

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2413905
Decision Date:	10/29/2024	Hearing Date:	10/08/2024
Hearing Officer:	Amy B. Kullar, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Eileen Smith, Charlestown 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; Start date
Decision Date:	10/29/2024	Hearing Date:	10/08/2024
MassHealth's Rep.:	Eileen Smith	Appellant's Rep.:	
Hearing Location:	Charlestown MassHealth Enrollment Center - Room 2 (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 August 9, 2024, MassHealth approved the appellant's application for Long Term Care (LTC). Exhibit 1. The appellant filed this appeal in a timely manner on September 6, 2024, because the Appellant disagreed with the start date of her benefits. *See* 130 CMR 610.015(B) and Exhibit 2. 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 February 12, 2024.

Issue

The appeal issue is whether MassHealth correctly determined the appellant's benefit start-date to be February 12, 2024.

Summary of Evidence

The appellant is an adult who is over the age of 65, and she currently resides in a long-term care facility. The appellant was represented at hearing by a MassHealth liaison employed by the appellant's long-term care facility. MassHealth was represented by a worker from the Charlestown MassHealth Enrollment Center. All parties appeared on the telephone. The following is a summary of the testimony and documentary evidence presented at hearing:

The appellant is a single individual who entered the long-term care facility in 2023. An application for LTC benefits was submitted on April 19, 2024, requesting coverage as of January 7, 2024. The MassHealth representative testified that the appellant's assets on the requested date of coverage totaled \$32,133.00. Since MassHealth regulations allow the recipient of LTC MassHealth to retain \$2,000.00 in assets, the appellant's total countable assets were \$30,133.00 as of January 7, 2024, her requested date of coverage. Testimony. The appellant reduced her assets by \$14,685.00 by (i) privately paying the long term care facility \$2,640.00 to cover January 1, 2024-January 7, 2024, (ii) purchasing an irrevocable funeral contract in the amount of \$10,540.00 on January 23, 2024; and (iii) funding a burial account in the amount of \$1,500.00 on April 22, 2024. Testimony. The appellant had \$15,448.00 remaining in excess assets as of January 7, 2024, which MassHealth divides by \$440.00, or the daily private rate, to determine the period of ineligibility; here, this is 35 days, which gives the appellant a benefit start date of February 11, 2024¹. Testimony.

The appellant's representative did not dispute MassHealth's calculation of the period of ineligibility. She agreed that the only issue in dispute is the start-date of the appellant's benefits. The appellant owed the long term care facility private payment for the entire month of December 2023. She privately paid the long term care facility for the month using her excess assets. She responded to MassHealth's testimony by stating that she interpreted the regulations, 130 CMR 520.004, to mean that room and board are separate from medical bills used to establish eligibility. Testimony.

The MassHealth representative emphasized that because the application was received on April 19, 2024, the earliest retroactive date available is January 1, 2024. This means that any payments that the appellant made for health care from 2023 cannot be considered as current, unpaid medical bills because MassHealth cannot count any bills incurred earlier than the first day of the month three months prior to the application. Testimony.

¹ The MassHealth representative stated in her testimony that she made an error in her calculations and that the benefit start-date of February 12, 2024 that was in the August 9, 2024 approval notice to the appellant was incorrect. She noted that the actual benefit start date is February 11, 2024, and that she would adjust the start-date for the appellant once a decision is issued. The appellant's representative stated she would accept February 11, 2024 as the correct start-date if this appeal was denied.

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 long-term care facility. (Testimony).
2. An application for LTC MassHealth was submitted on the appellant's behalf on April 19, 2024. (Testimony).
3. The appellant requested a coverage start date of January 7, 2024. (Testimony and Exhibit 6).
4. On January 7, 2024, the appellant had total countable assets in the amount of \$32,133.00. (Testimony and Exhibit 6).
5. The total value of countable assets may not exceed \$2000.00. (Testimony).
6. After deducting \$2,000.00 for the allowable asset limit, the appellant had \$30,133.00 in excess assets on the requested coverage start date of January 7, 2024. (Testimony and Exhibit 6).
7. MassHealth deducted \$14,685.00 from this figure². (Testimony and Exhibit 6).
 - a. The appellant privately paid her long term care facility \$2,640.00 to cover January 1, 2024-January 7, 2024;
 - b. The appellant purchased an irrevocable funeral contract in the amount of \$10,540.00 on January 23, 2024; and
 - c. The appellant funded a burial account in the amount of \$1,500.00 April 22, 2024.
8. As of January 7, 2024, the appellant had \$15,448.00 in excess assets. (Testimony and Exhibit 6).
9. The private pay daily nursing facility rate was \$440.00. (Testimony and Exhibit 6).
10. MassHealth then divided the remaining excess assets of \$15,448.00 by the private pay daily nursing facility rate of \$440.00 and arrived at a 35-day ineligibility period. (Testimony and Exhibit 6).
11. Counting forward 35 days from January 7, 2024, MassHealth determined that the coverage

² The total of the allowable spenddown is actually \$14,680.00. MassHealth's representative acknowledged that she made an error in her calculations in her testimony and adjusted the appellant's start date to February 11, 2024.

start-date would be February 11, 2024. (Testimony).

12. Through a notice dated August 9, 2024, MassHealth notified the appellant that she was approved for long-term care services with an effective start date of February 12, 2024. (Testimony and Exhibit 1).

Analysis and Conclusions of Law

To qualify for MassHealth long-term care coverage, the assets of the institutionalized applicant cannot exceed \$2,000.00. *See* 130 CMR 520.016(A).

Pursuant to 130 CMR 520.004, the amount of an applicant's total countable assets affects the start date for MassHealth long-term care benefits in the following manner:

(A) Criteria.

(1) An applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth

(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 for nursing-facility residents at 130 CMR 520.019(F); or

(b) as of the date, described in 130 CMR 520.004(C), 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.

(2) In addition, the applicant must be otherwise eligible for MassHealth.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. **Bills used to establish eligibility**

(1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: *Date of Application*; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

(Emphasis added)

Under 130 CMR 520.004(A)(1), an applicant whose countable assets exceed the asset limit of MassHealth Standard, Family Assistance, or Limited may be eligible for MassHealth (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 for nursing-facility residents at 130 CMR 520.019(F); or (b) as of the date, described in 130 CMR 520.004(C), 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.

In this case, MassHealth calculated the appellant's long-term care coverage start-date based on her excess assets as of January 7, 2024, the requested start-date. In accordance with 130 CMR 520.004(A), MassHealth determined that the excess assets would have paid for 35 days of nursing home care and approved her coverage to begin on February 11, 2024. The appellant argues that the private pay payments for room and board that she made in December of 2023 should be an allowable expense. However, as MassHealth pointed out, this period preceded the three-month "retro" period described at 130 CMR 520.004(B)(1), as it was "before the first day of the third month prior to the date of application." With an April 19, 2024 application, that "first day" was January 1, 2024. MassHealth correctly determined that these assets could not be offset by her nursing facility expenses incurred before that date.

MassHealth correctly determined that on January 7, 2024, the appellant's total countable assets were \$32,133.00. After deducting \$2,000.00 for the allowable asset limit, the appellant had \$30,133.10 in excess assets on the requested coverage start date of January 7, 2024. MassHealth then deducted the appellant's January 2024 purchase an irrevocable funeral contract, April 2024 funding of a burial account, and the appellant's privately paying for her care from 1/1/24-1/6/2024, totaling \$14,685.00, from this figure, leaving the appellant with \$15,488.00 in excess assets.

As there were no other allowable expenses that MassHealth could appropriately consider,

MassHealth then calculated the date the appellant would be eligible for MassHealth benefits pursuant to 130 CMR 520.004(C). MassHealth divided the remaining excess assets (\$15,488.00) by the private pay daily nursing facility rate (\$440.00) and calculated a 35-day period of ineligibility. As such, MassHealth correctly determined that the appellant was eligible for MassHealth benefits starting on February 11, 2024.

For the foregoing reasons, this appeal is DENIED.

Order for MassHealth

Notify Appellant in writing of coverage start-date of February 11, 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

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cc: MassHealth Representative: Nga Tran, Charlestown MassHealth Enrollment Center, 529 Main Street, Suite 1M, Charlestown, MA 02129