community spouse.

Pending verification of ownership of all other assets, proceed to an eligibility determination for the appellant, using the May 23, 2023 application date.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Tosin Adebyi, Appeals Coordinator, Quincy MassHealth Enrollment Center