

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2312709
Decision Date:	02/02/2024	Hearing Date:	01/04/2024
Hearing Officer:	Susan Burgess-Cox	Record Open to:	01/18/2024

Appearance for Appellant:



Appearance for MassHealth:

Karen Ryan



*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

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Eligibility
<b>Decision Date:</b>	02/02/2024	<b>Hearing Date:</b>	01/04/2024
<b>MassHealth's Rep.:</b>	Karen Ryan	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 November 28, 2023, MassHealth denied the appellant's application for MassHealth because her countable assets were over the program limit. (130 CMR 520.000; Exhibit 1). An appeal was filed on December 7, 2023. (Exhibit 2). The Board of Hearings dismissed the appeal as it was not filed by an individual with written authorization to file a request for hearing on the appellant's behalf. (130 CMR 610.004; 130 CMR 610.130 CMR 610.035; Exhibit 3). Counsel for the appellant provided notice to the Board of Hearings that he is representing the appellant in the appeal. (Exhibit 4). The Board of Hearings vacated the dismissal and scheduled a hearing for January 4, 2024. (130 CMR 610.048(C); Exhibit 5). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

At the hearing, counsel for the appellant requested that the record be held open. Granting this request extended the decision due date to February 9, 2024.

### Action Taken by MassHealth

MassHealth determined that the appellant has more countable assets than MassHealth allows. (130 CMR 520.000).

## **Issue**

Whether MassHealth was correct in determining that the appellant has more countable assets than MassHealth allows.

## **Summary of Evidence**

The MassHealth representative, from the Tewksbury MassHealth Enrollment Center, presented documents that were incorporated into the hearing record as Exhibit 6. The appellant applied for MassHealth long-term care seeking coverage as of August 1, 2023. (Testimony; Exhibit 6). MassHealth denied the application due to the appellant having excess assets. (Testimony; Exhibit 1; Exhibit 6). The countable assets include: a revocable trust with a bank balance of \$100,000; a second bank account with a balance of \$169,884.64 and a personal needs account with a balance of \$5.01. (Testimony; Exhibit 6). The MassHealth representative presented: a copy of the trust; a certification of trust stating that the trust is in full effect and holds \$100,000 in a bank account; May 2023 and June 2023 bank statements from the trust account each showing a balance of \$100,000; and April 2023, May 2023 and June 2023 bank statements from the second bank account with a balance of \$203,592 in April 2023, \$190,645 in May 2023 and \$175,240 in June 2023. (Testimony; Exhibit 6).

Counsel for the appellant appeared by telephone and offered no documents or evidence of a spend down prior to or at hearing. Counsel for the appellant did not dispute the fact that the trust was revocable or that the assets in question were countable. Counsel stated that they started to spenddown the assets in question noting that some funds were provided to the appellant's son as a gift so the appellant would likely have a period of ineligibility due to a transfer of assets. Counsel requested a record open period to provide evidence of the spenddown. The record was held open until January 12, 2024 for counsel to provide evidence of a spenddown. (Exhibit 7). MassHealth had until January 19, 2024 to review and respond to the appellant's submission. Documents presented by counsel for the appellant were incorporated into the hearing record as Exhibit 8.

Counsel for the appellant provided a letter with a summary of payments made by the appellant to the nursing facility and other parties from August 2022 through June 2023. Counsel acknowledges in his statement that the appellant still does not dispute the balances noted by MassHealth at hearing. Counsel states that the appellant made a gift to her son and granted a loan to her son. Counsel notes in his summary that records of payments and balances were requested the day after the hearing and not received at the close of the record open period. The appellant requested an extension of the record open period. This request was denied.

The MassHealth representative responded that they would need to see financial statements showing balances from June 2023 to present from both bank accounts to verify that the assets were spent down. As noted above, counsel for the appellant did not have such statements prior

to or at hearing or during the record open period. In their response, the MassHealth representative also questioned whether the transactions noted in the summary presented by counsel for the appellant had occurred.

## **Findings of Fact**

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

1. MassHealth received an application for long-term care seeking coverage as of August 1, 2023.
2. MassHealth denied the application due to the appellant having excess assets.
3. The countable assets include: a revocable trust with a bank balance of \$100,000; a second bank account with a balance of \$169,884.64 and a personal needs account balance of \$5.01.
4. The appellant did not dispute the ownership or value of the assets.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Countable assets are all assets that must be included in the determination of eligibility. (130 CMR 520.007). 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. (130 CMR 520.007). Assets owned exclusively by an applicant or member and the spouse are counted in their entirety when determining eligibility for MassHealth. (130 CMR 520.005(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 \$2,000 for an individual. (130 CMR 520.003(A)(1)). At the time of the eligibility decision, the appellant's assets

exceeded this limit. During the course of the appeal process, the appellant failed to demonstrate that the asset amount determined by MassHealth was not correct or that the assets were spent down. Statements by counsel for the appellant alone were not sufficient to demonstrate that the assets were spent. Additionally, the fact that counsel noting taking action to obtain verification of a spenddown demonstrates that MassHealth was correct in their decision at the date of the issuance of the notice and as of the hearing date.

As the decision made by MassHealth was correct, this 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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290