

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402193
Decision Date:	07/16/2024	Hearing Date:	03/15/2024
Hearing Officer:	Christopher Jones	Record Open to:	07/08/2024

Appearance for Appellant:




Appearance for MassHealth:

Gloria Medeiros - Taunton Intake



*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:	Long-Term-Care; Assets; Over 65
Decision Date:	07/16/2024	Hearing Date:	03/15/2024
MassHealth's Rep.:	Gloria Medeiros	Appellant's Rep.:	
Hearing Location:	Telephonic	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 27, 2023, MassHealth denied the appellant's March 2023 application for long-term-care benefits because the appellant had more assets than allowed.¹ (Exhibits 4-5; 130 CMR 520.002 - .004.) The appellant filed this appeal, through his conservator, in a timely manner on February 13, 2024. (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

Following the hearing, the record was left open and then the record open period was extended to July 8, 2024, for the appellant to provide updates and MassHealth to respond.

Action Taken by MassHealth

MassHealth denied the appellant's application because he has a life insurance policy and an investment account, each worth in excess of \$2,000.

¹ This application was previously denied for missing verifications on July 28, 2023. This verification issue was resolved during Appeal No. 2307747, following a two-month record open period. The December 27, 2023 denial notice is styled a denial for missing verifications, but the parties agreed at the hearing the sole remaining issue in this application was the appellant's excess assets.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.000, in determining that the appellant's assets are too high to qualify for long-term-care benefits.

Summary of Evidence

The appellant is over the age of 65. He is a single individual who entered the nursing facility in [REDACTED]. An application for long-term-care benefits was submitted on March 20, 2023, requesting coverage as of February 6, 2023. This application was denied for missing verifications on July 28, 2023. This denial was resolved following Appeal No. 2307747, where all verifications were submitted. Following the resolution of that appeal, MassHealth issued a new denial notice because the appellant had verified their current assets.

At that time the appellant verified a life insurance policy with a face value of \$10,000, but a cash surrender value of \$4,177.20 as of July 12, 2023. He also verified five investment accounts, four of which held \$1.76 between them, but the fifth account had \$20,808.61 as of August 31, 2023. The appellant was deemed to have \$24,415.36 over the asset limit of \$2,000.²

At the hearing, the appellant's conservator testified that the investment account actually belongs to the appellant's ex-wife, and that the account did not belong to the appellant. She testified that this was set out in the divorce documents she had provided to MassHealth the morning of the hearing. Further, she argued that the life insurance policy requires an expanded conservatorship to cash out. She testified that the petition to expand the conservatorship had been filed and asked that the record be left open so she could provide a copy of the filing and a reference to the statute regarding her limited authority as a conservator. She also asked that the assets be deemed inaccessible pending the expansion of her conservatorship.

Initially, the record was left open for only a few days for the appellant to submit the petition to expand conservatorship powers and a copy of the divorce settlement. The parties submitted the appellant's divorce settlement agreement from 2013 and a Judgement on Petition to Change the settlement agreement, dated from August 2019, into the record after the hearing.

MassHealth's representative responded that she would need to confer with her superiors regarding whether an expansion of conservatorship could qualify for the six-month inaccessibility period described in the regulations at 130 CMR 520.006. However, she noted that this is the second appeal for the appellant, and as of the second hearing date, it did not appear that the appellant had actually filed for expanded conservatorship. The conservator testified the filing had

² The appellant's checking account held his income, which was paid over as anticipated patient-paid amount. On February 14, 2024, the appellant submitted proof that he had paid his patient-paid amount and claimed that his assets were reduced. (See Exhibit 14, p. 25.)

been delayed because they needed to retain counsel to complete the filing, but that they had already filed for expanded conservatorship.

Based upon this testimony, the record was initially left open until March 18 for the appellant to submit proof of filing for expanded conservatorship. MassHealth had until April 1 to provide arguments regarding how the submitted divorce documents should be treated, and whether the petition to expand conservatorship should be entitled to the same inaccessible asset treatment as an initial filing for conservatorship.

On March 19, the appellant's conservator was emailed to ask why nothing had been received. That evening, a colleague replied that the conservator had been in court the past two days, and he attached a petition to expand conservatorship signed February 26, 2024. He also submitted it with a fax coversheet that purported to have been sent on March 18, 2024.³ The appellant's submission was accepted, and MassHealth filed their own timely response.

MassHealth noted that the 2013 settlement agreement awarded to each spouse "any and all retirement/investment funds in [their] name alone" (See Exhibit 6, p. 7.) The updated order from 2019 approved a \$65,000 transfer from the appellant's IRA to his ex-wife, and there was no reason to believe that this order was not timely executed. Thus, all remaining assets held in accounts solely in the appellant's name should be considered entirely his resources. Regarding the life insurance policy, MassHealth noted that it identified this policy as a countable asset on March 24, 2023, but the appellant's conservator did not request authority to cash out this policy until February 26, 2024. Nor did the appellant even submit proof that they had attempted to cash out the life insurance policy and were denied.

The conservator responded attaching the divorce documents MassHealth had already provided, and arguing that the agreements "do not appear to have been followed furthering my belief that this remaining asset should rightfully belong to the wife." (Exhibit 14, p. 14.) With regards to the expansion needed to cash out the life insurance policy, she

believed we would be able to allocate the life insurance policy to the funeral home rather than divesting the asset and making a payment to the funeral home; however, in communication with the life [insurance] company they are citing the probate code restricting my ability to re-assign a beneficiary without court authority hence the need to petition for expansion which I agree was delayed [*sic*] while we arremoted [*sic*] a work around.

(Exhibit 14, pp. 14-15.)

³ The petition requests order that financial institutions honor the existent conservatorship and that "to surrender any account/policy at the Conservator's discretion." (Exhibit 7.) It must be noted that neither the life insurance policy nor the investment accounts are identified in the list of the Respondent's assets.

The investment account in dispute was clarified to be in the appellant's name alone, but conservator responded that she believed the account held "Gold which, per the divorce decree, was to be split between the parties." It was pointed out that the original order, from 2013, required an even split of "the Gold, estimated amount \$75,000," but otherwise allowed all retirement accounts to be kept by each spouse. The adjustment order in 2019 required the appellant to transfer "\$65,000 from his ... IRA to" the ex-spouse. Further, MassHealth had submitted financial records from 2021, showing that the appellant had ample assets to have completed a \$65,000 transfer from his IRA at that time, and there was nothing in the record to suggest that he had not timely complied with these orders. (Exhibit 14, p. 13.)

The conservator then responded that she would "be able to make a trade from the account into the Conservatorship Account within the next few days," and requested "a week to effectuate the spend down-all assets in the account will be going to the facility for private pay." The appellant's extension of the record open period was granted until April 5, and it was anticipated that the only remaining issue would be the life insurance policy, which the appellant asked to be treated as inaccessible. (Exhibit 14, pp. 12-13.)

The conservator responded on April 2, to say that the investment company had locked the account pending her proving that she was the appellant's conservator.⁴ "I have filed the Conservatorship documents with [the investment bank] today and am requesting an additional two (2) weeks for them to process the information and divest the account and/or requesting an inaccessible approval as I am unable to access either the [investment] account or the Life Insurance." (Exhibit 14, p. 11.) She was granted a two-week extension to April 19. On April 19, the appellant attached a letter from the attorney retained to represent her in filing the conservator expansion. This letter clarified that the petition was prepared on February 26, but they did not have the Medical Certificate needed to file the petition. The Medical Certificate was received on April 18, and the citation for service to interested parties had not yet been issued. (Exhibit 10.) She otherwise requested an additional week for the investment bank to process her paperwork.

The appellant was allowed a week from April 19 to respond. On April 29, the appellant belatedly responded that the investment bank had still not approved her right to divest the remaining account. She attached the citation, giving notice of the intent to expand her authority, and otherwise reiterated her request that these assets be deemed inaccessible. (Exhibit 11; Exhibit 14, p. 8.) MassHealth responded that the assets cannot be deemed inaccessible because inaccessibility runs for six months from the date of the application. Here that would September

⁴ She attached a letter from the financial institution that required that the appellant "take one of the following actions ... Add a Power of Attorney ... Add a guardian or conservator ... Provide a Court Order." (Exhibit 9.) It is unclear what documentation the appellant's conservator had been operating under with regards to the financial institution, but nothing in this letter indicates that the conservator required expanded authority, just that she had not shown the institution that she was the appellant's conservator.

2023. MassHealth's representative noted that the conservator has been in place since February 3, 2021, and she does not appear to have taken any steps prior to 2024 to gain control over these resources. Nor has the conservator submitted any documentation showing that the financial institutions have declined to accept her existing authority.

On May 1, the appellant requested that the record open period be extended further, as the Probate hearing was expected to occur in June. The record was extended through July 1 for the appellant to provide a status update. The appellant did not respond. Because the appellant had missed multiple deadlines, the parties were informed that a decision would issue based upon the record. On July 2, a staff member from the conservator's office submitted a hearing date of July 17. He did not request that the record be reopened, but rather chose to "wait for the written decision and file a 30A appeal."⁵ (Exhibit 14, p. 3.)

Findings of Fact

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

- 1) The appellant is over the age of 65. He is a single individual, and he is under conservatorship. (Exhibit 1; Exhibit 5; Exhibit 7.)
- 2) The appellant's conservator was appointed on February 3, 2021, and she was also appointed his guardian. (Exhibit 1; Exhibit 7.)
- 3) An application for long-term-care benefits was submitted on March 20, 2023, requesting coverage as of February 6, 2023. (Exhibit 4.)
- 4) On July 28, 2023, MassHealth denied this application for missing verifications. This denial was appealed; the hearing occurred on September 22; and the appeal was closed after it was administratively resolved in December 2023. (Exhibit 5.)
- 5) During the verification process, the appellant's representatives verified an investment account in the appellant's name with \$20,808.61 as of August 31, 2023, and a life insurance policy with a cash surrender value of \$4,177.20 as of July 12, 2023. (Exhibit 4, pp. 11, 18; Exhibit 14.)
- 6) The appellant's conservator testified that the investment account was not in the appellant's name but was in his ex-wife's name. Alternatively, she argued that the appellant owed this money to his ex-wife pursuant to his divorce 11 years earlier. (Testimony by the appellant's representative; Exhibit 14, pp. 13-17.)

⁵ He then emailed the MassHealth caseworker separately to state "Learn Probate Laws before Caseworkers go to Appeals. Looking forward to a fun 30A appeal with you!!" (Exhibit 14, p 2.)

- 7) The appellant's divorce agreement required the couple split an investment in gold evenly in 2013, and later required the appellant to transfer \$65,000 from his IRA to his ex-spouse in 2019. Nothing indicated that the remaining \$20,808.61 in the investment account in the appellant's name alone was related to either of these agreements. (Exhibit 6; Exhibit 14, p. 13.)
- 8) Immediately prior to this hearing, the appellant's conservator had a petition to expand her authority prepared. She testified that it had been filed, but it was not filed until after April 19, 2024. (Testimony by the appellant's conservator; Exhibit 7; Exhibit 10; Exhibit 14.)
- 9) On March 6, 2024, the investment bank informed the appellant that he would need to "Add a guardian or conservator" to the account to access the funds. (Exhibit 9.)
- 10) The appellant's conservator has repeatedly missed her response deadlines. (Exhibit 14.)

Analysis and Conclusions of Law

An individual applying for MassHealth long-term-care benefits must have countable assets below \$2,000. (130 CMR 520.003(A).) Bank accounts include "deposits in a bank, savings and loan institution, credit union, or other financial institution," and are "available only to the extent that the applicant or member has both ownership of and access to such funds." (130 CMR 520.007(B).) Life insurance policies are counted as of their "cash-surrender value The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset **during the adjustment period.**" (130 CMR 520.007(E)(1) (emphasis added).)

520.006: Inaccessible Assets

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

- (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and
- (2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

(1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or

(2) from the period beginning six months after the date of application or acquisition, whichever is later, if

(a) the applicant or member cannot competently represent his or her interests, **has no guardian or conservator** capable of representing his or her interests, **and the authorized representative** (which may include a provider) of such applicant or member **is making a good-faith effort to secure the appointment of a competent guardian or conservator**; or

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

(130 CMR 520.006.)

This regulation is clearly designed to allow a short window of time for assets to be made accessible where some legal hurdle prevents their immediate liquidation. The appellant's conservator has been involved in the management of his finances for over three years. Further, she has submitted no evidence to support that she lacks the present authority to liquidate these assets.⁶ Therefore, I cannot find that these assets are inaccessible under the meaning of the regulation. The fact that the appellant's conservator appears to be, belatedly, pursuing an expansion of her authority does not establish that her authority needs to be expanded. This appeal is DENIED.

Order for MassHealth

None.


⁶ The appellant's conservator testified that her legal authority as conservator has not been accepted by these financial institutions, but she had also testified that the investment account was in the appellant's ex-wife's name and that she had filed for expansion of her authority prior to the hearing, neither of these statements turned out to be true.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

A large black rectangular redaction box covering several lines of text.