

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2407592
Decision Date:	7/8/2024	Hearing Date:	06/13/2024
Hearing Officer:	Susan Burgess-Cox	Record Open to:	06/15/2024

Appearance for Appellant:



Appearance for MassHealth:

Sandy Xie



*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:	Approved	Issue:	Long-Term Care Eligibility; Excess Assets
Decision Date:	7/8/2024	Hearing Date:	06/13/2024
MassHealth's Rep.:	Sandy Xie	Appellant's Rep.:	
Hearing Location:	All Parties Apepared by Telephone	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 May 1, 2024, MassHealth denied the appellant's application for MassHealth benefits because her countable assets were over the program limit. (130 CMR 520.000; Exhibit 1). The appellant filed an appeal in a timely manner on May 13, 2024. (130 CMR 610.015(B); Exhibit 2). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant was not eligible for MassHealth due to excess assets. (130 CMR 520.003; 130 CMR 520.004).

Issue

Whether MassHealth was correct in determining that the appellant had excess assets.

Summary of Evidence

All parties appeared by telephone. The MassHealth representative presented documents that were incorporated into the hearing record as Exhibit 4. Counsel for the appellant presented documents that were incorporated into the hearing record as Exhibit 5.

The appellant submitted an application for long-term care on September 14, 2023 seeking coverage as of June 12, 2023. MassHealth sent out a request for information and did not receive it as of the date due. On December 12, 2023, MassHealth issued a notice denying the application for failure to provide information necessary to complete the application. (Exhibit 4). On January 8, 2024, MassHealth received information and re-stamped the application for that date. On March 25, 2024, MassHealth issued a notice denying coverage for failure to provide information necessary to complete the application. Upon receipt of the necessary documents, MassHealth issued a notice denying coverage due to excess assets. (Exhibit 1).

The notice on appeal states that the appellant has assets totaling \$11,479.66. Since the regulations allow the appellant to keep \$2,000, the appellant had excess assets totaling \$9,479.66. At hearing, the MassHealth representative testified that the agency received updated bank statements which lowered the excess asset amount to \$6,365.40.¹

Counsel for the appellant noted that the bank account in question should be considered non-countable as it is utilized to deposit funds from tax returns and such funds cannot be deemed countable for a period of 12 months from the date of receipt. The account was opened in [REDACTED] and remained opened as of [REDACTED]. A deposit in the amount of \$5,752 was made on [REDACTED]. Counsel provided a copy of the appellant's 2021 IRS Form 1040, dated [REDACTED] indicating a refund in the amount of \$5,752. A deposit in the amount of \$7,202 was made on [REDACTED]. Counsel provided a copy of the appellant's 2022 IRS Form 1040, dated [REDACTED] 2023 indicating a refund in the amount of \$7,202. In a memorandum, counsel notes that the funds were received in [REDACTED] and [REDACTED].

Counsel cited Title 26, Section 6409 of the Internal Revenue Code which states:

Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal

¹ Documents presented by MassHealth at hearing indicate an excess asset amount of \$7,460.63. At hearing, the MassHealth representative testified to an excess asset amount of \$6,365.40 which is the figure that will be utilized in this decision.

program or under any State or local program financed in whole or in part with Federal funds. (26 USC § 6409).

Counsel argued that this statute deems the funds received in [REDACTED] and [REDACTED] as noncountable within 12 months from the date of receipt as MassHealth is a program financed by federal funds.

The MassHealth representative responded that the agency must follow the regulations governing the treatment of assets and those regulations state that countable assets are all assets that must be included in the determination of eligibility. The MassHealth representative noted that the agency can consider certain assets as noncountable but those are specifically defined in the regulations. Counsel for the appellant noted that the regulations at 130 CMR 520.008(K) state that any other asset considered noncountable for Title XIX eligibility purposes is considered a noncountable asset.

Counsel was asked whether funds from a tax return would be considered noncountable for Title XIX eligibility purposes as that is the statute cited in the regulations. Counsel did not provide a direct correlation and argued that the IRS Code directly speaks to how MassHealth should treat the assets at issue. The record was held open to provide counsel with the opportunity to present additional evidence and arguments regarding the consideration of the funds in question as a noncountable asset for MassHealth eligibility purposes. Prior to the close of the record open period, counsel sent the Board of Hearings a message asking the hearing officer to issue a decision based on the evidence and arguments presented at hearing alone. (Exhibit 7).

Findings of Fact

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

1. The appellant submitted an application for long-term care in September 14, 2023 seeking coverage as of June 12, 2023.
2. MassHealth sent out a request for information and did not receive it as of the date due.
3. On December 12, 2023, MassHealth issued a notice denying the application for failure to provide information necessary to complete the application.
4. On January 8, 2024, MassHealth received information and re-stamped the application for that date.
5. On March 25, 2024, MassHealth issued a notice denying coverage for failure to provide information necessary to complete the application.

6. Upon receipt of the necessary documents, MassHealth issued a notice denying coverage due to excess assets.
7. MassHealth determined that the appellant had excess assets totaling \$6,365.40.
8. The assets were funds all in one bank account.
9. The account was opened in [REDACTED] and remained open as of [REDACTED]
10. The appellant filed 2021 IRS Form 1040 in [REDACTED]
11. The 2021 IRS Form 1040 from [REDACTED] indicates that the appellant is entitled to a refund in the amount of \$5,752.
12. The appellant received \$5,752 in [REDACTED]
13. A deposit in the amount of \$5,752 was made on [REDACTED]
14. The appellant filed 2022 IRS Form 1040 on [REDACTED]
15. The 2021 IRS Form 1040 from [REDACTED] 023 indicates that the appellant is entitled to a refund in the amount of \$7,202.
16. A deposit in the amount of \$7,202 was made on [REDACTED]

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged [REDACTED] or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Countable assets are all assets that must be included in a determination of eligibility. (130 CMR 520.007). Assets that MassHealth considers countable include bank accounts. (130 CMR 520.007(B)). Bank accounts are defined as deposits in a bank, savings and loan institution, credit union, or other financial institution. (130 CMR 520.007(B)(1)). Bank accounts may be in

the form of savings, checking, or trust accounts, term certificates, or other types of accounts. (130 CMR 520.007(B)(1)). MassHealth considers funds in a bank account available only to the extent that the applicant or member has both ownership of and access to such funds. (130 CMR 520.007(B)(2)). Neither party disputed the fact that the appellant has both ownership and access to the funds in question. The issue raised by counsel for the appellant involved consideration of the funds as noncountable.

Pursuant to 130 CMR 520.008, noncountable assets are those assets exempt from consideration when determining the value of assets. The MassHealth regulations do not specifically speak to funds received from an income tax return. Counsel for the appellant argued that MassHealth must comply with all federal laws and regulations including the IRS Code which specifically speaks to deeming such funds as noncountable. Counsel noted that the regulations at 130 CMR 520.008(K) state that any other assets considered noncountable for Title XIX eligibility purposes is considered a noncountable asset. At hearing, counsel could not cite to a section of Title XIX relating to the IRS code or a requirement for State Medicaid agencies to comply with all other federal statutes and regulations. As noted above, counsel did not submit any additional arguments regarding the assets at issue except to cite the IRS code.

In December 2010, Congress passed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312). Under this law, the statutory language cited by counsel for the appellant became effective December 17, 2010, and applied to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013. (P.L. 111-312; CMS Informational Bulletin, February 2, 2011). In February 2012, Congress passed the American Taxpayer Relief Act of 2012 which permanently extended the rule disregarding refunds in the administration of federal programs and federally assisted programs. (P.L. 112-240). The regulations require MassHealth to consider as noncountable any other assets considered noncountable for Title XIX eligibility purposes. (130 CMR 520.008(K)). In this case, assets considered noncountable for Title XIX eligibility purposes would include those that are considered noncountable in compliance with other federal statutes and regulations. The statute cited by counsel for the appellant clearly speaks to a state or local program not including tax refunds as a resource for a period of 12 months from receipt. MassHealth should act in compliance with this federal statute.

The decision made by MassHealth was not correct.

This appeal is approved.

Order for MassHealth

Determine eligibility excluding tax refunds received by the appellant in [REDACTED] and [REDACTED] [REDACTED] for a period of up to 12 months from the date of receipt.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc: [REDACTED]

MassHealth Representative: Quincy MEC, Attn: Appeals Coordinator, 100 Hancock Street, 6th Floor, Quincy, MA 02171