

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Appeal Decision:	Denied	Appeal Number:	2404619
Decision Date:	08/22/2024	Hearing Date:	04/09/2024
Hearing Officer:	Casey Groff, Esq.	Record Open to:	07/19/2024

Appearance for Appellant:

[REDACTED]
[REDACTED]

Appearance for MassHealth:

Roberta Noland, Tewksbury MEC
Andrea Pelczar, 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:	Eligibility; LTC; Verifications
Decision Date:	08/22/2024	Hearing Date:	04/09/2024
MassHealth's Rep.:	Roberta Noland	Appellant's Rep.:	Conservator
Hearing Location:	Board of Hearings, 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

Through a notice dated 2/20/24, MassHealth denied Appellant's application seeking assistance in paying for her long-term care (LTC) services on the basis that Appellant did not provide requested verifications that were needed to determine eligibility within the required time frame. See Exhibit 1 and 130 CMR 515.008. Appellant, through her court appointed Conservator, filed this appeal in a timely manner on 3/25/24. See 130 CMR 610.015(B) and Exhibit 1. Denial of assistance is valid grounds for appeal. See 130 CMR 610.032. A hearing took place on 4/9/24. See Exh. 3. At the conclusion of the hearing, Appellant's request for a record open period was granted. See Exh. 5. Following receipt of Appellant's post-hearing submissions, and after giving MassHealth an opportunity to respond, the record closed on 7/19/24. See Exh. 6-8.

Action Taken by MassHealth

MassHealth denied Appellant's application for LTC benefits for failure to provide the necessary verifications to determine her eligibility within the required time frame.

Issue

The appeal issue is whether MassHealth erred in denying Appellant's application for LTC benefits based on its determination that Appellant failed to submit necessary verifications to establish eligibility within the required timeframe.

Summary of Evidence

A MassHealth representative appeared at the hearing via telephone and testified as follows: Appellant is over the age of 65 and is a resident of a nursing facility. On 11/3/23, MassHealth received a long-term care (LTC) application on behalf of Appellant, seeking a benefit start date of 7/22/23. On 11/16/23, MassHealth issued a request for information (RFI) listing the necessary documentation Appellant needed to produce by 2/14/24 to verify eligibility. Appellant did not provide all requested verifications by the deadline. Accordingly, through a notice dated 2/20/24, MassHealth denied the application based on its determination that Appellant "did not give MassHealth the information it need[ed] to decide [her] eligibility within the required timeframe. 130 CMR 515.008" See Exh. 1. Appellant timely appealed the notice on 3/25/24. See Exh. 2.

The MassHealth representative reviewed the verifications that remained outstanding, as listed on the 2/20/24 denial notice. First, MassHealth testified that Appellant was the beneficiary and successor trustee of a revocable living trust ("the Trust"). MassHealth requested a written trustee statement listing all assets held in, and disposed from, the Trust, between 2018 to present. The representative testified that if trustee capacity was an issue, then MassHealth would accept, as an alternative verification, tax documents and filings for Appellant and the trust from 2018 to present.

Next, the MassHealth representative explained that Appellant owned three bank accounts, consisting of a [REDACTED] checking account and [REDACTED] checking and savings accounts. MassHealth had not received the requested verifications for the accounts, as follows:

- [REDACTED] **checking account:**
 - For 11/1/22 deposit of \$3,585 74: Proof of source of funds
 - For 11/07/22 withdrawal of \$2,000: Proof of disposition of funds (e.g., invoice)
- [REDACTED] **savings account:**
 - FOR PERIOD 6/29/23 TO PRESENT, all bank account statements; proof and explanations for all disbursements of \$1,000 and over; and proof of source of all deposits of any amount.

- [REDACTED] checking account
 - FOR PERIOD 10/12/23 TO PRESENT, all bank account statements; proof and explanations for all disbursements of \$1,000 and over; and proof of source of all deposits of any amount.
 - 8/16/22 deposit of \$8,000, proof of source of funds.
 - Copies of the following checks with proof of disposition:
 - 8/26/22 check for \$1,000
 - 9/20/22 check for \$4,000
 - 10/26/22 check for \$4,000

The Conservator testified that she has encountered numerous obstacles in her effort to obtain the requested information, including Appellant's cognitive impairments and incapacity to assist in the verification process, as well as the out-of-state nature of some of the accounts and transactions. The Conservator addressed each of the outstanding items, as follows:

- Appellant submitted bank statements for the [REDACTED] account prior to the hearing, which contained a deposit slip for the 11/1/22 deposit of \$3,585.74. The bank did not produce a corresponding check, or details on the originating source, suggesting it may have been a cash deposit. Similarly, the bank did not provide details for the \$2,000 withdrawal on 11/07/22. The Conservator did not have knowledge on where this money went or how it was spent.
- The Conservator testified that she anticipated receiving statements for Appellant's [REDACTED] accounts and requested additional time to produce these records. The Conservator noted, however, that, because Appellant's accounts were registered in [REDACTED], the Bank froze any further activity on her accounts pending a foreign decree of conservatorship. The Conservator retained a [REDACTED]-based attorney so she can register her conservatorship and gain access to the accounts. Until this occurs, she cannot access the assets in the accounts, nor can she obtain copies of checks to verify the transactions in question.
- Lastly, the Conservator confirmed that Appellant was the trustee and sole beneficiary of a revocable living trust. The grantor of the Trust is now deceased, and Appellant, the only other party with knowledge of the assets contained in the Trust, is too cognitively impaired to provide any information related to the requested information. The Conservator testified that the only Trust asset of which she was aware, was a home that sold after the grantor's passing. There were no proceeds from the sale that could have been distributed to Appellant, and she has provided MassHealth with the HUD statement and documentation verifying the short sale. The Conservator explained that she is currently seeking information from the IRS to show that Appellant would have not filed any tax returns reflecting an inheritance from the Trust.

In response, the MassHealth representative testified that if Appellant cannot verify the source of the bank account transactions in question, Appellant could submit, as an alternative, an affidavit by the bank attesting to the fact they do not have such verifications in their possession. The MassHealth representative also explained that Appellant could potentially obtain pertinent financial information relating to the trust and/or missing account information by filing a wage and income report request, via a 4506-T form, through the IRS. The transcript request would contain financial information banks are required to report to the IRS, regardless of whether the individual filed taxes. At Appellant's request, the record remained open for Appellant to obtain and submit the outstanding verifications, and for MassHealth to review and respond. See Exh. 5.

On 5/7/24, Appellant's Conservator submitted statements for the [REDACTED] accounts, as well as a letter from the bank stating that Appellant had a third account, that was associated with the Trust, which closed on 6/8/22. See Exh. 6, pp. 3-20. The submission also included the deposit slip for the \$8,000 transaction on 8/16/22; a withdrawal slip for the \$1,000 on 8/26/22; and copies of the checks dated 9/20/22 for \$4,000 and 10/26/22 for \$4,000, both of which appeared to be signed by Appellant with a written note on the back of both checks reading "For deposit only [account ## [REDACTED] Id. at 23-24. At Appellant's request, the record was further extended pending a response from the IRS regarding Appellant's 4056-T request, which she had completed following the hearing. See id. at 1; See Exh. 7, p. 1.

On 6/26/24, Appellant's representative reported that she had exhausted her ability to obtain documentation from the IRS or any other entity to satisfy MassHealth's request. See Exh. 8. The Conservator asserted that she would not be seeking any further extension pending "a verification [she] will never be able to provide." Id. In lieu of the requested Trust information, she prepared a "Conservator's Statement," in which she asserted, in relevant part, the following:

It is by information and belief that the trust held only the real estate located [in [REDACTED] which was sold for \$145,000 on November 3, 20 [sic] This sale was a Short Sale approved by the [mortgage] lender. As detailed in the Settlement Statement dated there were no proceeds from the sale of the home that were provided to the trust.

It is by information and belief that the only other asset held in the Living Trust was the [REDACTED] statement ending in # [REDACTED] which was held jointly by [Appellant] and [the Grantor] and had a Zero (\$0.00) Balance in 2021 and 2022 and was auto-closed by the bank.

See Exh. 8(a).

The Conservator also submitted a copy of an affidavit she prepared to file on behalf of Appellant in

a pending G.L. ch. 30A appeal of a prior MassHealth application denial (Suffolk Sup. Ct. Docket No. NO23P2629GD). See Exh. 8(b). In her affidavit, the Conservator attested to the various steps she undertook in an effort to comply with MassHealth's information requests. Paragraph 2 of the affidavit, states the following:

2. As of June 18, 2024 the only outstanding verification required is documentation confirming what assets held within the [Trust] for which [Appellant] is the sole beneficiary and that [she] received no funds from the Trust.

See id., p. 1.

The Conservator concluded her affidavit by stating that she had "exhausted all available avenues to locate" and produce the related Trust verifications. See id. at 6. The Conservator stated that in the event there were other assets held in the Trust, "the whereabouts of such assets are inaccessible" and have not been located despite her extensive search. Id.

When asked to confirm whether it was Appellant's position that all other (non-trust related) verification requests had been complied with, the Conservator responded that "MassHealth has received the required bank statements." Id.

On 7/9/24, MassHealth responded to the sufficiency of Appellant's production. See Exh. 10. MassHealth asserted that, notwithstanding the missing Trust verifications, Appellant had still not satisfied the requested verifications pertaining to the following bank account transactions, all of which were identified in the 2/20/24 denial and discussed at hearing:

- 11/1/22 deposit of \$3,585.74 into Appellant's [REDACTED] checking account – proof of source of funds, or letter from bank attesting to the fact and the reason it is impossible for them to provide this verification.
- 8/16/22 deposit of \$8,000 into Appellant's [REDACTED] account - proof of source of funds, or letter from the bank attesting to the fact and the reason it is impossible for them to provide this verification.
- Verifications related to Appellant's checking account via a withdrawal of \$4,000 on 9/20/22 and another withdrawal of \$4,000 on 10/26/22. Although Appellant provided copies of the checks written from her checking account, they both were endorsed "for deposit only account [# [REDACTED] and, with respect to the 9/20/22 check, included Appellant's signature on the endorsement. MassHealth noted that the endorsements suggested that Appellant may have had an ownership interest in the receiving account. Therefore, MassHealth required verification of the ownership of the receiving account to satisfy this particular request. See Exh. 10.

MassHealth emphasized the fact that these transactions were made from accounts owned solely by Appellant, *not* the Trust. Without these verifications, MassHealth posited that it could not render a determination regarding Appellant's eligibility for benefits. MassHealth responded that it would not consider the sufficiency of the affidavit to verify the Trust until it received the aforementioned transaction verifications. Similarly, MassHealth was unable to confirm whether it would deem the 11/7/22 and 8/26/22 withdrawals of \$2,000 and \$1,000 as disqualifying transfers, until the other requests were satisfied. See id.

Appellant was given a final opportunity to respond. The Conservator explained that she was "still working on registering the conservatorship in [REDACTED] in order to access Appellant's [REDACTED] based accounts, and until this occurs, information outside the bank statements were not obtainable. See Exh. 11. With respect to the receiving bank account number identified on the endorsements of the \$4,000 checks, the Conservator explained that she had no knowledge of this account, that it was not identified by the bank as one of the three accounts associated with Appellant, and she would not have access to accounts that were not held in Appellant's name. Id.

Findings of Fact

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

1. Appellant is over the age of 65 and is a resident of a nursing facility.
2. On 11/3/23, MassHealth received a long-term care application on behalf of Appellant, seeking a benefit start date of 7/22/23.
3. On 11/16/23, MassHealth issued a request for information (RFI) listing the necessary documentation Appellant needed to produce to MassHealth by 2/14/24 to verify eligibility. (Testimony).
4. Appellant did not provide all requested verifications by the deadline. (Testimony; Exh. 1).
5. Through a notice dated 2/20/24, MassHealth denied the application based on its determination that Appellant "did not give MassHealth the information it need[ed] to decide [her] eligibility within the required timeframe. 130 CMR 515.008" (Exh. 1).
6. Appellant timely appealed the notice on 3/25/24. (Exh. 2).

7. As of the hearing date on 4/9/24, MassHealth had not received the following verifications, which were identified in the 2/20/24 denial notice: (1) A written trustee statement listing all assets held in, and disposed from, the Trust, between 2018 to present, or alternatively, tax documents and filings for Appellant and the Trust from 2018 to present. (2) [REDACTED] checking account: For 11/1/22 deposit of \$3,585.74: proof of source of funds; and for 11/07/22 withdrawal of \$2,000: proof of disposition of funds; (3) [REDACTED] account: statements from 6/29/23 to present with proof and explanations for all disbursements of \$1,000 and over; and proof of source of all deposits of any amount; (4) [REDACTED] checking account: All account statements for period 10/12/23 to present with proof and explanations for all disbursements of \$1,000 and over; and proof of source of all deposits of any amount; 8/16/22 deposit of \$8,000, proof of source of funds; copies of the following checks with proof of disposition for each 8/26/22 check for \$1,000, 9/20/22 check for \$4,000, and 10/26/22 check for \$4,000. (Testimony; Exh. 1; Exh. 4).
8. Appellant lacks the capacity to assist in relaying information regarding, or obtaining documentation, to verify her eligibility for MassHealth benefits. (Testimony).
9. Appellant was granted additional time, post-hearing, to produce the outstanding verifications. (Exhibit 5-11).
10. During the record open period, Appellant submitted the requested bank statements for the two [REDACTED] accounts statements, as well as a letter by the bank stating that Appellant had a third account, associated with the Trust, which closed on 6/8/22. (Exh. 6, pp. 3-20).
11. The bank statements included a copy of the deposit slip for the \$8,000 transaction on 8/16/22; a withdrawal slip for the \$1,000 on 8/26/22; and copies of checks dated 9/20/22 for \$4,000 and 10/26/22 for \$4,000, both of which appeared to be signed by Appellant with a written note on the back of both checks reading "For deposit only [account ## [REDACTED]] (Exh. 6, pp. 23-24).
12. The Conservator was unable to access the funds or obtain information beyond bank statements from the [REDACTED] accounts until her Conservatorship was registered in [REDACTED] (Exh. 8; 8(a)).
13. MassHealth was willing to accept, in lieu of the requested proofs, a statement from the bank stating that it did not possess verification of the source of funds deposited, or the distribution of withdrawn funds, and the reason it was not possible to provide this verification.

14. Appellant was unable to obtain the requested tax information from the IRS, and attested to her belief that no assets, other than the property, had been held in the Trust. (Exh. 8; 8(b)).
15. On 6/26/24, Appellant's Conservator asserted, through a written submission that she exhausted all avenues in trying to obtain requested verifications, and on this basis, would not seek a further extension of the record open period. (Exh. 8).
16. Through a written response submitted on 7/8/24, MassHealth asserted that still outstanding were verifications to prove the source of funds for the deposits in question, as well as the distribution of funds for the identified withdrawals, including information relating to the receiving account of the two \$4,000 checks; and that Appellant had not offered a letter from the bank(s) attesting to the non-existence of said verifications and/or the reason they could not be produced. (Exh. 10).
17. As of the record close date, Appellant's decree of Conservatorship had not been registered in [REDACTED] (Exh. 11).

Analysis and Conclusions of Law

At issue in this appeal is whether Appellant failed to provide MassHealth with requested information to verify eligibility by the specified deadline, and if so, whether MassHealth appropriately denied Appellant's application for long-term care benefits on this basis.

Once an application for assistance is received, MassHealth may request all corroborative information necessary to determine the applicant's eligibility, including requests for income and asset information to determine whether the individual meets the program financial criteria. See 130 CMR 516.001; see also 130 CMR 516.003 (listing eligibility factors that require verification). To qualify for MassHealth LTC benefits, individuals, like Appellant, *must* verify that: (1) their countable assets do not exceed \$2,000, *and* (2) they have not made any disqualifying transfers of resources (i.e. transfers for less than fair market value) within the last five years.¹ See 130 CMR 519.006(A), see also 130 CMR §§ 520.018, 520.019. MassHealth outlines the verification process as follows:

(C) Request for Information Notice. If additional documentation is required, including corroborative information as described at 130 CMR 516.001(B), a

¹ Under MassHealth's financial eligibility regulations, an applicant who is "otherwise eligible" may incur a period of disqualification if they (or their spouse) transferred resources for less than fair market value within the five years preceding the application for nursing home benefits. See 130 CMR §§ 520.018, 520.019.

Request for Information Notice will be sent to the applicant listing all requested verifications and the deadline for submission of the requested verifications.

(D) Time Standards. The following time standards apply to the verification of eligibility factors.

(1) The applicant or member has 30 days from the receipt of the Request for Information Notice to provide all requested verifications.

(2) If the applicant or member fails to provide verification of information within 30 days of receipt of the MassHealth agency's request, MassHealth coverage is denied or terminated.

(3) A new application is required if a reapplication is not received within 30 days of the date of denial.

See 130 CMR 516.003. On April 1, 2023, MassHealth extended the time limit for producing verifications from 30-days to 90-days. See Eligibility Operations Memo 23-09 (March 2023).

It is the responsibility of the applicant or member to "cooperate with MassHealth in providing information necessary to establish eligibility... and to comply with all the rules and regulations of MassHealth." See 130 CMR 515.008.

In the present case, Appellant applied for MassHealth LTC benefits on 11/3/23. Pursuant to the verification process outlined above, MassHealth issued a request for information (RFI) on 11/16/23, which listed the specific verifications Appellant needed to produce within 90 days of the request, i.e., 2/14/24. It is undisputed that MassHealth did not receive the requested information within the 90-day timeframe. Accordingly, on 2/20/24, MassHealth denied Appellant's application for failure to provide the necessary information needed to determine her within the required timeframe in accordance with 130 CMR 515.008. See Exh. 1. The denial notice identified the missing verifications, which included, in summary, (1) bank statements for three bank accounts owned solely by Appellant; (2) for each account, proof and explanations for all disbursements of \$1,000 and over, including four identified disbursements made between August and November of 2022 in amounts ranging between \$1,000 to \$4,000; (3) for each account, proof of the source of all deposits of any amount, including a 11/1/22 deposit of \$3,585.74 and a 8/16/22 deposit of \$8,000; and (4) a trustee statement of all Trust assets, or, alternatively, related tax filings or transcript information from the IRS. See Exh. 1. As of the hearing on 4/9/24, all requested information remained outstanding with the exception of statements for one of the three bank accounts.

Appellant was granted additional time, post-hearing, to submit the outstanding verifications. During this period, Appellant produced bank statements for her remaining two accounts but was unable to verify the transaction information, including the source of funds for the \$3,585.74 deposit on 11/1/22 and the \$8,000 deposit in her other account on 8/16/22. At

hearing, MassHealth indicated that it was willing to accept, as an alternative verification, a letter from the bank(s) attesting to the absence of, or impossibility to produce, such corroborative information. Appellant did not offer a letter from either bank as suggested by MassHealth. Moreover, while Appellant did produce check images for the large withdrawals in question, she did not produce documentation or provide explanation to explain the purpose for the disbursements, such as an invoice. Notably, the two checks Appellant wrote from her account for \$4,000 each, appeared to be endorsed by Appellant herself with the instruction “for deposit only [into account ending # ██████]. This instruction, as MassHealth noted, suggested that Appellant may have or had an ownership interest in the receiving account. See Exh. 10. Appellant’s Conservator did not have any information pertaining to the ownership of this account.²

Based on the evidence in the hearing record, Appellant failed to meet her burden in demonstrating that MassHealth erred in denying Appellant’s application for LTC benefits. Despite being granted additional time through the fair hearing process, Appellant was unable to produce all requested verifications to determine Appellant’s eligibility for benefits. Appellant’s Conservator conceded that she had exhausted her ability to obtain the remaining verifications and would not be able to satisfy MassHealth’s requests even if granted additional time. As MassHealth is unable to account for all potential countable assets and/or resource transfer, it acted within its regulatory authority to deny Appellant’s application for LTC benefits, via the 2/20/24 notice.

The appeal is DENIED.

Order for MassHealth

None.

² In addition, MassHealth requested that Appellant produce a trustee statement, or provide, as an alternative verification for the Trust, related tax information through the IRS. In lieu of her ability to satisfy this latter verification, the Conservator submitted an affidavit attesting to her belief that no assets were held in the Trust aside from a real estate property that was sold from the Trust via a short sale, and which did not yield any proceeds or distribution to Appellant. In response to this submission, MassHealth indicated that it would not address the sufficiency of the affidavit until Appellant complied with all outstanding verifications related to the account transactions, which had not been produced, i.e. the source of funds for the large deposits, and the explanations for the disbursements, two of which, Appellant appeared to deposit into an unknown account. Similarly, this decision does not address whether Appellant sufficiently verified the assets in the Trust through her affidavit, as there are remaining outstanding verifications related to Appellant’s non-Trust assets, which alone, prevent MassHealth from determining whether Appellant is eligible for MassHealth LTC benefits.

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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

cc: [REDACTED]
[REDACTED]

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