

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2402195
Decision Date:	6/21/2024	Hearing Date:	3/15/2024
Hearing Officer:	Cynthia Kopka	Record Open to:	4/30/2024

Appearance for Appellant:



Appearance for MassHealth:

Eileen Smith, Charlestown



*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:	LTC eligibility, assets
Decision Date:	6/21/2024	Hearing Date:	3/15/2024
MassHealth's Rep.:	Eileen Smith	Appellant's Rep.:	
Hearing Location:	Charlestown (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 January 30, 2024, MassHealth denied Appellant's long term care application because Appellant had more countable assets than MassHealth benefits allow. Exhibit 1. Appellant filed this appeal in a timely manner on February 12, 2024. Exhibit 2. 130 CMR 610.015(B). Challenging the denial of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through April 30, 2024 at the request of Appellant. Exhibit 5.

Action Taken by MassHealth

MassHealth denied Appellant's long term care application because Appellant had more countable assets than MassHealth benefits allow.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant's countable assets exceeded MassHealth's limit.

Summary of Evidence

The MassHealth representative appeared by phone and testified as follows. MassHealth received Appellant's application for long term care benefits on March 24, 2023 seeking coverage beginning February 25, 2023. The application was denied on July 26, 2023 for failure to submit verifications. This denial was appealed, preserving the application date.

On January 30, 2024, MassHealth denied Appellant's application for excess assets totaling \$1,672.66. Exhibit 1. MassHealth determined that as of October 26, 2023, Appellant had \$1,140.04 in her [REDACTED] bank account and \$1,860.88 in her [REDACTED] bank account. The notice also lists \$750 in cash, which MassHealth explained reflects part of a funeral contract that is not permissible. MassHealth testified that \$750 of the contract set aside for flowers would have to be reallocated, as flowers are not a service provided by the funeral home. This could be moved to a burial account to make it non-countable. To verify the spend down, MassHealth would need to see updated bank statements and a private pay letter verifying a check to the nursing facility.

Appellant's representative appeared by phone and testified as follows. Appellant's representative requested more time to take care of the remaining spend down as discussed by MassHealth. Appellant's family can be slow in getting information, so Appellant's representative requested 30 additional days to obtain and submit the information.

The hearing record was held open through April 16, 2024 for Appellant's representative to submit proof that the assets have been spent permissibly, and through April 30, 2024 for MassHealth to review and respond. Exhibit 5. On April 17, 2024, the MassHealth representative reported that she had not received any information for the appeal and could not approve the application. Exhibit 6. Appellant's representative was copied on all email correspondence regarding this appeal and did not provide any response. Exhibit 7.¹

Findings of Fact

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

1. On March 24, 2023, MassHealth received Appellant's application for long term care benefits seeking coverage beginning February 25, 2023.
2. On January 30, 2024, MassHealth denied Appellant's application for excess assets totaling \$1,672.66. Exhibit 1.
3. Appellant filed a timely appeal on February 12, 2024. Exhibit 2.

¹ The record open email sent to Appellant's representative did not come back undeliverable or with an error in the address.

4. At the time of denial, Appellant had \$1,140.04 in her [REDACTED] bank account and \$1,860.88 in her [REDACTED] bank account. The notice also lists \$750 in cash. Exhibit 1.
5. At Appellant's request, the hearing record was held open through April 16, 2024 for Appellant to submit proof of the spend down, and through April 30, 2024 for MassHealth to review and respond. Exhibit 5.
6. On April 17, 2024, MassHealth reported that Appellant sent no new information during the record open period. Exhibit 6.
7. Appellant's representative submitted no information to the Board of Hearings and did not respond to MassHealth's email despite having been copied on all correspondence. Exhibit 7.

Analysis and Conclusions of Law

The total value of countable assets owned by or available to an individual applying for MassHealth Standard for long term care assistance may not exceed \$2,000.00. 130 CMR 520.003(A)(1). Per 130 CMR 520.004, the amount of an applicant's total countable assets affects the start date for MassHealth long term care benefits:

(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.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility

(1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: *Date of Application*; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

In reviewing whether an applicant spent down assets in a permitted manner, MassHealth looks to the transfer of resource provisions for nursing-facility residents at 130 CMR 520.019(F), which allows for transfers as described in 130 CMR 520.019(D). These permissible transfers include transfers to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse. 130 CMR 520.019(D)(5).

Bank accounts are countable assets as per 130 CMR 520.007(B) and are to be verified as follows:

(3) Verification of Account Balances. The MassHealth agency requires verification of the current balance of each account at application, during eligibility review, and at times of reported change.

(a) Noninstitutionalized individuals excluding the individuals described at 130 CMR 519.007(B): *Home- and Community-Based Services Waiver-Frail Elder* must verify the amount on deposit by bank books or bank statements that show the bank balance within 45 days of the date of application or the date that the eligibility review is received in a MassHealth Enrollment Center or outreach site.

(b) Nursing-facility residents as described at 130 CMR 515.001: *Definition of Terms* must verify the amount on deposit by bank books or bank statements that show the current balance and account activity during the look-back period.

Here, the evidence showed that as of the date of hearing, Appellant's assets exceeded \$2,000. Appellant did not offer updated information despite a long application process. Appellant has not shown that MassHealth's determination of excess assets was made in error. Accordingly, 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129

[REDACTED]