

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2404384
Decision Date:	05/24/2024	Hearing Date:	04/23/2024
Hearing Officer:	Radha Tilva	Record Open to:	05/24/2024

Appearance for Appellant:



Appearance for MassHealth:

Maran Yi, Tewksbury MEC Rep.



*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 - assets
Decision Date:	05/24/2024	Hearing Date:	04/23/2024
MassHealth's Rep.:	Maran Yi	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center	Aid Pending:	Yes

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 March 11, 2024, MassHealth determined that appellant is no longer eligible for MassHealth long-term care services and that the benefits will end on March 11, 2024 because the appellant has more countable assets than MassHealth benefits allows (Exhibit 1). The appellant filed this appeal in a timely manner on March 21, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth terminated appellant's long-term care benefits effective March 11, 2024 because appellant had more countable assets than MassHealth allows.

Issue

The appeal issue is whether MassHealth was correct in determining that appellant is over the asset limit for MassHealth long-term care benefits.

Summary of Evidence

The MassHealth representative appeared by telephone. The hearing officer requested a copy of the chronology of events following the hearing to clarify the background of the case. The following is MassHealth's testimony, written and oral: The appellant was approved for long-term care benefits on August 17, 2023. An approval notice was sent out on November 21, 2023 informing the appellant that he may keep \$2,000.00 in assets in his own name and that the rest of the assets must be placed in the wife's name within 90 days. Proof was not received, but the case did not close due to COVID-19 protections. On March 11, 2024, MassHealth issued a termination notice stating that MassHealth would end appellant's MassHealth coverage on March 11, 2024 because he had more countable assets than MassHealth benefits allows (Exhibit 1). It was explained at the hearing that there were two accounts that were putting appellant over the limit one of which was a life insurance policy. One of those accounts was surrendered prior to the hearing date and the MassHealth representative explained that the only remaining policy they needed to see the change or ownership in was the [REDACTED] Life policy amounting to approximately \$43,735.00.

The appellant was represented by his Power of Attorney/Health Care Proxy/wife who stated that the life insurance company said they could not change the name or transfer the policy as it is not accessible to her. The hearing record was left open for appellant to try to provide documentation supporting the inaccessibility of the account. The appellant submitted an email sent to her advisor from [REDACTED] which stated that appellant's spouse (appeal rep.) could not be added to the policy as the agent because the Power of Attorney specifically states that she does not have right on any policies that are owned by appellant and insure her life (Exhibit 6). The company further stated that she can choose to resign as agent, at which time she can add the successor agent to the policy record or she can, under Section 6.03 of the Power of Attorney, appoint a special or ancillary agent to act for her (Exhibit 6). On May 22, 2024, the MassHealth representative reviewed the documentation submitted by the appellant and stated that the asset is still countable as the document states that the representative can be added to the policy (Exhibit 7).

Findings of Fact

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

1. The appellant was approved for long-term care benefits on August 17, 2023.
2. An approval notice was sent out on November 21, 2023 informing the appellant that he may keep \$2,000.00 in assets in his own name and that the rest of the assets must be placed in the wife's name within 90 days.
3. On March 11, 2024, MassHealth issued a termination notice stating that MassHealth would

end the appellant's MassHealth coverage on March 11, 2024 because he had more countable assets than MassHealth benefits allows.

4. One of the accounts that was putting appellant over the \$2,000.00 asset limit was surrendered prior to the hearing date and the MassHealth representative explained that the only remaining policy they needed to see the change or ownership in was the [REDACTED] Life policy amounting to approximately \$43,735.00.
5. The wife, who was present at the hearing, attempted to have the policy changed, but was unable to do so because the Power of Attorney prevented her from doing so.
6. The life insurance company stated that the appellant could choose to resign as agent, at which time she can add the successor agent to the policy record or she can, under Section 6.03 of the Power of Attorney, appoint a special or ancillary agent to act for her.

Analysis and Conclusions of Law

Pursuant to 130 CMR 519.006(A)(4), institutionalized individuals must have assets at or below \$2,000.00. 130 CMR 520.016(B) describes the treatment of a married couple's assets when one spouse is institutionalized. The community spouse is allowed to retain \$109,560.00 in combined total countable assets (130 CMR 520.016(B)(2)). To meet the needs of the community spouse and to allow the continuing eligibility of the institutionalized spouse, the MassHealth agency allows the institutionalized spouse, after he or she has been determined eligible for MassHealth Standard, to transfer assets to or for the sole benefit of the community spouse in accordance with 130 CMR 520.016(B)(1) and (2) (130 CMR 520.016(B)(3)(a)). The institutionalized spouse is given 90 days after the date of notice of approval to make said transfers (130 CMR 520.016(B)(3)(b)). The issue under appeal is whether MassHealth erred in determining that appellant is over asset following the 90 day period. The following regulations are pertinent as to whether the cash surrender value of the life insurance policy is a countable asset.

520.005: Ownership of Assets

(A) General. Assets owned exclusively by an applicant or member and the spouse are counted in their entirety when determining eligibility for MassHealth, except when assessing assets in accordance with 130 CMR 520.016.

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...The assets that the MassHealth agency considers include, but are not

limited to, the following:...

(E) Cash-surrender Value of Life-insurance Policies.

(1) The cash-surrender value of a life-insurance policy is the amount of money, if any, that the issuing company has agreed to pay the owner of the policy upon its cancellation. An individual may adjust the cash-surrender value of life insurance to meet the asset limit. The MassHealth agency will consider the cash-surrender-value amount an inaccessible asset during the adjustment period.

It is undisputed that the [REDACTED] life insurance policy is still under the appellant's name (see Exhibit 5). The appellant's representative claimed that she cannot transfer the policy to her name, however, the correspondence provided from [REDACTED] does not preclude appellant from changing the name of the policy provided appellant can choose to resign as agent, at which time she can add the successor agent to the policy record or she can under Section 6.03 of the Power of Attorney appoint a special or ancillary agent to act for her (see Exhibit 6).

The appellant representative's argument that the policy is inaccessible and should not be counted is unpersuasive or supported by the regulations. 130 CMR 520.006 states that an inaccessible asset is an asset to which the applicant or member has no legal access. The regulation gives an example of an inaccessible asset. Specifically, 130 CMR 520.006(B)(2) states that the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment can be considered inaccessible. This is not the case, however, as the policy has not been assigned to the issuing company for adjustment yet. Thus, it is not considered inaccessible. Based on the above, MassHealth did not err in determining that the appellant is over the asset limit. 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.

Radha Tilva
Hearing Officer
Board of Hearings

cc:

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