

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2409833
Decision Date:	11/19/2024	Hearing Date:	09/24/2024
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Stephanie Mowles (Quincy MEC) *via* telephone



*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/Excess Assets
Decision Date:	11/19/2024	Hearing Date:	09/24/2024
MassHealth's Rep.:	Stephanie Mowles	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South	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 April 25, 2024, MassHealth denied the appellant's application for Long Term Care (LTC) benefits because he has more countable assets than MassHealth benefits allow. (See 130 CMR 520.003 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on June 24, 2024. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

BOH initially scheduled a hearing for July 23, 2024. (Ex. 4). This was rescheduled for good cause, first to August 20, 2024 and then to September 24, 2024. (Exs. 6-10).

Action Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits because his assets exceed the asset limit for MassHealth Standard for long term care residents.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003 and 520.016, in determining that the appellant's assets exceed the limit for LTC benefits.

Summary of Evidence

MassHealth was represented by a benefits eligibility and referral social worker from the Quincy MassHealth Enrollment Center (MEC). The appellant's conservator authorized the attorney to represent the appellant at the hearing. Both representatives attended the hearing by telephone.

The MassHealth representative testified to the following. The appellant is an unmarried individual over age 65 who submitted an application for Long Term Care (LTC) on June 30, 2023. (Testimony; Ex. 3; Ex. 11, p. 3). The appellant requested a MassHealth start date of April 1, 2023. (Testimony). By letter dated July 13, 2023, MassHealth sent the appellant a VC-1, request for information. (Testimony; Ex. 11, pp. 4-6). MassHealth denied the application on October 16, 2023 due to failure to submit the requested verifications within the specified time frame (first denial). (Testimony; Ex. 11, pp. 7-9). The appellant timely appealed the October 16, 2023 denial. On November 17, 2023, MassHealth mailed the appellant a second request for information (VC-2). (Testimony; Ex. 11, pp. 10-11).

BOH held a hearing on December 11, 2023.¹ (Testimony). During the hearing, the appellant's attorney informed the hearing officer in that appeal that the appellant's conservator was having difficulties obtaining documents from the Investment Firm² and requested the hearing officer leave the record open to allow the appellant's conservator additional time to obtain the necessary verifications. (Testimony). On February 26, 2024, during the pendency of the appellant's appeal of the first denial, MassHealth denied the application a second time due to failure to submit the requested verifications within the time frame (second denial). (Testimony; Ex. 11, pp. 12-13). After several extensions to the record open, the appellant's attorney was able to submit the requested verifications by April 25, 2024. (Testimony). Because requested verifications were submitted, MassHealth reopened the original application date of June 30, 2023, and the appellant's attorney withdrew the appeal of the verifications denial. (Testimony).

Based on the verifications it received, MassHealth denied the appellant's LTC application on April 25, 2024, because the value of the appellant's countable assets exceeded the MassHealth asset limit for individuals. (Testimony; Ex. 1; Ex. 11, pp. 14-17). The appellant's assets totaled \$763,333.24 and consisted of the following:

- Bank Account: \$19,921.00 as of August 16, 2023. (Testimony; Ex. 11, p. 18).
- Investment Firm Account One: \$728,477.00 as of March 24, 2024. (Testimony; Ex. 11, p. 19).
- Investment Firm Account Two: \$14,933.84 as of March 28, 2024. (Testimony; Ex. 11, p. 20).

¹ Appeal No. 2311556.

² All personal identifying information concerning named financial institutions and account information has been changed in this decision in order to protect this information.

The appellant's assets were therefore \$761,333.24 over the \$2,000 limit for an individual. (Testimony; Ex. 1; Ex. 11, pp. 14-17).

The appellant's attorney stated the entire situation arises from the appellant's need for a conservatorship. (Testimony; Ex. 5; Ex. 12). The appellant submitted the MassHealth application for LTC benefits in June 2023, with a requested start date of April 1, 2023. (Testimony). At the time the appellant submitted the application, the appellant's niece held both the appellant's power of attorney as well as being his healthcare proxy. (Testimony). Based on the authority so provided, the appellant's niece attempted to obtain copies of statements for the two accounts the appellant had with the Investment Firm, but received no response from them. (Testimony). As a result, the appellant's niece had no choice but to file for conservatorship in August 2023. (Testimony).

The conservatorship hearing took place on November 13, 2023, and letters of appointment for the conservator, along with the decree, were issued on the same day. (Testimony). On November 14, 2023, the appellant's attorney's office sent a certified copy of the letters of conservatorship to the Investment Firm, along with instructions regarding the management of the appellant's accounts. (Testimony). However, the Investment Firm did not acknowledge the conservatorship or the authority of the court-appointed conservator until April 2024. (Testimony).

The appellant's attorney and the appellant's niece made multiple requests for the niece to be granted access to the appellant's account statements starting in December 2023. (Testimony). These efforts included a two-hour phone call with the Investment Firm, where they learned that the Investment Firm's system is not linked to that of its similarly named parent firm, and that the Investment Firm accounts were not directly accessible through the parent firm. (Testimony). Instead, they were forced to go through customer service, which proved unhelpful. (Testimony). Despite repeated requests in December 2023; and January, February, and March 2024, the appellant's niece was consistently denied access to the necessary statements. (Testimony). On several occasions, she even received formal letters from the Investment Firm denying her access to the accounts, without any clear explanation. (Testimony).

The appellant's niece was able to obtain the required statements by submitting additional documentation and escalating the matter to higher-level individuals. (Testimony). These efforts were not successful until April 2024, when all relevant documents were finally submitted to the hearing officer in Appeal No. (Testimony). 2311556. (Testimony). By this point, MassHealth had issued the second denial. (Testimony).

For the entire period from the requested Medicaid start date until April 2024, the appellant had no access to his assets. (Testimony). The appellant's attorney stated that she was not seeking MassHealth coverage for that entire period. (Testimony). However, the appellant's attorney believed that the appellant should be eligible for coverage from the requested start date up to the date the court appointed his niece as his conservator, as this was the point at which she would have had legal access to the appellant's assets. (Testimony).

The appellant's attorney cited 130 CMR 520.006, regarding inaccessibility of assets. (Testimony). The regulation states that an asset is considered inaccessible if the applicant or member has no legal access to it. (Testimony). Due to the appellant's severe dementia, he was unable to manage his finances or make decisions about his assets. (Testimony). Furthermore, [REDACTED] denied the validity of the power of attorney in April 2023, which necessitated the filing for conservatorship in August 2023. (Testimony). The entire process was not concluded until November 13, 2023, when the conservator was formally appointed. (Testimony). In light of these circumstances, the appellant's attorney requested that MassHealth cover the period from the requested Medicaid start date until the appointment of the conservator, which is when the appellant's conservator would have had legal access to manage the appellant's assets. (Testimony).

The hearing officer asked if the appellant's assets have now been spent down. The appellant's attorney stated that they planned on having the appellant's assets spent down through private pay to the nursing facility from November 2023, the date when the conservator had access to the appellant's assets. (Testimony). The appellant's attorney confirmed, however, that no spend down had yet occurred. (Testimony).

Findings of Fact

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

1. The appellant is an unmarried individual over the age of 65, who submitted an application for LTC on June 30, 2023. (Testimony; Ex. 3; Ex. 11, p. 3).
2. The appellant is seeking a MassHealth start date of April 1, 2023. (Testimony).
3. MassHealth issued a denial notice on October 16, 2023 because the appellant did not submit the requested verifications within the specified time frame. (Testimony; Ex. 11, pp. 7-9).
4. The appellant appealed the denial in a timely fashion on November 16, 2023, and a hearing was held on December 11, 2023. (Testimony).
5. At the conclusion of the hearing on December 11, 2023, the record was left open in order to allow the appellant further time to obtain account statements from one specific source. (Testimony).
6. After several extensions of the record open, the appellant's attorney was able to submit the requested verifications to MassHealth on April 25, 2024, at which point the record closed, MassHealth reopened the June 30, 2023 application date, and the appellant's attorney withdrew the appeal. (Testimony).

7. MassHealth issued a notice on April 25, 2024 informing the appellant that he was not eligible for MassHealth because the value of his countable assets exceeded the individual asset limit. (Testimony; Ex.1; Ex. 11, pp. 14-17).
 - A. The appellant's assets totaled \$763,333.24 and consisted of the following:
 1. Bank Account: \$19,921.00 as of August 16, 2023. (Testimony; Ex. 11, p. 18).
 2. Investment Firm Account One: \$728,477.00 as of March 24, 2024. (Testimony; Ex. 11, p. 19).
 3. Investment Firm Account Two: \$14,933.84 as of March 28, 2024. (Testimony; Ex. 11, p. 20).
 - B. The appellant's assets were therefore \$761,333.24 over the \$2,000 limit for an individual. (Testimony; Ex. 1; Ex. 11, pp. 14-17),
8. The appellant submitted a timely appeal of the April 25, 2024 notice. (Ex. 2).
9. As of the date of the hearing, the appellant's excess assets were not spent down. (Testimony).

Analysis and Conclusions of Law

The total value of countable assets owned by or available to individuals applying for MassHealth LTC benefits may not exceed \$2,000 for that individual. (130 CMR 520.003(A)(1); 520.016(A)). An applicant whose countable assets exceed the asset limit may be eligible for MassHealth either as of the date the applicant reduces their excess assets to the allowable asset limit without violating the transfer of resource provisions for nursing-facility residents, or as of the date 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. (130 CMR 520.004(A)(1)).

The record shows that as of the date of the hearing, the appellant owned countable assets valued at \$763,333.24. The appellant is a single individual, and the asset limit is \$2,000 for single individuals. The appellant's assets exceed the MassHealth asset limit by \$761,333.24. The appellant's attorney did not dispute that the appellant was over the asset limit. The appellant's attorney confirmed that the appellant had not spent down the excess assets as of the date of the hearing.

The appellant's attorney argues that the appellant's assets were inaccessible pursuant to 130 CMR 520.006 which states:

- (A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal

access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

(1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and

(2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

(1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or

(2) from the period beginning six months after the date of application or acquisition, whichever is later, if

(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee

The appellant argues that MassHealth should not count his assets for the period April, 2023 to November, 2023 because they were inaccessible until November, 2023. The appellant's application was still pending during this period and MassHealth made no determination with regard to the countability of the appellant's assets for this period as it was still awaiting verifications. As of the date of MassHealth's determination of excess assets in April 2024, the appellant had access to his assets through his conservator. Accordingly, such assets are not inaccessible and were not inaccessible at the time the determination of excess assets was made. The appellant's countable, accessible assets totaling \$763,333.24 exceed the MassHealth limit of \$2,000.00.

For the above reasons, 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

[REDACTED]

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