Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Approved	**Appeal Number:**	2412054
Decision Date:	11/7/2024	**Hearing Date:**	09/04/2024
Hearing Officer:	Christopher Jones	**Record Open to:**	09/20/2024

Appearances for Appellant:

[redacted]

Appearances for MassHealth:
Jenya Kruglyansky – Tewksbury Ongoing
Meghan Adie (Record Open) Tewksbury Supervisor

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:**	Community Eligibility; Over-65; Annual Renewal; Start Date
Decision Date:	11/7/2024	**Hearing Date:**	09/04/2024
MassHealth's Reps.:	Jenya Kruglyansky; Meghan Adie (Record Open)	**Appellant's Reps.:**	[redacted]
Hearing Location:	Telephonic	**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 July 10, 2024, MassHealth approved the appellant for the Senior Buy In benefit (now Medicare Savings Program – Qualified Medicare Beneficiaries) as of August 1, 2024. (Exhibit 1; 130 CMR 520.003; 520.004.) The appellant filed this appeal in a timely manner on August 2, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

The record was left open after the hearing until September 20, 2024, for the appellant to submit proof of asset reduction, and for MassHealth to review it.

Action Taken by MassHealth

MassHealth approved the appellant for the Medicare Savings Program – Qualified Medicare Beneficiaries, instead of Standard, because she had assets in excess of $2,000.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, 520.004, in

determining that the appellant's asset reduction was not entitled to a Haley calculation and the retroactive approval of MassHealth benefits.

Summary of Evidence

MassHealth's representative works in the agency's ongoing unit, which handles benefits for individuals over the age of 65 who have already been approved for MassHealth benefits. She testified that an eligibility renewal application was mailed out to the appellant on January 18, 2024, with a due date of March 3, 2024. When this renewal was not received, the appellant's community benefits were terminated, effective March 22, 2024. The appellant completed the community renewal on March 21, 2024.

A request for information was mailed on April 5, 2024, and some information was received on May 29, 2024. Another request was mailed out, due July 21, 2024. On July 3, 2024, the final documentation requested was received, and MassHealth determined that the appellant had assets of $30,023.38. Because this exceeded the asset limit for MassHealth Standard, the appellant was approved for the Medicare Savings Program – Qualified Medicare Beneficiaries ("MSP – QMB") through the July 10 notice. MassHealth's representative testified that she had accidentally double counted assets, and that the true countable asset figure was actually $14,996.

The appellant is an elderly woman who currently resides in a nursing facility, and her representatives are employees of that facility. They testified that the appellant entered the facility on [redacted] and she was screened as short-term. The representatives completed the community application with the appellant because it was unclear how long the appellant would stay at the facility. Normally a community applicant's short-term nursing facility care is automatically covered between Medicare and MassHealth community benefits. The appellant's representatives testified that they would complete a conversion application, but that this appeal was regarding the community application that would go back to cover her care from April 20, 2024. The appellant's Medicare covered her stay before that. The appellant's representatives testified that the only remaining assets were going to be spent on a funeral contract and uncovered medical expenses from the start of her care.

The hearing record was left open for a week for the appellant to submit proof of asset reduction, and MassHealth was allowed until September 20, 2024 to review and respond. The appellant is seeking to have MassHealth Standard coverage reinstated based upon her March 21 application, which was the triggering application for MassHealth's July approval of MSP – QMB benefits. The appellant submitted proof of funding a prepaid funeral arrangement with $11,100 and paying $5,575.20 to the nursing facility on Aug. 30. The facility's private pay letter states that $4,284 was paid for Medicare co-insurance from March 30 to April 19, and $1,296.20 for Medicare coinsurance from May 3 to May 17, 2024.

On September 12, 2024, MassHealth approved the appellant's request for MassHealth Standard, but only as of September 1, 2024. When asked why the funeral contract and medical expenses

were not applied retroactively to allow for benefits to be approved in the past, MassHealth responded it was because the "[m]ember only used $11,100 of that to fund the burial and we did not receive proof of all assets being reduced until September, so we were unable to go back to the March application date." When asked for additional clarification, MassHealth's representative responded: "MassHealth's position is that the matter under appeal was resolved with the approval notice generated on 9/12/2024. MassHealth stands by our decision to approve as of 9/1/2024 and if there is a disagreement with the start date, the approval notice has appeal rights."

A summary of the facts of this matter was forwarded to the parties so that they could correct the record before a decision was issued, and the parties were asked to weigh in on the manner in which retroactive asset reduction should be applied in this case. It was specifically noted that an approval appeared appropriate given the retroactive manner in which assets may be reduced on medical expenses and funeral arrangements.

A MassHealth supervisor was copied on this email. The supervisor responded to the email with a detailed timeline of the various applications, screens, and SC-1s submitted on the appellant's behalf. This timeline notes that the original renewal application filed on March 21, 2024 noted that the appellant was residing in a nursing facility, and after a conversation with a MassHealth representative on March 26, the case was processed under the community renewal application. The timeline also reflects that the first SC-1 was received on July 24, 2024, requesting a short-term screen from May 18, 2024 to September 16, 2024. MassHealth responded by mailing out a long-term care application. On August 7, 2024, a short-term SC-1 with a payment request date of April 20, 2024, was submitted. Finally, on September 11, 2024, a long-term care application was submitted with a copy of the short-term SC-1 requesting payment as of May 18, 2024.

MassHealth's supervisor did not offer an opinion as to how asset reduction should be handled or why it was inapplicable. The appellant did not respond.

Findings of Fact

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

1) The appellant is over the age of 65 and she had been covered by MassHealth Standard in the community until March 22, 2024. (Exhibit 4.)

2) MassHealth mailed out a renewal application on January 28, 2024, which was due back by March 3, 2024. This renewal was not received, and MassHealth terminated the appellant's benefits, effective March 22, 2024. (Testimony by MassHealth's representative.)

3) The appellant entered the nursing facility on [redacted]. (Testimony by the appellant's representatives.)

4) The appellant applied for MassHealth community benefits on March 21, 2024. This application was processed on March 28, 2024, and requests for information were mailed out with a due date of July 21, 2024. (Exhibit 5, p. 1.)

5) The appellant timely responded to this request for information, and MassHealth determined her to be ineligible for MassHealth Standard on July 10, 2024, finding that she had assets in excess of the limit for that benefit. The appellant had excess assets of $14,996. (Exhibit 1; Exhibit 5, pp. 1, 2.)

6) On July 24, 2024, the nursing facility filed an SC-1 and a short-term screen, requesting MassHealth payment for nursing facility care as of April 20, 2024. (Exhibit 5, p. 1.)

7) During the record open period following the hearing, the appellant verified that she had reduced her excess assets through a prepaid funeral arrangement toward which she paid $11,100, and through payment of medical expenses incurred between March 30 and April 19, 2024 totaling $3,896. (Exhibit 5; Exhibit 6.)

Analysis and Conclusions of Law

MassHealth annually requires members to reestablish their eligibility. If a member's "continued eligibility cannot be determined based on reliable information contained in his or her account or electronic data match with federal and state agencies, a MassHealth eligibility review form must be completed." (130 CMR 516.007(C)(2).) The member has 45 days to return the completed application, or benefits will be terminated. If the requested renewal application is returned "within 30 days from the date of the termination, a second eligibility determination is made within 15 days." (130 CMR 516.007(C)(2)(b).) If additional verifications are required, a Request for Information Notice is sent out. (See 130 CMR 516.003(C).) A member is given 90[1] "days from the receipt of the Request for Information Notice to provide all requested verifications." (130 CMR 516.003(D)(1).)

MassHealth Standard benefits "may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided." (130 CMR 516.006(A)(2).) MassHealth applicants must establish financial eligibility, including having countable assets of $2,000 or less for individuals seeking MassHealth Standard for persons over the age of 65. (130 CMR 520.003(A).)

If an applicant has assets in excess of this limit, they only become eligible for coverage

[1] EOM 23-09 extended the number of days allowed to verify eligibility criteria in over-65 applications from 30 to 90 days to align with under-65 eligibility processes. (EOM 23-09 (Mar. 2023).)

> (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 … or (b) 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 only medical expenses that count are those "incurred [after] the first day of the third month prior to the date of application." (130 CMR 520.004(C).) This manner of reducing assets is referred to as a "Haley calculation." (See Haley v. Comm'r of Pub. Welfare, 394 Mass. 466 (1985).) Furthermore, excess assets used to fund funeral arrangements are considered "to have been in existence on the first day of the third month before the application." (130 CMR 520.008(F)(3).)

Fair hearings exist to give an appellant the opportunity to present evidence regarding why they believe MassHealth's decision was in error. (See 130 CMR 610.061.) A hearing officer must facilitate the orderly presentation of evidence at the hearing, can consider evidence's effect on a member's eligibility as of the date it existed, and afford the parties the opportunity to respond to evidence first presented at a hearing. (See 130 CMR 610.065; 130 CMR 610.071.) An applicant for MassHealth benefits has the burden to prove his or her eligibility. (130 CMR 515.001, 520.004; and G.L. ch. 118E, § 20.)

Though the notice is styled as an approval for Senior Buy In benefits, the appellant was effectively denied MassHealth Standard coverage because she had excess assets of $14,996. During the record open period, the appellant submitted proof that she paid $11,100 for funeral arrangements and $3,896 in medical expenses incurred prior to April 20, 2024. MassHealth raised no objection to the nature of this asset reduction. Therefore, this appeal is APPROVED. The appellant is entitled to MassHealth Standard coverage as of April 20, 2024.[2]

Order for MassHealth

Reinstate MassHealth Standard coverage as of April 20, 2024. Any payment decisions regarding nursing facility care must be made as if the appellant's community MassHealth Standard were in effect on April 20, 2024.

[2] It is possible that MassHealth's reticence to approve Standard retroactively was because they had other concerns about nursing facility coverage or long-term-care benefits. MassHealth may issue new, appealable notices regarding payment for nursing facility services. However, any notices must be premised upon the appellant having MassHealth Standard coverage as of April 20, 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.

Christopher Jones
Hearing Officer
Board of Hearings

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