

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2401956
Decision Date:	6/14/2024	Hearing Date:	03/11/2024
Hearing Officer:	Thomas Doyle	Record Open to:	04/22/2024

Appearance for Appellant:



Appearance for MassHealth:

Kim McAvinchey, Tewksbury 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:	Excess Assets
Decision Date:	06/14/2024	Hearing Date:	03/11/2024
MassHealth's Rep.:	Kim McAvinchey	Appellant's Rep.:	
Hearing Location:	Remote (phone)	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 December 12, 2023, MassHealth denied the appellant's application for long-term care services because MassHealth determined that appellants had excess assets. (Ex. 1). Appellant's power of attorney (Ex. 3) filed this appeal on February 7, 2023. (Ex. 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied long-term care services because appellant was over assets.

Issue

The appeal issue is whether MassHealth was correct in denying long-term care services because appellant was over assets.

Summary of Evidence

The MassHealth worker (worker) and the appeal representative, an attorney, both appeared by phone. The hearing began, both parties were sworn and exhibits were marked. The worker testified that appellant's application for long-term care was received on January 19, 2023.

Appellant (Institutionalized Spouse) was admitted to the facility on [REDACTED]. Appellant's spouse (Community Spouse) resides in the community. The requested coverage date was February 1, 2023. The worker stated between February 6, 2023 and October 21, 2023, there were two requests for information sent to appellant, and two MassHealth denials. She stated the first appeal process finished at the end of November 2023, with MassHealth making an eligibility determination that appellant was over assets. She stated appellant's original application date was preserved based upon the prior appeal. She stated that countable assets are all assets that must be included in the determination of eligibility. All real estate owned by the individual and the spouse, with the exception of the principal place of residence, is a countable asset. (Testimony).

The worker stated that appellant had a Fidelity account ending in [REDACTED] with a balance of \$99,323.05 as of March 31, 2023. The community spouse had two [REDACTED] accounts, one ending in [REDACTED] with a balance of \$44,543.52, and the other ending in [REDACTED] with a balance of \$2,450.81. The worker stated that appellant and the community spouse jointly held three [REDACTED] accounts ending in [REDACTED], respectively. There was a jointly held [REDACTED] IRA ending in [REDACTED]. The total cash value of assets was \$160,504.69. (Testimony; Ex. 5, p. 2). Appellant and the community spouse jointly own real estate in [REDACTED] with a total assessed value of \$164,700.00. (Id.). They jointly owned a second vehicle totaling \$1,857.00. (Id.).¹ The worker stated the couple's total assets equaled \$327,061.69. She stated that the asset allowance for a couple where one spouse is institutionalized and the other lives in the community is \$150,620. She concluded that the couple had excess assets of \$176,441.69, and therefore the appellant is not eligible for MassHealth. (Id.).

The worker stated that appellant is arguing that one of the [REDACTED], was not countable because it was a business property essential to the self-support of the community spouse. The worker contends the property is countable because the community spouse took \$490,000.00 in cash and purchased an annuity that pays him \$40,000.00 a month which will allow the community spouse to recoup the purchase price in a year. (Ex. 11, pp. 9-17). The worker wanted to point out that the community spouse had access to this cash to purchase the annuity. The worker also stated the community spouse did not submit any expenses related to this purported business property. She stated the community spouse is making almost \$45,000 a month from his pension, Social Security and the annuity income. She stated that the property has never been rented and there was no intent to rent, per a statement the community spouse wrote that is in evidence. (Ex. 9). The worker testified in support of MassHealth's argument that it is not a rental, and therefore countable property, because the community spouse wrote "the idea of renting the cottage came up when I realized I would not be spending summers on the island with my wife in long-term care." The institutionalized spouse (wife) entered long-term care on [REDACTED] (Ex. 7). The worker concluded that the argument by appellant that the property was a rental is an attempt to circumvent MassHealth limits and testified that the property is not essential to the community spouse's self-support. (Testimony).

¹ The appellants' attorney did not dispute the value of the vehicle offered by MassHealth.

The appellants' attorney stated the community spouse has brain cancer and other health issues. The attorney testified that "with respect to the rental [of the [REDACTED] property], yes, it's something just decided but over a year and a half ago because it takes a long time to get permits." (Testimony). The record was left open at the request of the attorney so she could present arguments on the rental property and answer the appeal summary sheet provided by the worker on the morning of the hearing. (Ex. 10). At the close of the record open period, the attorney provided a packet of documents. (Ex. 11).

On the application for Health Coverage for Seniors and People Needing Long Term Care Services, both appellant and the community spouse were asked if they receive rental income. Nothing was checked. (Ex. 6, pp. 5, 10).

I reopened the record pursuant to the Fair Hearing Rules at 130 CMR 610.081 to narrow the issues and asked the parties if the rental property was the only item placing appellant over assets. (Ex.13). The responses from the parties are in the record. (Exs. 14, 15, 16, 17, 18 and 19). The attorney asserted that the house is the only issue. The worker argued that there were other assets that put appellant over the asset limit, including cash, another property and a second vehicle. The parties then made arguments on the date appellant was over assets.

Findings of Fact

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

1. Appellant's application for long term care was received on January 19, 2023. (Testimony).
2. Appellant was admitted to the facility on [REDACTED]. (Testimony; Ex. 7).
3. Appellant's spouse resides in the community. (Testimony).
4. Appellant had a Fidelity account ending in [REDACTED] with a balance of \$99,323.05 as of March 31, 2023. (Testimony; Ex. 5).
5. The community spouse had [REDACTED] accounts, one ending in [REDACTED] with a balance of \$44,543.52, and the other ending in [REDACTED] with a balance of \$2,450.81 as of March 31, 2023. (Testimony; Ex. 5).
- 6. Appellant and the community spouse jointly held [REDACTED] accounts, one ending in [REDACTED] \$1,921.60, another ending in [REDACTED], \$292.93 and another ending in [REDACTED], \$3,589.50. There was also a jointly held [REDACTED] IRA ending in [REDACTED], with \$8,383.28. (Testimony; Ex. 5).

7. The total cash value of assets was \$160,504.69. (Testimony; Ex. 5).
8. Appellant and the community spouse jointly owned real estate in [REDACTED] valued at \$6,800.00, and [REDACTED] valued at \$157,000.00, totaling \$164,700.00. There is no dispute between the parties as to the value of the properties in [REDACTED]. (Testimony; Ex. 5; Ex. 11).
9. Appellant and the community spouse jointly owned a second vehicle worth \$1,857.00. (Testimony; Ex. 5; Ex. 6, p. 14).
10. The total value of real estate and a second vehicle owned by appellant and the community spouse is \$166,557.00. (Testimony; Ex. 5).
11. The community spouse has income of almost \$45,000 a month from a pension, Social Security and an annuity income. (Testimony; Ex. 6, p. 10).
12. On an application for Health Coverage for Seniors and People Needing Long Term Care Services, both appellant and the community spouse were asked if they receive rental income. Nothing was checked. (Ex. 6, pp. 5, 10).
13. The property at [REDACTED] is not essential to the self-support of the community spouse.

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

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); or
 - (b) as of the date, described in 130 CMR 520.004(C), the applicant incurs medical bills that equal the amount of the excess assets and reduces the assets to the allowable asset limit within 30 days after the date of the notification of excess assets.

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. The applicant or member and the spouse must verify the total value of countable assets. However, if he or she is applying solely for MassHealth Senior Buy-in for Qualified Medicare Beneficiaries (QMB) as described in 130CMR519.010: MassHealth Senior Buy-in (for Qualified Medicare Beneficiaries (QMB)) or MassHealth Buy-in for Specified Low Income Medicare Beneficiaries (SLMB) or MassHealth Buy-in for Qualifying Individuals (QI) both as described in 130 CMR 519.011: MassHealth Buy-in, verification is required only upon request by the MassHealth agency. 130 CMR 520.007 also contains the verification requirements for certain assets. The assets that the MassHealth agency considers include, but are not limited to, the following

...

(G) Real Estate.

(1) Real Estate As a Countable Asset. All real estate owned by the individual and the spouse, with the exception of the principal place of residence as described in 130 CMR 520.008(A), is a countable asset. The principal place of residence is subject to allowable limits as described in 130 CMR 520.007(G)(3). Business or nonbusiness property as described in 130 CMR 520.008(D) is a noncountable asset.

(2) Nine-month Exemption. The value of such real estate is exempt for nine calendar months after the date of notice by the MassHealth agency, provided that the individual signs an agreement with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value. The MassHealth agency will extend the nine-month period as long as the individual or the spouse continues to make a good-faith effort to sell, as verified in accordance with 130 CMR 520.007(G)(4).

[REDACTED] :

The attorney argues the property is rental property and is essential to the support of the community spouse because he has brain cancer and other health issues and is therefore noncountable. She states 130 CMR 520.008(D) is applicable in this case.²

The community spouse wrote in a letter dated March 12, 2023 that the property has never been rented, there has been no intent to rent the property, and no rent has been collected from the

² That regulation reads: "Business and nonbusiness property essential to self-support and property excluded under an SSA-approved plan for self-support are considered noncountable assets."

property. He also wrote in the letter that “the idea of renting the cottage came up when I realized I would not be spending summers on the island with my wife in long-term care.” (Ex. 9). The appellant entered the facility in March, 2022. (Ex. 7).

On the application for Health Coverage for Seniors and People Needing Long Term Care Services, dated December 20, 2022, both appellant and the community spouse were asked if they receive rental income. Nothing was checked. (Ex. 6, pp. 5, 10).

Per the regulations, the value of the [REDACTED] property is exempt for nine calendar months after the date of the eligibility notice by the MassHealth agency, provided that the individual signs an agreement to sell with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value. There is no evidence in the record that such an agreement was signed.

Based on the record, I find the residence at [REDACTED] is not essential for the self-support of the community spouse. The record is clear there was no intent to rent until after appellant entered a facility in March 2022. (Ex. 7). The community spouse has Social Security benefits, a pension and income from an annuity. (Ex. 6, p. 10). The community spouse used \$490,000.00 to purchase an annuity. While this is permissible under the regulations, it shows the amount of cash the community spouse had available to him. [REDACTED] property, valued at \$157,900, is a countable asset.

Regarding the property at [REDACTED], appellant did not dispute it is valued at \$6,800.00. It is also a countable asset.

Along with the [REDACTED] properties, appellant and the community spouse have assets in the form of several bank accounts and a second vehicle. Appellants did not dispute the value of the second vehicle as \$1,857.00. At the time of the eligibility determination, appellant and the community spouse had cash assets of \$160,504.69. Appellant states the bank accounts should be considered at the time of application. (Ex. 11, pp. 2-3). However, the regulations state, “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) (130 CMR 520.004(A)(1)(a)) (emphasis added).

Appellant and the community spouse have total assets valued at \$327,061.69. Subtracting from this amount the community spouse asset allowance of \$150,620.00 (\$2000 for appellant and \$148,620 for the community spouse)(www.mass.gov/program-financial-guidelines), the appellant still has excess assets of \$172,921.69.

Therefore, 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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876