

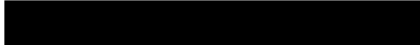
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2312054
Decision Date:	4/24/2024	Hearing Date:	12/20/2023
Hearing Officer:	Patrick Grogan	Record Open to:	3/8/2024

Appearance for Appellant:



Appearance for MassHealth:

Joan Rivera

Interpreter:

N/A



*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:	Eligibility Date, Assets, Pooled Trust
Decision Date:	4/24/2024	Hearing Date:	12/20/2023
MassHealth's Rep.:	Joan Rivera	Appellant's Rep.:	
Hearing Location:	Remote (Tel)	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 October 25, 2023, MassHealth approved the Appellant's application for MassHealth Standard benefits to cover care in a nursing home. (Exhibit 1) MassHealth determined that coverage would begin on April 28, 2023 (see 130 CMR 520.004 and Exhibit 1). The Appellant filed this appeal in a timely manner on November 27, 2023 (see 130 CMR 610.015(B) and Exhibit 2). A challenge to start date is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the Appellant's application for MassHealth Standard benefits to cover care in a nursing home. (Exhibit 1) MassHealth determined that coverage would begin on April 28, 2023 (see 130 CMR 520.004 and Exhibit 1).

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.004, in approving the Appellant's application for MassHealth Standard benefits to cover care in a nursing home and determining that coverage would begin on April 28, 2023 (see 130 CMR 520.004;

520.008 and Exhibit 1).

Summary of Evidence

The Appellant is a MassHealth member over the age of 65, who applied for and was approved, for MassHealth Standard benefits. (Exhibit 1). MassHealth determined that coverage would begin on April 28, 2023. (Exhibit 1). At Hearing, MassHealth testified that the Appellant's application was dated June 14, 2023, but it was later determined that the controlling application date is May 30, 2023. (Testimony). The appellant was admitted to the nursing facility on [REDACTED] 2022 and is seeking a February 14, 2023 MassHealth start date. (Exhibit 6, p. 6). MassHealth stated that a first request for information was sent to the Appellant on June 14, 2023, and the Appellant was initially denied for MassHealth Standard benefits to cover care in a nursing home on September 18, 2023. The appellant was later approved on October 25, 2023 with a start date of April 28, 2023. (Testimony, Exhibit 1) MassHealth testified that the Appellant was the beneficiary of a revocable trust holding real estate property. By deed dated [REDACTED] 2023 and recorded on [REDACTED] 2023, the trustee of the revocable trust transferred the trust property to the appellant. (Testimony, exhibit 6, p. 8). By deed dated [REDACTED] 2023 and recorded on [REDACTED] 2023, the appellant's durable power of attorney, on behalf of the appellant, transferred the real estate to a third party for consideration of \$330,000.00. (Exhibit 6, p. 10). By check dated April 28, 2023, \$304,689.35 was paid from the attorney's IOLTA account to a pooled trust on behalf of the appellant. (Exhibit 6, p. 12). MassHealth testified that because the pooled trust is not countable, MassHealth considered April 28, 2023 as the date that the appellant spent down her assets and was otherwise eligible for MassHealth.

The Appellant, through her Appeal Representative, did not contest that the real property was a countable asset, nor that the proceeds from the sale were countable. (Testimony, Exhibit 6). Rather, the Appellant contends that the property was transferred from the revocable trust to the Appellant individually so that Appellant could transfer the property to a third-party seller for fair market value. (Testimony, Exhibit 6, pg. 8, 10). The proceeds were then transferred into a pooled trust for the benefit of the Appellant. (Testimony, Exhibit 6, pg. 15)

The Appellant contends that in accordance with the Regulations, the Appellant may transfer the proceeds of the sale of the real property into a pooled trust, which then converts the proceeds into a non-countable asset as governed by 130 CMR 520.008(I). (Testimony, Exhibit 6). The Appellant submits that the transfer was permissible in accordance with 130 CMR 520.019(D)(5). (Testimony, Exhibit 6). Additionally, pursuant to 130 CMR 520.019(K)(1) and 130 CMR 520.019(K)(1)(b), the Appellant argues that the transfer was cured during the eligibility process and was cured before a period of ineligibility was determined by MassHealth. (Testimony, Exhibit 6) The appellant is seeking an eligibility start date of February 14, 2023. (Exhibit 2).

The Record was left open for the Parties to submit Briefs/Memoranda prior to February 23, 2024

and to submit Reply Briefs/Memoranda prior to March 8, 2024. (Exhibit 7) MassHealth submitted a Brief/Memorandum timely. (Exhibit 8) The Appellant submitted a Brief/Memorandum timely. (Exhibit 9). Neither party submitted a Reply Brief/Memorandum.

It is noted that at the commencement of the Public Health Emergency (PHE), the federal government implemented continuous coverage requirements. In response to these requirements, MassHealth put protections in place that prevented MassHealth members' coverage from ending. These protections were in place from February 2020 until April 1, 2023. The Federal government ended the National Emergency Concerning the Novel Coronavirus Disease 2019 (COVID-19) Pandemic (COVID-19 National Emergency) and the Public Health Emergency on May 11, 2023. (see Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127))

Findings of Fact

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

1. The Appellant is a MassHealth member over the age of 65, who applied, and was approved, for MassHealth Standard benefits. (Exhibit 1).
2. MassHealth determined a MassHealth start date of April 28, 2023. (Exhibit 1).
3. The Appellant's application was received by MassHealth on May 30, 2023. (Testimony)
4. MassHealth stated that a first request for information was sent to the Appellant on June 14, 2023, and the Appellant was initially denied for MassHealth Standard benefits to cover care in a nursing home on September 18, 2023, but was later approved on October 25, 2023 with a start date of coverage MassHealth determined as April 28, 2023. (Testimony, Exhibit 1)
5. The Appellant was the beneficiary of a revocable trust that held real estate property; the trustee of the trust transferred the real estate property to the appellant on [REDACTED] 2023, with the deed recorded on [REDACTED] 2023. (Testimony).
6. The Appellant, through her durable power of attorney, sold the real estate to a third party on [REDACTED] 2023, with deed recorded on [REDACTED] 2023, for \$330,000.00; by check dated [REDACTED] 2023, \$304,689.35 was paid from the attorney's IOLTA account to a pooled trust on behalf of the appellant.

Analysis and Conclusions of Law

The parties do not dispute that the real estate property that was held in the revocable trust of which the appellant was a beneficiary is a countable asset. MassHealth does not dispute that the pooled trust is a non-countable asset. Rather the parties differ regarding when the assets should be considered spent down. MassHealth contends that the Appellant's eligibility must begin on April 28, 2023, the date the appellant's assets were paid into the pooled trust. The entirety of this appeal is governed by 130 CMR 520.000, et. seq. MassHealth relies on 130 CMR 520.004(A)(1):

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);

MassHealth further cites to 130 CMR 520.023(B)(4):

520.023: Trusts or Similar Legal Devices Created on or after August 11, 1993 The trust and transfer rules at 42 U.S.C. 1396p apply to trusts or similar legal devices created on or after August 11, 1993, that are created or funded other than by a will. Generally, resources held in a trust are considered available if under any circumstances described in the terms of the trust, any of the resources can be made available to the individual.

(B) Revocable Trusts...

(4) The home or former home of a nursing-facility resident or spouse held in a revocable trust is a countable asset. Where the home or former home is an asset of the trust, it is not subject to the exemptions of 130 CMR 520.007(G)(2) or (G)(8).

MassHealth determined that the pooled trust into which the appellant transferred her assets on April 28, 2023 is non-countable pursuant to 130 CMR 520.008(I).

(I) Pooled Trust.

Effective until sixty days after the end of the maintenance of effort and continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), a pooled trust in accordance with the trust rules at 130 CMR 520.021 through 520.024 is considered a noncountable asset.

Effective 60 days after the end of the maintenance of effort and

continuous eligibility provisions of Section 6008 of the Families First Coronavirus Response Act (Public Law No. 116-127), a valid pooled trust as determined by the MassHealth agency in accordance with 130 CMR 515.001: Definition of Terms and the trust rules at 130 CMR 520.021 through 520.024 is considered a noncountable asset. A pooled trust that does not meet federal Medicaid and state MassHealth requirements may be considered a countable asset or transfers into such trusts may be considered disqualifying transfer of resources.

The Appellant cites to the regulations concerning disqualifying transfers at 130 CMR 520.019, however MassHealth did not make a determination of a disqualifying transfer here nor did it impose a period of ineligibility. A transfer of assets into a pooled trust is a permissible asset and MassHealth determined such. (130 CMR 520.019(D)).

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228. See also Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., 11 Mass. App. Ct. 333, 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386, 390 (1998). Here, the Appellant has not met her burden, by a preponderance of evidence, that MassHealth's administrative determination is invalid.

On the date for which the appellant seeks MassHealth coverage to start, February 14, 2023, the appellant had countable assets as the beneficiary of a revocable trust. Such assets remained countable until they were paid into the non-countable pooled trust on [REDACTED] 2023. Again, the appellant is confused in arguing that the transfer regulations at 130 CMR 520.019(D) are applicable here, as MassHealth did not make a determination of a disqualifying transfer of assets. If it had, the ineligibility period for a transfer of \$304,000 would be years long. Instead, MassHealth correctly determined that the appellant spent down her excess assets, without violating the disqualifying transfer regulations, on April 28, 2023. MassHealth's action is upheld and the 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.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171