

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2400986
Decision Date:	3/18/2024	Hearing Date:	2/14/2024
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

Nicole Conrad, Taunton



*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:	Approved	Issue:	Long term care eligibility, assets
Decision Date:	3/18/2024	Hearing Date:	2/14/2024
MassHealth's Rep.:	Nicole Conrad	Appellant's Rep.:	Attorney
Hearing Location:	Taunton (remote)	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

By notice dated December 28, 2023, MassHealth denied Appellant's application for MassHealth because Appellant failed to submit required information. Exhibit 1. Appellant filed this timely appeal on January 19, 2024. Exhibit 2, 130 CMR 610.015(B). Denial of assistance is a valid basis for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth benefits because Appellant failed to submit required verifications.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 515.008, in denying Appellant's application for failure to provide requested verifications.

Summary of Evidence

A representative from MassHealth appeared by phone and submitted records in support, Exhibit 4. Appellant was represented at hearing by phone by an attorney and submitted records in support, Exhibits 5, 6. A summary of testimony and records follows.

The appeal issue relates to ownership of a property in Western Massachusetts (“the property”). MassHealth received notification during an asset search that Appellant’s name was listed as an owner of the property.

Appellant initially applied for benefits on September 1, 2022. On October 14, 2022, MassHealth denied the application for failure to provide information, including documentation of the ownership of the property. Appellant appealed the denial on February 8, 2023. A hearing was scheduled and held on March 10, 2023 (Appeal No. 2301047). At this hearing, MassHealth agreed to consider the property and Appellant’s other assets inaccessible for six months while Appellant had a conservator appointed. 130 CMR 520.006(C). Appellant was approved for a six month period beginning June 30, 2023. Appellant withdrew Appeal No. 2301047, maintaining the argument that Appellant does not own the property and therefore cannot provide proof of negative ownership even at a later date.

At the present hearing, MassHealth’s representative testified that during the six month period, MassHealth re-ran the search for the property in its asset verification system. This yielded the same result, that Appellant’s name is listed on the tax assessor’s card on the property. Exhibit 4. MassHealth once again requested proof that Appellant is not the owner or has any legal interest of the property. On December 28, 2023, MassHealth denied Appellant’s application for failure to provide information or proof needed. Exhibit 1. The notice states that the proof not submitted in the time allowed was:

Please submit proof of the current status of [the property].

What we received is not acceptable proof.

According to the City ..., [Appellant] and [mother] are both assessed owners of this property. This was found on a property card obtained by MassHealth from the [City] Assessors office.

Id. The MassHealth representative did not have a specific response when asked what Appellant would need to provide in order to satisfy the request, acknowledging that it was an unusual circumstance.

Appellant’s submission includes a copy of a deed issued to Appellant’s mother in 1984. Exhibit 5 at 4. A search in the registry does not show any conveyances made by Appellant’s mother or her estate apart from a mortgage in 1984. Exhibit 6. The city’s tax assessor’s property listing only lists Appellant’s mother’s estate as an owner. Exhibit 5 at 6. The residential property record card includes Appellant’s name (preceded by an unexplained “%” symbol). *Id.* at 8.

Appellant's attorney argued that when Appellant's mother died¹, no one opened her estate. Appellant was living in the home with his mother at the time she passed away and continued living in the house. Appellant's attorney speculated that Appellant paid the property taxes on the property, which is how his name may have become attached to the property on a database somewhere.

Appellant's attorney argued that Appellant does not own the property and could not sell, lease, or mortgage it legally without a proper deed. Appellant's name listed on a property card could not be used to prove ownership of the property. Appellant's attorney argued that the property is in legal limbo at the moment, with no owner apart from Appellant's mother's estate. Appellant could possibly have a one-third claim to the property if Appellant's mother's estate was probated, as he has two siblings. However, Appellant's attorney argued that Appellant cannot afford to, nor should legally be compelled to, enter the estate in probate. The property is in disrepair.

Finally, Appellant's attorney argued that even if the hearing officer or MassHealth found that this property was Appellant's countable asset, the asset is inaccessible pursuant to 130 CMR 520.006(B).

The document relied upon by MassHealth lists Appellant and his mother as owners of the property pursuant to book [REDACTED] page [REDACTED] in the registry of deeds. Exhibit 4 at 1. Appellant's mother's deed is registered at book [REDACTED] page [REDACTED] in the registry of deeds. Exhibit 5 at 4. MassHealth also submitted an illegible copy of a document registered at book [REDACTED] page [REDACTED] of the registry. Exhibit 4 at 2. This is a document recording Appellant's mother's mortgage on the property. Exhibit 6. This mortgage was discharged in 1993, recorded at book [REDACTED] page [REDACTED] *Id.*

Findings of Fact

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

1. On September 1, 2022, Appellant applied for MassHealth long term care benefits.
2. On October 14, 2022, MassHealth denied the application for failure to provide information, including documentation of the ownership of the property. Appellant appealed the denial on February 8, 2023. A hearing was scheduled and held on March 10, 2023 (Appeal No. 2301047).
3. At the hearing for Appeal No. 2301047, MassHealth agreed to consider the property and Appellant's other assets inaccessible for six months while Appellant had a conservator

¹ A fact offered during Appeal No. 2301047, but not the present hearing, was that Appellant's mother passed away in 1999.

appointed. 130 CMR 520.006(C). Appellant was approved for a six month period beginning June 30, 2023. Appellant withdrew Appeal No. 2301047

4. On December 28, 2023, MassHealth denied Appellant's application for failure to provide information or proof needed. Exhibit 1.
5. The notice states that the proof not submitted in the time allowed was:

Please submit proof of the current status of [the property].

What we received is not acceptable proof.

According to the City ..., [Appellant] and [mother] are both assessed owners of this property. This was found on a property card obtained by MassHealth from the [City] Assessors office.

Id.

6. Appellant filed this timely appeal on January 19, 2024. Exhibit 2.
7. A property listing found by MassHealth lists Appellant and his mother as owners of the property pursuant to book [REDACTED] page [REDACTED] in the registry of deeds. Exhibit 4.
8. The deed found at book [REDACTED] page [REDACTED] in the registry of deeds lists Appellant's mother as grantee. Exhibit 5 at 4.
9. Appellant's mother also recorded a mortgage, book [REDACTED] page [REDACTED] of the registry, and discharge of the mortgage, book [REDACTED] page [REDACTED]
10. Appellant's mother is deceased.

Analysis and Conclusions of Law

An individual applying for MassHealth long term care benefits (or the individual's authorized representative) must submit a complete application and all required supplements. 130 CMR 516.001(A)(1). Pursuant to 130 CMR 515.008(A), an "applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility." After receiving an application for MassHealth benefits, MassHealth proceeds as follows:

The MassHealth agency requests all corroborative information necessary to determine eligibility.

- (1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of the receipt of the [application].

(2) The notice 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 received [by MassHealth] within 30 days of the date of the request, the [application] is considered complete...If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied.” 130 CMR 516.001(C).

MassHealth asserted that it had not received sufficient proof that Appellant does not own the property. MassHealth relied upon a property card that lists Appellant as an owner. However, the property card listing the Appellant as an owner refers to the deed Appellant’s mother held on the property. Appellant is not listed on this deed. The property card appears to contain an error, and the proper verification showing the error is the deed referenced on the card. No other evidence presented demonstrates that Appellant owns the property, and the hearing officer’s search of the county registry of deeds and city’s assessor database yielded the same results offered by Appellant.

Appellant has provided sufficient proof regarding the ownership of the property. Accordingly, this appeal is approved.

Appellant requested a finding that the property is inaccessible under 130 CMR 520.006(B)(1). This is not a ripe issue for this appeal, as there has been no determination made by MassHealth regarding whether this is a countable asset of Appellant’s or if there has been a disqualifying resource transfer.

Order for MassHealth

Rescind the December 28, 2023 denial notice and proceed to determine eligibility.

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.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616

[REDACTED]