

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2410781
<b>Decision Date:</b>	09/27/2024	<b>Hearing Date:</b>	08/08/2024
<b>Hearing Officer:</b>	Scott Bernard	<b>Record Open to:</b>	09/16/2024

**Appearance for Appellant:**



**Appearance for MassHealth:**

Lori Van Zile (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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Long Term Care/Verifications
<b>Decision Date:</b>	09/27/2024	<b>Hearing Date:</b>	08/08/2024
<b>MassHealth's Rep.:</b>	Lori Van Zile	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Quincy Harbor South	<b>Aid Pending:</b>	N/A

### 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 June 25, 2024, MassHealth denied the appellant's application for Long Term Care (LTC) benefits because it determined that the appellant failed to submit requested verifications within the required time frame. (See 130 CMR 516.001 and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on July 11, 2024. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

At the conclusion of the hearing, the record was left open until September 16, 2024 for the appellant attorney to submit further verifications and for the MassHealth representative to review those verifications at which time the record closed. (Ex. 9; Ex. 10; Ex. 11; Ex. 12; Ex. 13).

### Action Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits.

### Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001, in determining that the appellant failed to submit requested verifications within the required time frame.

## Summary of Evidence

The hearing was attended telephonically by an eligibility worker from the Quincy MassHealth Enrollment Center (MEC) and the appellant's attorney.

The MassHealth representative testified to the following. The appellant is over the age of 65, and lives in a single person household. (Testimony). The appellant was admitted to the nursing facility at the end of [REDACTED] (Testimony). On March 8, 2024, MassHealth received an application for LTC benefits for the appellant. (Testimony). At that time, the appellant requested a coverage start date of January 11, 2024. (Testimony). More recently, however, the appellant submitted an updated Status Change (SC-1) form requesting a start date of March 2, 2024. (Testimony; Ex. 6). The reason for the change was that the appellant had made a \$20,000 private payment to the nursing facility. (Testimony; Ex. 6).

MassHealth sent the appellant a request for information on March 22, 2024. (Testimony). MassHealth then sent a second request for information on March 26, 2024, because MassHealth learned that there was a property that had not been reported on the application. (Testimony). On April 16, 2024, MassHealth sent a third request for information because MassHealth learned there were bank accounts that had not been reported on the application. (Testimony). On June 25, 2024, MassHealth denied the appellant's LTC application because she had not verified all the requested information. (Testimony; Ex. 1).

Since issuing the denial, MassHealth has received most of the missing verifications. (Testimony). MassHealth still required verifications concerning an annuity and a burial account. (Testimony). For the annuity, MassHealth needed a full copy of the annuity contract with verification that the Commonwealth of Massachusetts is named the remainder beneficiary. (Testimony). MassHealth did receive a few pages of the contract but needed a full copy. (Testimony). Additionally, MassHealth needed the appellant to complete and return a separately mailed Annuity Tracking form. (Testimony). For the burial account, MassHealth needed a copy of current statements for that account. (Testimony).

The appellant's attorney testified to the following. Prior to the hearing, she and the MassHealth representative discussed requesting that the record remain open an additional 30 days to make a further attempt to obtain the documents that MassHealth was seeking. (Testimony). The appellant's attorney stated that she has sent every page of the annuity contract to MassHealth except the signature page. (Testimony). The appellant's attorney provided the cover sheet, the definitions, and the data page. (Testimony). The only missing part was the signature page for the contract. (Testimony). The appellant's daughter, who is her attorney-in-fact, called the current administrator of the annuity, but was told that since the contract was [REDACTED] they were uncertain if they could provide the original. (Testimony; Ex. 7). The annuity's current administrator acknowledged changing the beneficiary to the Commonwealth. (Testimony). The appellant's attorney stated that she will continue to pursue obtaining the signature page, but, failing that,

would submit an affidavit outlining her due diligence in trying to obtain and submit the signature page. (Testimony).

For that reason, the appellant's attorney agreed to submit the following documents by September 9, 2024:

1. Income from Annuity...: Please submit full copy of annuity contract and verification that the Commonwealth of Massachusetts has been named the remainder beneficiary. Please complete and return the Annuity Tracker (mailed separately). Although MassHealth has received a few pages of the Annuity contract, it is still missing a full copy.
2. BURIAL ACCOUNT: A copy of current statements of the newly established burial account. The appellant's representative did provide a copy of the check written to [REDACTED] for \$1,500.00 and a Consumer Account Agreement from [REDACTED] but the Consumer Account Agreement does not have the information necessary for MassHealth to verify the account. (Ex. 9).

MassHealth agreed to review any documentation the appellant's attorney submitted by September 16, 2024 and inform the hearing officer what, if any, verifications were missing or not sufficient. (Ex. 9).

On August 26, 2024, the appellant's attorney submitted the verifications concerning the burial account as well as a letter from the annuity administrator laying out the terms of the annuity, as well as the income supplied to the appellant through the annuity. (Ex. 11). On September 6, 2024, the appellant's attorney submitted an affidavit stating the following:

1. On August 21, 2024, [the appellant's daughter] and I spoke with a customer service representative in the [the annuity administrator's] department that administers the applicant's annuity contract.
2. The customer service woman we spoke with searched the company's database records while we were on the phone to determine whether [the annuity administrator] retained the original contract.
3. The [annuity administrator's] customer service person confirmed that [the annuity administrator] did not retain a hard copy of the contract.
4. [The appellant's daughter] received a letter from [the annuity administrator] dated August 26, 2024, which stated that the annuity services department stated that the remaining guaranteed benefit is only \$3,085.85, and that the applicant receives \$102.51 monthly. See attached letter from [the annuity administrator].
5. The caseworker for this application is denying Mass Health [sic] for not having every page of the contract, when the company states they do not have it, and the applicant's attorney in fact provided the pages she could find in her mother's financial statements.

6. The irrevocable annuity is valued at only \$3,085.85. To find that the application is going to be denied when the asset cannot be liquidated, is only \$1,085.85 over the Mass Health [sic] asset limit, and that the long-term care facility is going to be penalized for the lack of a complete contract that neither the applicant's attorney in fact nor her attorney have any control over, and that the contract has paid out for 14 years of something, is unreasonable.
7. There is nothing in the regulations that requires the applicant provide the entire contract.
8. As the contract has been in effect since 2010, and any remaining payments of the annuity after the applicant's death will be made to the Mass Health [sic], Mass Health's [sic] interest in this annuity contract are clearly protected without the fully executed contract. (Ex. 12).

On September 16, 2024, the MassHealth representative emailed both the hearing officer and the appellant's attorney stating that she could not approve the appellant's LTC application without a copy of the contract for the annuity. (Ex. 10). The MassHealth representative later also confirmed that all other verification requested through the record open were submitted and the only outstanding item was a full copy of the annuity contract. (Ex. 13).

## Findings of Fact

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

1. The appellant is over the age of 65, and lives in a single person household. (Testimony).
2. The appellant was admitted to the nursing facility at the end of [REDACTED] (Testimony).
3. On March 8, 2024, MassHealth received an application for LTC benefits for the appellant. (Testimony).
4. The appellant submitted an updated SC-1 form requesting a start date of March 2, 2024. (Testimony; Ex. 6).
5. MassHealth sent the appellant requests for information on March 22, March 26, and April 16, 2024. (Testimony).
6. On June 25, 2024, MassHealth denied the appellant's LTC application because she had not verified all the requested information. (Testimony; Ex. 1).
7. Since issuing the denial, MassHealth has received most of the missing verifications. (Testimony).
8. As of the date of the hearing, MassHealth still required verifications concerning an annuity

and a burial account. (Testimony).

9. Specifically regarding the annuity, MassHealth needed a full copy of the annuity contract with verification that the Commonwealth of Massachusetts is named the remainder beneficiary. (Testimony).
10. The appellant's attorney confirmed that she has sent all pages of the annuity contract to MassHealth except the signature page, providing the cover sheet, definitions, and data page, while the appellant's daughter, acting as her attorney-in-fact, contacted the current annuity administrator, who, uncertain about providing the original due to the contract's [REDACTED] age, acknowledged the beneficiary change to the Commonwealth; the attorney will continue to pursue the signature page or submit an affidavit detailing her efforts if unsuccessful. (Testimony; Ex. 7).
11. At the appellant's attorney's request and with the MassHealth representative's agreement, the record was left open until September 9, 2024 to give the appellant's attorney the opportunity to submit a full copy of annuity contract and verification that the Commonwealth of Massachusetts has been named the remainder beneficiary, complete annuity tracking form, and a copy of current statements for the appellant's newly established burial account. (Testimony; Ex. 9).
12. During the record open period, the appellant's attorney submitted the completed annuity tracking form and a copy of current statements for the appellant's newly established burial account. (Ex. 11; Ex. 13).
13. On September 6, 2024, the appellant's attorney submitted an affidavit stating the following:
  1. On August 21, 2024, [the appellant's daughter] and I spoke with a customer service representative in the [the annuity administrator's] department that administers the applicant's annuity contract.
  2. The customer service woman we spoke with searched the company's database records while we were on the phone to determine whether [the annuity administrator] retained the original contract.
  3. The [annuity administrator's] customer service person confirmed that [the annuity administrator] did not retain a hard copy of the contract.
  4. [The appellant's daughter] received a letter from [the annuity administrator] dated August 26, 2024, which stated that the annuity services department stated that the remaining guaranteed benefit is only \$3,085.85, and that the applicant receives \$102.51 monthly. See attached letter from [the annuity administrator].
  5. The caseworker for this application is denying Mass Health [sic] for not having every page of the contract, when the company states they do not have

it, and the applicant's attorney in fact provided the pages she could find in her mother's financial statements.

6. The irrevocable annuity is valued at only \$3,085.85. To find that the application is going to be denied when the asset cannot be liquidated, is only \$1,085.85 over the Mass Health [sic] asset limit, and that the long-term care facility is going to be penalized for the lack of a complete contract that neither the applicant's attorney in fact nor her attorney have any control over, and that the contract has paid out for 14 years of something, is unreasonable.

7. There is nothing in the regulations that requires the applicant provide the entire contract.

8. As the contract has been in effect since 2010, and any remaining payments of the annuity after the applicant's death will be made to the Mass Health [sic], Mass Health's [sic] interest in this annuity contract are clearly protected without the fully executed contract. (Ex. 12).

14. In response, the MassHealth representative wrote that the application cannot be approved without a copy of the annuity contract, and the decision of denial remains unchanged. (Ex. 10).

## **Analysis and Conclusions of Law**

A MassHealth applicant must cooperate with MassHealth in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining other health insurance. (130 CMR 515.008(A)). To apply for MassHealth long-term care services in a nursing facility, the individual or their authorized representative must submit a complete paper Senior Application and Supplements, or apply in person at a MassHealth Enrollment Center (MEC). (130 CMR 516.001(A)(1)(b)). Upon receiving the application, MassHealth will request any necessary corroborative information to assess eligibility. (130 CMR 516.001(B)). This request will be communicated through written notification shortly after the application is received. (130 CMR 516.001(B)(1); 516.003(C)). The notice will specify a due date for submitting the requested information and outline the consequences of non-compliance. (130 CMR 516.001(B)(2); 516.003(D)). If MassHealth receives the information within 30 days of the request, the application is deemed complete, and MassHealth will determine the most comprehensive coverage type for which the applicant qualifies. (130 CMR 516.001(C)). Failure to provide the requested information within this timeframe may result in denial of benefits. (Id.).

MassHealth requires verification of various eligibility factors, including income, assets, residency, citizenship, immigration status, and identity. (130 CMR 516.003). To verify ownership of countable assets, written documentation is essential. (130 CMR 520.005(D)). Acceptable forms of verification can be varied and may include title documents, purchase contracts, and for joint bank account records documents that show a clear view of ownership and responsibilities. (Id.). Other

acceptable documentation may include ownership certifications, financial institution records indicating ownership interests, and evidence of asset value and access restrictions. (Id.). A notarized affidavit from all asset owners attesting to ownership distribution may also be acceptable. (Id.). For individuals applying solely for MassHealth Senior Buy-in for Qualified Medicare Beneficiaries. (QMB), a self-declaration is permitted. (Id.).

With the exception of citizenship and immigration status verifications, MassHealth allows self-attestation for all other eligibility criteria on a case-by-case basis when documentation is unavailable or difficult to obtain. (130 CMR 516.003(G)). Although this flexibility applies particularly to individuals who are homeless, have experienced domestic violence, or have been affected by a natural disaster it also does not limit this flexibility to these classes of people. (Id.).

The hearing officer may not exclude evidence at the hearing simply because it was not previously submitted to the acting entity, as long as they allow the acting entity representative reasonable time to respond to any new evidence, and any adjustments to the appellant's eligibility status will take effect on the date when all eligibility conditions were met, regardless of when the supporting evidence was submitted. (130 CMR 610.071(A)(2)).

The appellant submitted a complete Senior Application for LTC benefits on March 8, 2024. Following the application, MassHealth requested additional information on March 22, March 26, and April 16, 2024. The application was denied on June 25, 2024, due to the appellant not verifying all requested information. MassHealth confirmed that after the denial, most of the missing verifications were submitted, but MassHealth still required verification for an annuity and a burial account. Specifically, with regards to the annuity, MassHealth required a full copy of the annuity contract and verification that the Commonwealth of Massachusetts was named as the remainder beneficiary. The appellant's attorney has been proactive, providing partial documentation but facing challenges in obtaining the signature page from the annuity administrator.

The parties agreed to leave the record open until September 9, 2024, in order to allow the appellant's attorney additional time to submit the required documentation. During the record open period, the appellant's attorney submitted the completed annuity tracking form and current statements for the burial account. On September 6, 2024, the appellant's attorney submitted an affidavit detailing her efforts to obtain the annuity contract and stating that the annuity administrator had not retained a hard copy of the contract. The affidavit does show the efforts made by the appellant's attorney to comply with MassHealth's requirements and emphasizes the difficulties encountered in obtaining the complete contract. Despite the affidavit and the documented efforts to obtain the annuity contract, MassHealth maintains that the application cannot be approved without the full contract, suggesting a strict interpretation of the verification requirements.

Given the circumstances, it appears that the appellant has made significant efforts to comply with MassHealth's verification requirements but faced obstacles beyond her control. The



argument could be made that, since the annuity is irrevocable and MassHealth's interest is protected as the remainder beneficiary, the denial based solely on the absence of the full contract may be unreasonable. Furthermore, the regulations allow for self-attestation and flexibility in documentation, particularly for individuals facing challenges in providing complete records. It appears that between the information provided through the affidavit, and the other documents submitted to MassHealth previously, MassHealth would be able to verify the essential elements concerning this annuity.

For the above stated reasons, the appeal is APPROVED.

## **Order for MassHealth**

Rescind the notice dated June 25, 2024, and reopen and process the appellant's MassHealth application dated March 8, 2024.

## **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.

---

Scott Bernard  
Hearing Officer  
Board of Hearings

cc:

[REDACTED]

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