

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2404667
Decision Date:	6/26/2024	Hearing Date:	04/29/2024
Hearing Officer:	Alexandra Shube	Record Open to:	05/16/2024

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Douglas Thompson, Charlestown 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:	Long term care eligibility; assets
Decision Date:	6/26/2024	Hearing Date:	04/29/2024
MassHealth's Rep.:	Douglas Thompson	Appellant's Rep.:	[REDACTED]
Hearing Location:	Charlestown MassHealth Enrollment Center - 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 February 27, 2024, MassHealth approved the appellant for MassHealth Standard long-term care benefits effective April 28, 2023 (Exhibit 1). The appellant filed this appeal in a timely manner on March 25, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Challenging the scope of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved the appellant for MassHealth Standard long-term care benefits effective April 28, 2023.

Issue

The appeal issue is whether MassHealth was correct in determining the start date of long-term care coverage.

Summary of Evidence

The MassHealth representative and the appellant's attorney appeared at hearing via telephone. The MassHealth representative testified as follows: on May 25, 2023, MassHealth received an application for long-term care benefits on behalf of the appellant, who is over the age of [REDACTED] and a resident in a nursing facility. The appellant entered the facility on [REDACTED] and the facility is seeking a start date of April 7, 2023. On February 27, 2024, MassHealth approved the application with a 21-day period of ineligibility, resulting in a start date of April 28, 2023.

The MassHealth representative explained that to calculate the start date of coverage, MassHealth uses a Haley¹ calculation. Upon applying for MassHealth, a member must be asset eligible at the time of the decision, on the requested start date of coverage, and throughout the process. MassHealth determined that on the requested start date of coverage, April 7, 2023, the appellant's assets totaled \$23,542.30, putting her \$21,542.30 over the allowable asset limit of \$2,000.

MassHealth reviewed how the appellant spent down the funds and deducted allowable payments from the total asset amount. MassHealth deducted \$8,845 for a funeral contract and \$1,500 for a burial account. The total excess asset amount after these deductions was \$11,197.30. Using the private pay daily rate of \$515, MassHealth calculated that based on her assets, the appellant's eligibility for long-term care benefits would begin on April 28, 2023, 21 days after the requested start date.

MassHealth explained that those were the only allowable expenses it could deduct. MassHealth will consider allowable medical expenses; however, they need to be properly verified. There was a \$90 check to [REDACTED] on April 25, 2023, but no receipts or other verifications indicating what it was for. There was a \$1,915 check to [REDACTED] on May 9, 2023 that stated "May Payment," but again, no receipts or other verifications indicating what it was for. On April 24, 2023, there was a \$584 withdrawal for [REDACTED] and a \$305.25 withdrawal for [REDACTED] but no receipt for items purchased. On April 10, 2023, there was a \$7,500 withdrawal for legal expenses, but it is not an allowable deduction because MassHealth can only consider medical bills when reducing assets and calculating the start date. There was also a \$996 check on April 24, 2023 for junk removal, but again, as it is not a medical expense, it is not an allowable deduction. There were also about \$3,000 in charges for personal items, including for clothing, at CVS, and at Target. There were receipts for these items, but because they were not medical expenses, MassHealth could not consider them.

The appellant's attorney stated there were issues with the spend down over the last few months. He stated in the past, legal fees have been allowed as part of a spend down. The appellant was

¹ *Haley v. Comm'r of Pub. Welfare*, 394 Mass. 466 (1985).

also obligated under contract to pay for the last month's rent.

MassHealth explained that legal expenses are acceptable as part of a spend down in that it would not be considered a transfer, but as they are not medical expenses, they are not considered for the Haley calculation. The same would go for rent; however, the MassHealth representative stated he would re-examine whether rent and home maintenance items, such as junk removal, could be considered.

The record was held open until May 9, 2024 for the appellant to supply any additional supporting documentation and/or receipts. MassHealth was given until May 16, 2024 to review and respond to the appellant's submission.

On May 9, 2024, the appellant's attorney submitted a receipt from [REDACTED] from April 23, 2023 in the amount of \$296.33 for a rolling walker and handy pouch. He also submitted a screenshot of the "Transaction Details" from the appellant's bank for a withdrawal on April 25, 2023 to [REDACTED]. It does not show the amount of the withdrawal or what was purchased.

On May 16, 2024, the MassHealth representative responded that he could accept the receipt from [REDACTED] but when recalculating the period of ineligibility, the \$296.33 purchase does not change the start date. He cannot accept the bank transaction record for [REDACTED] because it does not show the amount paid or what was purchased. If proper proof for the [REDACTED] purchase were provided, it would change the start date by one day, to April 27, 2023. The MassHealth representative also confirmed that the rent and junk removal could not be counted since they are not medical expenses. Additionally, those costs are offset by the short-term home maintenance allowance that was granted in the appellant's patient paid amount.

This hearing officer confirmed with the appellant's attorney that he had no other receipts available and the record closed.

Findings of Fact

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

1. The appellant is over the age of [REDACTED] and a resident in a nursing facility (Testimony and Exhibit 4).
2. On May 25, 2023, MassHealth received an application on behalf of the appellant seeking MassHealth long-term care benefits with a start date of April 7, 2023 (Testimony and Exhibit 5).

3. On February 27, 2024, MassHealth approved the appellant for long-term care benefits with an effective start date of April 28, 2023 (Testimony and Exhibit 1).
4. On March 25, 2024, the appellant timely appealed the approval notice (Exhibit 2).
5. On the requested start date of April 7, 2023, the appellant had assets totaling \$23,542.30 (Testimony and Exhibit 5).
6. After deducting \$2,000 for the asset limit, \$8,845 for a funeral contract, and \$1,500 for a burial account, MassHealth determined that the total excess asset amount after the spend down was \$11,197.30 (Testimony and Exhibit 5).
7. Using the private pay daily rate of \$515, MassHealth calculated a 21-day period of ineligibility and, per its February 27, 2024 notice, approved the appellant for long-term care benefits with an effective start date of April 28, 2023 (Testimony and Exhibit 5).
8. There were some additional, potential medical expenses that were not included in the spend down calculation because there were no receipts or verifications showing what the withdrawals or checks were for. Those included checks to [REDACTED] and [REDACTED] and withdrawals for [REDACTED] and [REDACTED] y. (Testimony and Exhibit 5).
9. There were also a withdrawal for legal fees and a check for junk removal that were not considered by MassHealth in the calculation because they were not medical expenses (Testimony and Exhibit 5).
10. The record was held open until May 9, 2024 for the appellant to submit additional supporting documentation and/or receipts and until May 16, 2024 for MassHealth to review and respond (Testimony and Exhibit 6).
11. On May 9, 2024, the appellant's attorney submitted a receipt from [REDACTED] from April 23, 2023 in the amount of \$296.33 for a rolling walker and handy pouch. He also submitted a screenshot of the "Transaction Details" from the appellant's bank for a withdrawal on April 25, 2023 to [REDACTED] It does not show the amount of the withdrawal or what was purchased. (Exhibit 7).
12. On May 16, 2024, MassHealth responded that he could accept the receipt from [REDACTED] but when recalculating the period of ineligibility, the \$296.33 purchase does not change the start date. He could not accept the bank transaction record for [REDACTED] because it does not show the amount paid or what was purchased. (Exhibit 7).
13. The appellant's attorney had no other receipts to provide (Exhibit 7).

Analysis and Conclusions of Law

This appeal addresses whether MassHealth correctly approved the appellant for long-term care coverage with a benefit start date of April 28, 2023. For an individual to become eligible for long-term care benefits, his or her assets may not exceed \$2,000. See 130 CMR 520.003. However, an applicant whose countable assets exceed the asset limit may become eligible through MassHealth's asset reduction process, described as follows:

(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.

...

(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.***

130 CMR 520.004 (emphasis added).

In this case, MassHealth correctly determined that the appellant had total countable assets of \$23,542.30 on the requested start date, April 7, 2023. After deducting \$2,000 for the allowable asset limit, the appellant had \$21,542.30 in excess assets on the requested start date. MassHealth then deducted the burial contract and burial account, leaving the appellant with \$11,197.30 in excess assets.² As there were no other allowable medical expenses that MassHealth could appropriately consider, MassHealth then calculated the date the appellant would be eligible for MassHealth benefits pursuant to 130 CMR 520.004(C) by dividing the remaining excess assets (\$11,197.30) by the private pay daily nursing facility rate (\$515), and calculated a 21-day period of ineligibility. As such, MassHealth correctly determined that the appellant was eligible beginning April 28, 2023.

The appellant's attorney was given additional time during the record open period to provide supporting documentation and/or receipts for MassHealth to consider other potential medical

² Funeral and burial arrangements are considered noncountable assets pursuant to 130 CMR 520.008(F).

expenses; however, he was only able to provide acceptable proof for a \$296.33 pharmacy purchase. Even if that receipt is considered, the appellant's start date would still be the same.³

Furthermore, pursuant to 130 CMR 520.004(A)(1)(b), MassHealth can only consider allowable medical expenses as part of the asset reduction process, not items such as rent, junk removal, or legal expenses.⁴

For these reasons, the MassHealth decision was correct and 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.

Alexandra Shube
Hearing Officer
Board of Hearings

[REDACTED]
cc: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M,
Charlestown, MA 02129

³ Excess assets would be \$10,900.97, which divided by the private pay daily rate of \$515, is still a 21-day period of ineligibility.

⁴ The regulations do allow for some consideration for payment of fees an applicant incurs in relation to the application process. Per 130 CMR 520.026(E)(3), MassHealth allows deductions from a member's **income, not assets**, for guardianship fees and related expenses when a guardian is essential to enable an incompetent applicant or member to gain access to or consent to medical treatment. In such a case, MassHealth allows a deduction from an applicant's patient paid amount not to exceed \$750 for reasonable costs related to the application process and hearing. The appellant's attorney has not alleged that this is the case here and there is no evidence that there is a guardian in place or that such a process occurred. As such, the regulation does not allow for a deduction of up to \$750, let alone \$7,500, for legal expenses here.