

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2416490
<b>Decision Date:</b>	05/13/2025	<b>Hearing Dates:</b>	01/13/2025; 04/29/2025
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	05/02/2025

**Appearances for Appellant:**




**Appearance for MassHealth:**

Liz Landry – Taunton Ongoing



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

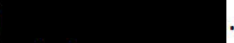
## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Long term care; Excess assets
<b>Decision Date:</b>	05/13/2025	<b>Hearing Date:</b>	04/29/2025
<b>MassHealth's Rep.:</b>	Liz Landry	<b>Appellant's Reps.:</b>	
<b>Hearing Location:</b>	Telephonic	<b>Aid Pending:</b>	No

### Authority

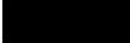
This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated September 13, 2024, MassHealth denied the appellant's application for long-term care benefits because the applicant and his community spouse had more countable assets than MassHealth benefits allow. (Exhibit 1; 130 CMR 520.003; 520.004.)  filed a timely appeal on October 27, 2024.<sup>1</sup> (Exhibit 1; 130 CMR 610.015(B).) Denial of assistance is valid grounds for appeal. (130 CMR 610.032.)

The Board of Hearings scheduled a hearing for November 25, 2024. (Exhibit 2.) The applicant died prior to the hearing, and the appeal was placed on hold for authority to represent the applicant's estate at the fair hearing. (Exhibits 3; 4.) On December 12, 2024, the applicant's spouse submitted a certified Voluntary Administration Statement, which had been filed with the Probate Court. (Exhibit 4.) This matter was scheduled for hearing on January 13, 2025. (Exhibit 5.) Following that hearing, the hearing record was left open until January 27, 2025, for the appellant's representative to submit evidence regarding the community spouse's assets. (Exhibit 14.)

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<sup>1</sup>  represented the appellant by and through the applicant's power of attorney, who was also the community spouse. (Exhibit 1.)

On January 14, 2025, the nursing facility at which the applicant resided informed the Board of Hearings that it filed for Formal Adjudication of Probate on January 3, 2025, notifying the surviving spouse. (Exhibits 8; 10.) Proof of the petition to appoint a Personal Representative of the estate was submitted to the Board of Hearings. (Exhibit 6.) The Board of Hearings again placed the appeal on hold pending the Probate Court's appointment of a Personal Representative of the applicant's estate. (Exhibits 7; 14.)

On March 11, 2025, the Probate Court issued a Decree and Order appointing [REDACTED] as the Personal Representative of the applicant's estate. (Exhibit 9.) On March 28, 2025, [REDACTED] submitted a signed appeal request and BOH vacated the hold and scheduled a second hearing. (Exhibits 11; 12.) After the hearing on April 29, 2025, the hearing record was left open until May 2, 2025, for the appellant's representative to provide information necessary for a subpoena to be issued by the Board of Hearings.

## **Action Taken by MassHealth**

MassHealth denied an application for long-term care benefits because the appellant and the community spouse had countable assets in excess of \$154,140.

## **Issue**

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.016, in determining that the appellant and the community spouse had countable assets in excess of \$154,140.

## **Summary of Evidence**

MassHealth's representative testified at both hearings that the applicant had been covered by MassHealth Standard, prior to entering the nursing facility, through one of the Home and Community Based Waiver programs. A long-term care conversion application was filed on April 5, 2024. MassHealth requested verifications, and the submitted financial documents showed the couple had assets of \$192,908.36, as of February 29, 2024. MassHealth's September 13, 2024 denial notice informed the applicant and his spouse that they must spend \$36,769.86 in order to qualify for long-term care benefits. The nursing facility was requesting MassHealth coverage to start on June 30, 2024.

At the first hearing, the appellant's estate was represented by an attorney authorized by the appellant's estate's Voluntary Administrator. As of that hearing date, MassHealth had received no updated financial records. MassHealth's representative testified that the couple had verified 9 financial accounts, most of which had small dollar amounts. One CD had \$79,086, and an IRA had \$93,972. Both of these accounts were in the community spouse's name alone. The appellant submitted a fourth quarter statement from 2023 for the IRA. This statement labeled the account as

an Individual Retirement Annuity. The appellant's estate's attorney testified that this annuity produced a variable income, guaranteeing disbursement of up to 5% of the principal in the account. She argued that MassHealth should count this as income, not as an asset.

MassHealth's representative had never seen an annuity structured in this manner, and she asked for additional documentation regarding the structuring, funding, and irrevocability of this financial instrument. MassHealth counts certain annuities as assets but will exclude their principal under certain circumstances. MassHealth's representative agreed that the application would be approved if the annuity were countable as income. The parties also agreed that there were many options available for the community spouse to reduce her assets if the annuity was countable as an asset.

The appellant's estate's attorney requested additional time to verify that the community spouse did not have access to the principal of the annuity. If she did, the appellant was required to provide updated asset verifications from March 2024 forward. The hearing record was left open until January 27, 2025.

Shortly after the hearing concluded, the Board of Hearings received notice that a petition for Formal Adjudication of Probate had been on January 3, 2025. The nursing facility at which the applicant had resided filed for Formal Adjudication to have a Personal Representative appointed other than the surviving spouse. This matter was placed on hold as of January 14, 2025, while the authority to pursue the appeal was adjudicated at Probate Court.<sup>2</sup>

On March 11, 2025, the Probate Court decreed that [REDACTED] would be the Personal Representative of the estate. [REDACTED] submitted a signed request for a hearing on behalf of the estate on March 29, 2025, and the second hearing was scheduled.<sup>3</sup> At the second hearing, the Personal Representative acknowledged that he did not have any authority to seek additional documentation from the community spouse directly. Nor did he have any authority to reduce the community spouse's assets if her assets continued to be in excess of the community spouse's asset allowance. The Personal Representative testified that he had spoken with [REDACTED] and he did not anticipate the surviving spouse's cooperation. The parties identified several avenues forward for the nursing facility and the Personal Representative, all of which were likely to require further litigation outside of the Board of Hearings.

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<sup>2</sup> The hearing officer informed [REDACTED] that the appeal was being placed on hold and provided her with the docket number for the probate proceedings. On January 24, 2025, [REDACTED] emailed that the surviving spouse had been appointed as the Personal Representative, but provided no documentation to support this. Attached to this email was a 2017 MassHealth notice approving the appellant for the Home and Community Based Services Waiver. [REDACTED] provided no additional response.

<sup>3</sup> The hearing officer attempted to reach [REDACTED] and her paralegal during the second hearing, as the community spouse and the paralegal were still listed as appeal representatives and received notice of the appeal. Neither answered.

The Personal Representative was offered the opportunity to request a subpoena through the Board of Hearings to request updated financial information. The hearing record was left open until May 2, 2025, for the Personal Representative to provide the information necessary for a subpoena to be issued: what information is requested; from whom the information is requested; and to whom the information should be sent. The hearing record closed and nothing was received. A follow-up email was sent to confirm that the hearing record had closed. The Personal Representative was asked if they were still pursuing the appeal, and he responded that he had meant to email the information before the deadline. Because no good cause was identified for missing the response deadline, the hearing record was not reopened.

## Findings of Fact

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

- 1) Prior to entering the nursing facility, the appellant had been covered by MassHealth Standard through a Home and Community Based Waiver. (Testimony by MassHealth's representative.)
- 2) A long-term care conversion application was filed in April 2024. (Testimony by MassHealth's representative; Exhibit 17.)
- 3) As of February 29, 2024, the applicant and his community spouse had countable assets of \$192,908.36, which was \$36,769.86 over the asset limit for an institutionalized individual with a community spouse. Two accounts in the community spouse's name held \$173,058: a CD with \$79,086, and an annuity with a principal value of \$93,972. (Testimony by MassHealth's representative; Exhibit 17.)
- 4) The most recent financial verifications submitted to MassHealth are from February 2024. (Testimony by MassHealth's and the appellant's representatives; Exhibits 14; 16.)
- 5) On September 13, 2024, MassHealth denied the application for long-term care benefits because of excess countable assets. A timely fair hearing request was filed. (Exhibit 1.)
- 6) The applicant's surviving spouse was his power of attorney in life. In life, the applicant was representative by [REDACTED], by and through his community spouse and power of attorney. (Exhibit 1.)
- 7) After the hearing request was filed, the applicant died. The surviving spouse filed for Voluntary Administration. (Exhibit 4.)
- 8) A hearing was scheduled for January 13, 2025, based upon the Voluntary Administration of the applicant's estate. At that hearing, the appellant's estate's representative indicated that documentation would be gathered to prove that the community spouse's annuity was not

countable as an asset. The hearing record was left open until January 27, 2025, for this evidence to be submitted. (Testimony by [REDACTED]; Exhibits 5; 13; 14.)

- 9) On January 3, 2025, the nursing facility in which the applicant had resided filed for Formal Adjudication of Probate, including documentation identifying the surviving spouse. The petition sought someone other than the surviving spouse to be the Personal Representative of the estate. (Exhibits 8; 9; 10.)
- 10) Notice of this petition was provided to the Board of Hearings after the first hearing. The appeal was placed on hold for the Probate Court to determine who had the authority to represent the applicant's estate. (Exhibits 7; 14.)
- 11) On March 11, 2025, the Probate Court appointed Atty. Louis D'Amarino to be the Personal Representative of the estate. A signed fair hearing request was filed by the Personal Representative on March 28, 2025. (Exhibits 9; 11.)
- 12) A second hearing was scheduled for April 29, 2025. The hearing record was left open until May 2, 2025, for the appellant to provide information necessary to issue a subpoena. No information was received by May 2, 2025. The information was provided on May 5, 2025, without good cause for reopening the hearing record. (Exhibits 12; 16.)

## Analysis and Conclusions of Law

The purpose of Medicaid is to provide medical assistance to those "whose income and resources are insufficient to meet the costs of necessary medical services." (42 USC § 1396-1 (2014).) An applicant becomes eligible for long-term care benefits "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 ... or ... 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." (130 CMR 520.004(A)(1)(a)-(b).)

Individual applicants must have less than \$2,000 in assets to qualify for benefits. (130 CMR 520.003.) Applicants with spouses in the community may have combined assets of \$154,140.00. (130 CMR 520.016(B)(2)(a)(i).)

(2) Determination of Eligibility for the Institutionalized Spouse. At the time that the institutionalized spouse applies for MassHealth Standard, the MassHealth agency must determine the couple's current total countable assets, regardless of the form of ownership between the couple, and the amount of assets allowed for the community spouse as follows. **The community spouse's asset allowance is not considered available to the institutionalized spouse when determining the institutionalized spouse's eligibility for MassHealth Standard.**

(a) Deduct the community spouse's asset allowance, based on countable assets **as of the date of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse, from the remaining assets**. The community spouse's asset allowance is the greatest of the following amounts:

1. the combined total countable assets of the institutionalized spouse and the community spouse, not to exceed \$109,560;<sup>[4]</sup>

(130 CMR 520.016(B)(2) (emphasis added).)

Bank accounts, including CDs, are countable assets in their entirety. (130 CMR 520.007(B)(2).) Annuities that "can be converted to a lump sum," are countable assets in the amount of "the lump sum, less any penalties or costs of converting to a lump sum ... ." (130 CMR 520.007(J)(1).) Furthermore, irrevocable annuities funded after February 2006 may be treated as a disqualifying transfer if the annuity contract does not satisfy certain requirements. (See 130 CMR 520.007(J)(2).)

There are several hypothetical ways in which the appellant may have been eligible for long-term care benefits. The community spouse's annuity may have been irrevocable and not in violation of the annuity contract provisions. The community spouse may have spent \$36,769.86 on herself, prior to the benefits-request date. Despite leaving the record open twice, the appellant's countable assets remain verified as over the allowable limit. Therefore, MassHealth has made no error in processing the information provided and denying the application for long-term care benefits. This appeal is DENIED.

## Order for MassHealth

None.

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<sup>4</sup> In regulation, the limit is \$109,560; however, the Centers for Medicaid and Medicare Services ("CMS") regularly update this amount on their website. (See <https://www.medicaid.gov/federal-policy-guidance/downloads/cib05222024.pdf> (last visited May 9, 2025).)

## 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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780