

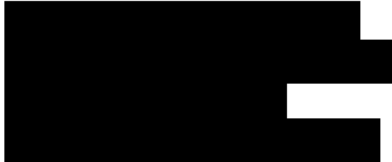
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2412330
Decision Date:	11/8/2024	Hearing Date:	9/12/2024
Hearing Officer:	Amy B. Kullar, Esq.	Record Open to:	10/3/2024

Appearances for Appellant:




Appearances for MassHealth:

Lynn Bloomquist, Tewksbury MassHealth
Enrollment Center
Karen Ryan, Supervisor, Tewksbury
MassHealth Enrollment Center



*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 – over 65; Coverage Start Date; Inaccessible Assets
Decision Date:	11/8/2024	Hearing Date:	09/12/2024
MassHealth's Reps.:	Lynn Bloomquist; Karen Ryan	Appellant's Reps.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 1 (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 July 26, 2024, MassHealth approved the appellant's application for MassHealth Long-Term-Care (LTC) benefits beginning on June 27, 2024. *See* 130 CMR 520.003, 130 CMR 520.004 and Exhibit 1. The appellant filed this appeal in a timely manner on August 9, 2024, because the appellant disagreed with the start date of her benefits. *See* 130 CMR 610.015(B) and Exhibits 2 and 3. Challenging agency determinations regarding scope and amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032(5).

Action Taken by MassHealth

MassHealth approved the appellant's long-term care benefit with a start date of June 27, 2024.

Issue

The appeal issue is whether MassHealth correctly determined the appellant's benefit start date to be June 27, 2024.

Summary of Evidence

The appellant was represented at hearing by her attorney and the attorney's paralegal. MassHealth was represented by a caseworker and a supervisor from the Tewksbury MassHealth Enrollment Center. All parties appeared by telephone. The following is a summary of the testimony and documentary evidence presented at hearing:

The appellant is a [REDACTED] year old individual. She entered a long-term care facility in [REDACTED]; this is where she currently resides. She submitted an application for LTC benefits on February 27, 2024, requesting coverage as of May 18, 2024. The MassHealth representative testified that MassHealth approved the appellant for LTC MassHealth with a start date of June 27, 2024, which was when the appellant's countable assets were reduced to the allowable asset limit of \$2,000.00.

The MassHealth representative testified that the appellant's assets on the requested date of coverage exceeded the amount allowed by the regulations. Since MassHealth regulations allow a recipient of LTC MassHealth to retain \$2,000.00 in assets, she stated that the appellant was over assets as of May 18, 2024, her requested date of coverage. Testimony. The issue here is that on May 18, 2024, the appellant owned a bank account (hereinafter the "Bank Account") at an "online" bank (hereinafter the "Financial Institution") with \$78,644.99 in it. The Bank Account was verified during the application process. Testimony. The appellant closed the Bank Account on June 11, 2024, and on that date the Financial Institution issued a check to the appellant in the amount of \$78,644.99. This check was deposited into the appellant's checking account on June 20, 2024. On June 27, 2024, a check was written from the appellant's checking account to purchase an annuity, and this purchase brought the appellant below the asset limit of \$2,000.00. On July 26, 2024, the appellant was approved for LTC MassHealth with a June 27, 2024 coverage start date. Testimony.

The appellant's attorney responded to MassHealth's testimony by stating that the sole issue here is whether or not the Bank Account was legally inaccessible from January 2024 through June 2024. Testimony. He asked the MassHealth representatives whether they agreed with him, that it was true that the Financial Institution refused to honor the appellant's Durable Power of Attorney document during the application process. He stated that the facts here are that the appellant attempted to access the Bank Account through her attorney-in-fact, because she wanted to annuitize that money and eventually did. Testimony. However, the Financial Institution would not honor the Durable Power of Attorney document between January 2024 and June 2024. The

attorney who drafted the Durable Power of Attorney got involved in this matter to prove the validity of the document and corresponded with the Financial Institution and eventually sent the Financial Institution a Chapter 93A¹ Demand Letter on behalf of the appellant, which resulted in having the Financial Institution close the Bank Account and release the funds to the appellant. Testimony and Exhibit 8.

The MassHealth supervisor responded that the role of MassHealth is to review the documentation that is submitted at the time of application and to determine whether that documentation complies with the regulations. Testimony. MassHealth does not accept that the circumstances surrounding the Bank Account meet the inaccessible asset standard in the regulations. Testimony. The MassHealth supervisor stated that if the application was filed in February 2024, and the surrender process was begun in January 2024, it is not MassHealth's issue that the appellant was unable to surrender the asset until June of 2024. Testimony. MassHealth does not understand how it was inaccessible when it was clearly a countable asset under the regulations.

The appellant's attorney responded that the appellant attempted to access the Ba4nk Account but that the Financial Institution refused to release the funds. Testimony. MassHealth responded that the "[Financial Institution] requested compliance and the applicant did not comply timely. At no time during the application did [the appellant] have an issue getting requested documentation." Testimony. The MassHealth representative stated that based on the documentation submitted to MassHealth, it appeared the issue was with the appellant's previous attorney not complying with the requests of the Financial Institution in January 2024. Testimony. The MassHealth supervisor stated that "the burden is on the appellant that this is an inaccessible asset, for MassHealth purposes we did not consider it inaccessible. [The appellant] has a 6/27/24 start date."

In response, the appellant's attorney stated that if an applicant is trying to access the money, and has hired a lawyer to send a letter to a bank, he cannot understand that how that asset is "accessible" during that time period. Testimony. He stated that the regulation reflects that an asset is inaccessible unless someone has ownership and control of the asset. He disputes that his client had control over the asset when the Financial Institution was refusing to honor her Durable Power of Attorney document. When questioned by the hearing officer as to whether or not the appellant has an invoked health care proxy, he stated that the appellant's Health Care Proxy was invoked in December of 2023. The appellant's argument is that if the Financial Institution refuses to release the money, she has no legal control of the asset.

After the conclusion of testimony at the hearing, it was determined that the appellant would submit a brief in support of the assertion that the Bank Account was legally inaccessible. MassHealth would have the opportunity to respond in writing by October 3, 2024.

¹ The Consumer Protection Act, M.G.L. Chapter 93A, protects people from unfair and misleading business actions.

On September 24, 2024, the appellant's attorney filed a 115-page document in support of the appellant's position that the funds in the Bank Account were inaccessible. Exhibit 8. The first five pages of the filing are a memorandum of facts and the appellant's legal argument for the asset to be considered inaccessible to the appellant, and the remaining 110 pages constitute exhibits that document the communications between MassHealth, the appellant's counsel, and the Financial Institution from the date the application was filed until the Bank Account was liquidated and the Annuity purchased.

On October 3, 2024, MassHealth responded to the appellant's record open submission by email: "MassHealth has reviewed the appellant's submission, and it does not change the agency's position. The [Bank Account] was a countable asset when determining the MassHealth eligibility for coverage in a nursing facility." Exhibit 9.

Having received the appellant's record open submission and MassHealth's response, the Hearing Office closed the administrative record on October 3, 2024.

Findings of Fact

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

1. The appellant is a single individual over the age of 65, and a resident of a long-term care facility.
2. On February 27, 2024, an application for MassHealth long-term care services was submitted on behalf of the appellant, with May 18, 2024, as the requested date of coverage.
3. As of May 18, 2024, the appellant owned the Bank Account, which held \$78,644.99.
4. On July 26, 2024, MassHealth approved the appellant's application for benefits as of June 27, 2024; the date that the appellant's countable assets were under \$2,000.00.
5. MassHealth included in its calculation of the appellant's assets the value of the funds in the Bank Account, or \$78,644.99.
6. The appellant timely appealed MassHealth's approval notice. Exhibit 2.
7. The Bank Account was closed by the Financial Institution on June 11, 2024.
8. The proceeds from the Bank Account, \$78,644.99, were deposited into the appellant's checking account on June 20, 2024.

9. On June 27, 2024, the appellant purchased an annuity, which brought her countable assets below \$2,000.00.

Analysis and Conclusions of Law

“MassHealth is a cooperative Federal and State undertaking that provides payment for medical services to eligible individuals and families who are unable to pay for their own medical care.” *Shelales v. Dir. of the Office of Medicaid*, 75 Mass. App. Ct. 636, 637 (2009). MassHealth is “a needs-based program aimed at maximizing the use of personal funds for long-term care before relying on public funds. **Medicaid is, and always has been, a program to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves.**” *Id.* at 641.

For an individual applying for long-term-care benefits, MassHealth has an asset limit of \$2,000. 130 CMR 520.003. In determining eligibility,

Countable assets are all assets that must be included in the determination of eligibility. Countable assets include assets to which the applicant or member . . . would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant, member, spouse, or person acting on his or her behalf. In determining whether or not failure to receive such assets is reasonably considered to result from such action or inaction, the MassHealth agency considers the specific circumstances involved.

130 CMR 520.007.

MassHealth considers “[a]ssets owned exclusively by an applicant...are counted in their entirety when determining eligibility for MassHealth.” 130 CMR 520.005. Here, the appellant argues that she had no legal access to a bank account from February 2024 until June 11, 2024. The MassHealth regulation governing inaccessible assets states in full:

520.006: Inaccessible Assets

(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.

130 CMR 520.006.

520.005: Ownership of Assets

(A) General. Assets owned exclusively by an applicant or member and the spouse are counted in their entirety when determining eligibility for MassHealth, except when assessing assets in accordance with 130 CMR 520.016.

130 CMR 520.005.

It is undisputed that the appellant was the owner of the Bank Account. The issue on appeal is therefore, whether the Financial Institution's refusal to honor the appellant's Durable Power of Attorney from February 2024 to June 11, 2024 is tantamount to the appellant having "no legal access" to the Bank Account (and therefore making the Bank Account temporarily inaccessible). 130 CMR 520.006(A).

Based on the evidence, testimony, and legal authority, the Appellant has not met her burden in establishing beyond a preponderance of the evidence that she had no "legal access" to the Bank Account and that the Bank Account was therefore inaccessible. The regulations at 130 CMR 520.006(C) state that "all assets to which the applicant . . . is legally entitled" are

considered accessible. Furthermore, 130 CMR 520.007 states that “Countable assets include assets to which the applicant . . . would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant . . . or person acting on his or her behalf.”

The Appellant has not provided sufficient evidence to support the argument that she was not legally entitled to the Bank Account during the application process. The appellant’s health care proxy was not invoked until December 2023, and the submissions from the appellant show that the appellant could have started liquidating the appellant’s assets as early as August 2023². There is no evidence to indicate that the appellant attempted to close the Bank Account before she entered the long-term care facility. The inaction and inability of the appellant, and her attorney-in-fact, to timely close the Bank Account before the appellant’s entry into the long-term care facility does not nullify her ownership of the Bank Account. The appellant did not provide any evidence that she initiated legal proceedings or took any action to attempt to access the Bank Account beyond one email³ in January, 2024 from the appellant’s previous attorney, and one fax from the appellant’s current attorney’s office February of 2024. In addition, the appellant’s previous attorney sent a Chapter 93A demand letter to the Financial Institution dated May 17, 2024. Nonetheless, the record shows that the appellant successfully closed at least eight (8) bank accounts since January 2024⁴. The record reflects that the appellant’s attorney-in-fact is adept at using the appellant’s Power of Attorney document to access the appellant’s financial assets.

The language of 130 CMR 520.006(B) suggests that inaccessible assets are those where there is some barrier that *temporarily* prevents the applicant from obtaining legal access to the asset, such as adjustment of a cash surrender value of a life insurance policy or where there is an ongoing legal proceeding to determine whether the applicant owns the property or asset (e.g., probate and divorce proceedings). As discussed above, here, there was no legal or otherwise formal proceeding currently pending that bears any similarity to the examples provided in 130 CMR 520.006(B). While the appellant’s attorney argues that the appellant had done everything possible to access the Bank Account during the application process, that position is not credible because within three weeks of receiving the Chapter 93A demand letter, the Financial Institution closed the Bank Account and issued a check to the appellant for the balance remaining in the Bank Account. Then, upon receiving the proceeds from the Bank Account, rather than use a portion of the funds to spend down her assets by privately paying her long-term care facility, the appellant chose instead to purchase an annuity. Since MassHealth is a needs-based program aimed at maximizing the use of personal funds for long-term care before relying on public funds, this was a remarkable choice by the appellant, especially given her advanced age at the time of the purchase of the annuity.

² See Exhibit 8 at 69. The appellant’s Toyota Prius was sold on August 3, 2023.

³ See Exhibit 8 at 22.

⁴ See Exhibit 8 at 67-71 for a list of the accounts the appellant closed in January 2024.

The funds for the annuity cleared the appellant's account on June 27, 2024, the date that she finally had fewer than \$2,000.00 in countable assets. At no point since her entry into the long-term care facility in January of 2024 was the appellant prevented from seeking available legal avenues to obtain access to the Bank Account. She is well-represented by experienced counsel, and the record indicates that she engaged in extensive and sophisticated legal long-term care planning prior to becoming a resident of a long term care facility⁵. She could have initiated a probate court action to validate her Durable Power of Attorney in the months that it took her counsel to send a Chapter 93A demand letter to the financial institution holding the Bank Account⁶.

For the foregoing reasons, and in consideration of the totality of the prehearing filings, testimony and evidence presented at hearing, and the record open filings, appellant has not proven by a preponderance of the evidence that during the application process she had "no legal access" to the Bank Account. 130 CMR 520.006(A). MassHealth correctly deemed the value of the Bank Account as countable to the appellant on the requested date of benefits, and correctly approved the appellant for LTC benefits on June 27, 2024, the date that the appellant spent down her assets and was financially eligible for LTC benefits.

The appeal is therefore DENIED.

Order for MassHealth

None.

⁵ Exhibit 8 at 71 indicates that the appellant is the grantor of a family irrevocable trust and that she also transferred assets to a pooled trust during the application period.

⁶ It is unclear from the record and testimony as to why a Chapter 93A demand letter was not sent to the Financial Institution at any point prior to May 17, 2024. The demand letter would have been received by the Financial Institution *after* the requested benefit start date of May 18, 2024.

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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

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