

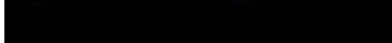
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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|-------------------------|-----------------|------------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2413396 |
| Decision Date: | 11/27/2024 | Hearing Date: | 10/03/2024 |
| Hearing Officer: | Thomas J. Goode | Record Open to: | 10/31/2024 |

Appearance for Appellant:



Appearance for MassHealth:

Katie LaDuke, Springfield MEC



*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: | 130 CMR 520.023 |
| Decision Date: | 11/27/2024 | Hearing Date: | 10/03/2024 |
| MassHealth's Rep.: | Katie LaDuke | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Remote | 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 August 21, 2024, MassHealth denied Appellant's application for MassHealth long-term care benefits because MassHealth determined that countable assets exceed program limits (130 CMR 520.004, 520.008, 520.023 and Exhibit 1). Appellant filed this appeal in a timely manner on August 29, 2024 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). The hearing record remained open until October 31, 2024 to allow the parties to submit legal memoranda which were submitted timely (Exhibits 5, 6, 7).

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth long-term care benefits because MassHealth determined that countable assets exceed program limits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.004, 520.008, 520.023, in determining that countable assets exceed program limits.

Summary of Evidence

Appellant is a resident of a long-term care facility and submitted an application for MassHealth long-term care benefits on May 22, 2024, seeking coverage effective May 13, 2024. On August 21, 2024, MassHealth denied the application because it determined that countable assets exceed \$2,000. The denial notice lists countable assets including the principal of a revocable trust which MassHealth valued at \$385,351, and consists of two properties, one located in [REDACTED] and the other in [REDACTED] (Exhibit 1). The Trust was established by Appellant on [REDACTED] 1997. Appellant is the Donor, Trustee and Beneficiary of the Trust. Paragraph (A)(1) of the First Article states Appellant may withdraw some or all trust assets. Pursuant to Paragraph (A)(2) of the First Article, Appellant may revoke or amend the Trust. Appellant has twice amended the Trust, once on [REDACTED] 2017 and the Second Amendment is dated [REDACTED] 2021. MassHealth determined that the principal of the revocable Trust is countable in Appellant's eligibility determination pursuant to 42 U.S.C. §1396p(d)(3)(A)(i) and 130 CMR 520.023(B)(1).

MassHealth argued that there is no provision that allows MassHealth to disregard the federal statute that specifically mandates the treatment of assets held in a revocable trust. MassHealth argued that Appellant's reliance on 130 CMR 520.023(B)(4) concerning an applicant's home or primary residence held in a revocable trust is misplaced in that the regulation renders countable an applicant's former home held in a revocable trust because the former home in a revocable trust is not subject to exemptions at 130 CMR 520.007(G)(2) or 520.007(G)(8). Further, under 130 CMR 520.008(A), real estate located outside of Massachusetts does not qualify for the non-countable exclusion for a home or primary residence, and if held in a trust, will be treated in accordance with trust rules. MassHealth asserts that if Appellant wants to claim that the out of state real estate should be considered non-countable under 130 CMR 520.008(D) (business and nonbusiness property essential to self-support and property excluded under an SSA-approved plan for self-support are considered noncountable assets), she could provide deeds showing the properties are no longer in the revocable trust and are instead owned by Appellant individually along with any other evidence supporting her claim, whereupon MassHealth could evaluate the evidence and render a decision whether the properties are non-countable as business and non-business property essential to self-support.

Appellant argued that an asset deemed non-countable under 130 CMR 520.008(D) does not automatically lose such status when held in a revocable trust as MassHealth must harmonize seemingly conflicting regulations at 130 CMR 520.008(D) and 130 CMR 520.023(B)(1).¹ Appellant argued that MassHealth's regulations contain clearly conflicting treatment of Appellant's rental properties which fall squarely within the definition of business and non-business property essential to self-support under 130 CMR 520.008(D) because Appellant relies on the income from the rental properties. Appellant argued that MassHealth does not contend

¹ Citing *DeCosmo v. Blue Tarp Redevelopment, LLC*, 487 Mass. 690, 697–98 (2021).

that it would treat such properties otherwise if Appellant held title to the properties in her name individually. MassHealth, therefore, relies on the contradictory provision of 130 CMR 520.023(B)(1) to treat the rental properties as a countable asset. Appellant argued that MassHealth ostensibly reads 130 CMR 520.023(B)(1) to supersede provisions of 130 CMR 520.008 and ignores its regulations that align these two sections and explicitly state which assets lose the shelter of non-countability when detailing the nature of assets in such a trust. The regulations specifically state that an applicant's primary residence is countable if such residence is held in a revocable trust. Additionally, the primary residence non-countability regulations also include a similar provision: "If the home is placed in a trust or in an arrangement similar to a trust, the MassHealth agency will apply the trust rules at 130 CMR 520.021 through 520.024. 130 CMR 520(A)." None of the remaining non-countable assets enumerated in 130 CMR 520.008 (B)-(K) contain such a statement. Appellant argued that the Board of Hearings and MassHealth must read these regulations consistently and, when conflicting, harmonize these rules for consistency. Appellant asserted that it is patently inconsistent to include specific reference to the value of a primary residence held in a revocable trust as a countable asset if the purported blanket countability of those assets applies. MassHealth must thus maintain the treatment of the rental properties as non-countable assets pursuant to 130 CMR 520.008(B)(sic).² MassHealth should not deem Appellant's rental properties as countable assets as this treatment is inconsistent with MassHealth's financial eligibility regulations contained at 130 CMR 520.000 et seq.

Findings of Fact

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

1. Appellant is a resident of a long-term care facility and submitted an application for MassHealth long-term care benefits on May 22, 2024 seeking coverage effective May 13, 2024.
2. On August 21, 2024, MassHealth denied the application because it determined that countable assets exceed \$2,000.
3. The August 21, 2024 denial notice includes the principal of a revocable trust, which MassHealth valued at \$385,351, and consists of two rental properties, one located in [REDACTED] and the other in [REDACTED]
4. The revocable Trust was established by Appellant on [REDACTED] 1997.
5. Appellant is the Donor, Trustee and Beneficiary of the Trust.

² See Exhibit 6, p.3, presumably 130 CMR 520.008(D).

6. Paragraph (A)(1) of the First Article of the Trust states that Appellant may withdraw some or all Trust assets at any time, and when so withdrawn, such assets shall be free of all trusts created hereby.
7. Pursuant to Paragraph (A)(2) of the First Article, Appellant may revoke or amend the Trust.
8. Appellant has twice amended the Trust, once on [REDACTED] 2017, and the Second Amendment is dated [REDACTED] 2021.

Analysis and Conclusions of Law

For Medicaid/MassHealth eligibility purposes, treatment of trusts established on or after August 11, 1993 are governed by 42 U.S.C. §1396p(d) *et seq.* as codified in 130 CMR 520.023. Federal Medicaid law, 42 U.S.C. §1396p(d), trust states in part (emphasis in bold):

(d) Treatment of trust amounts

(1) For purposes of determining an individual's [applicant's] eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

(2)

(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

(i)The individual.

(ii)The individual's spouse.

(iii)A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

(iv)A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(B) In the case of a trust the corpus of which includes assets of an individual (as determined under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

(C)Subject to paragraph (4), this subsection shall apply without regard to—

(i)the purposes for which a trust is established,

- (ii) whether the trustees have or exercise any discretion under the trust,
- (iii) any restrictions on when or whether distributions may be made from the trust, or
- (iv) any restrictions on the use of distributions from the trust.

(3)

(A) In the case of a revocable trust—...

(i) the corpus of the trust shall be considered resources available to the individual, ...

Regulation 130 CMR 520.023(B) follows (emphasis in bold):

(B) Revocable Trusts.

(1) The entire principal in a revocable trust is a countable asset.

(2) Payments from a revocable trust made to or for the benefit of the individual are countable income.

(3) Payments from a revocable trust made other than to or for the benefit of the nursing-facility resident are considered transfers for less than fair-market value and are treated in accordance with the transfer rules at 130 CMR 520.019(G).

(4) The home or former home of a nursing-facility resident or spouse held in a revocable trust is a countable asset. Where the home or former home is an asset of the trust, it is not subject to the exemptions of 130 CMR 520.007(G)(2) or 520.007(G)(8).

Regulation 130 CMR 520.008: Noncountable Assets follows (emphasis in bold):

Noncountable assets are those assets exempt from consideration when determining the value of assets. In addition to the noncountable assets described in 130 CMR 520.006 and 520.007, the following assets are noncountable.

(A) The Home. The home of the applicant or member and the spouse and any land appertaining to the home, as determined by the MassHealth agency, if located in Massachusetts and used as the principal place of residence, are considered noncountable assets, except when the equity interest in the home exceeds the amount described in 130 CMR 520.007(G)(3). The home is subject to the lien rules at 130 CMR 515.012: *Real Estate Liens*. **If the home is placed in a trust or in an arrangement similar to a trust, the MassHealth agency will apply the trust rules at 130 CMR 520.021 through 520.024.**

(B) Assets of an SSI Recipient. The assets of an SSI recipient are exempt from consideration as countable assets.

(C) Proceeds from the Sale of a Home. The proceeds from the sale of a home used by

the applicant or member as the principal place of residence, provided the proceeds are used to purchase another home to be used as the principal place of residence, are considered noncountable assets. Such proceeds are exempt from consideration as countable assets for the three calendar months following the month of receipt. The MassHealth agency places a lien before the death of the member against any real estate in which the member has a legal interest in accordance with 130 CMR 515.012: *Real Estate Liens*.

(D) Business and Nonbusiness Property. Business and nonbusiness property essential to self-support and property excluded under an SSA-approved plan for self-support are considered noncountable assets. ...

The MassHealth position is consistent with Federal Medicaid law as codified in MassHealth regulations in that the two out-of-state rental properties held in Appellant's Trust, which pursuant to the First Article is a revocable trust, are countable in an eligibility determination. 130 CMR 520.023(B)(1); 42 U.S.C. §1396p(d)(3)(A)(i). MassHealth is correct that there is no provision that allows MassHealth to disregard in an eligibility determination the federal statute that specifically mandates the treatment of assets held in a revocable trust as countable assets. As specified at 130 CMR 520.023(B)(4)³, and noted by Appellant, exemptions applicable to the former home of an institutionalized individual under 130 CMR 520.007(G)(2)⁴ or 520.007(G)(8)⁵

³ See 130 CMR 520.023(B)(4): The home or former home of a nursing-facility resident or spouse held in a revocable trust is a countable asset. Where the home or former home is an asset of the trust, it is not subject to the exemptions of 130 CMR 520.007(G)(2) or 520.007(G)(8).

⁴ See 130 CMR 520.007(G)(2): Nine-month Exemption. The value of such real estate is exempt for nine calendar months after the date of notice by the MassHealth agency, provided that the individual signs an agreement with the MassHealth agency within 30 days after the date of notice to dispose of the property at fair-market value. The MassHealth agency will extend the nine-month period as long as the individual or the spouse continues to make a good-faith effort to sell, as verified in accordance with 130 CMR 520.007(G)(4).

⁵ See 130 CMR 520.007(G)(8): Former Home of an Institutionalized Individual. If an applicant or member moves out of his or her home to enter a medical institution, the MassHealth agency considers the former home a countable asset that is subject to 130 CMR 520.007(G)(2), provided all of the following conditions are met. If the former home of a nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* is placed in a trust, the MassHealth agency will apply the trust rules in accordance with 130 CMR 520.021 through 520.024.

- (a) The individual is institutionalized as defined in 130 CMR 515.001: *Definition of Terms*.
- (b) None of the following relatives of the individual is living in the property:
 1. a spouse;
 2. a child who is younger than 21 years old or who is blind or permanently and totally disabled;
 3. a sibling who has a legal interest in the home and who was living there for a period of at least one year immediately before the applicant's or member's admission to the medical institution;
 4. a son or daughter who was living in the applicant's or member's home for a period of at least two years immediately before the date of the applicant's or member's admission

are forfeited by the application of the trust rules at 130 CMR 520.021 through 520.024, rendering countable under 130 CMR 520.023(B)(1) the former home held in a revocable trust.⁶ Appellant argues that unlike the treatment of the former home under 130 CMR 520.008(A), 130 CMR 520.008(D) does not specify that business property held in a revocable trust will be treated in accordance with trust rules, and therefore 130 CMR 520.023(B)(1) does not apply and/or creates a conflict between the regulations. Regulation 130 CMR 520.023(B)(4) does not limit to the former home non-countable assets that lose non-countable status if held in a revocable trust as Appellant asserts (Exhibit 6, p. 2); rather, it points to exemptions that are forfeited if that particular asset, i.e. the former home, is owned by a revocable trust. There are no similar exemptions for business and nonbusiness property essential to self-support. Pursuant to 20 CFR 416.1220 “When counting the value of resources an **individual** (and spouse, if any) has, the value of property essential to self-support is not counted, within certain limits.” Here, the rental properties at issue are resources held in a revocable trust, not owned by Appellant.⁷ A straight-forward reading of 130 CMR 520.008(D) in conjunction with 520.023(B)(1) yields the unambiguous conclusion that business and nonbusiness property essential to self-support that is otherwise non-countable under 520.008(D) is rendered countable under federal regulations and 130 CMR 520.023(B)(1) if held in a revocable trust.⁸ Therefore the rental properties are countable assets pursuant to federal and state regulations.

This hearing decision must be rendered in accordance with the law including the state and federal constitutions, statutes, and duly promulgated regulations, as well as decisions of the state and federal courts, with due consideration to Policy Memoranda and any other MassHealth agency representations and materials containing legal rules, standards, policies, procedures, or interpretations as a source of guidance in applying a law or regulation. In as

to the medical institution, and who establishes to the satisfaction of the MassHealth agency that he or she provided care to the applicant or member that permitted him or her to live in the home rather than in a medical institution; or

5. a dependent relative. A dependent relative is any of the following who has any kind of medical, financial, or other dependency: a child, stepchild, or grandchild; a parent, stepparent, or grandparent; an aunt, uncle, niece, or nephew; a brother, sister, stepbrother, or stepsister; a half brother or half sister; a cousin; or an in-law.

(c) The applicant or member (and spouse, if any) moves out of his or her home without the intent to return.

(d) The applicant or member does not own long-term-care insurance with coverage that meets the requirements of 130 CMR 515.014: *Long-term-care Insurance Minimum Coverage Requirements for MassHealth Exemptions* and the Division of Insurance regulations at 211 CMR 65.09(1)(e)(2).

⁶ Further, under 130 CMR 520.008(A), real estate located outside of Massachusetts does not qualify for the non-countable exclusion for a home or primary residence, and if held in a trust, will be treated in accordance with the trust rules.

⁷ It bears noting that ownership of the assets by a revocable trust would, upon Appellant’s death, remove the property from Appellant’s probate estate preventing estate recovery. See 130 CMR 515.011(A)(2).

⁸ MassHealth has not yet determined that the properties are non-countable if held individually by Appellant.

much as Appellant asserts that provisions of 130 CMR 520.023 and 520.008 are contradictory and/or conflict or are not harmonious, the argument cannot be addressed here as the hearing officer cannot rule on the legality of such law or regulation which must be subject to judicial review in accordance with 130 CMR 610.092 (130 CMR 610.082).⁹ MassHealth was correct in determining that the assets held in the revocable trust are countable to the appellant. 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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc:

[REDACTED]

Appeals Coordinator: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

⁹ There is nothing in *DeCosmo v. Blue Tarp Redevelopment, LLC*, 487 Mass. 690, 697–98 (2021) that affects this hearing decision. In *DeCosmo*, the Court addresses an ambiguous Massachusetts Gaming Commission rule governing blackjack payout-options. The regulation addressed is described as an “interpretative challenge” in terms of payout options contemplated under the rule. In harmonizing the rules and regulations, the Court deferred to the Gaming Commission’s interpretation which is consistent with the text, reasonable and does not lead to an absurd result. While the matter of purportedly conflicting regulations raised by Appellant is ultimately for judicial review, regulation 130 CMR 520.023(B)(1) is not ambiguous in establishing that the entire principal in a revocable trust is a countable asset.

