

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



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|-------------------------|---------------|------------------------|------------|
| Appeal Decision: | Denied | Appeal Number: | 2418014 |
| Decision Date: | 1/13/2025 | Hearing Date: | 12/10/2024 |
| Hearing Officer: | Scott Bernard | Record Open to: | 12/17/2024 |

Appearance for Appellant:



Appearance for MassHealth:

Jernice Diaz (Taunton MEC) *via* telephone

*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

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|---------------------------|--------------------------------------|--------------------------|--------------------------------|
| Appeal Decision: | Denied | Issue: | Long Term Care – Excess Assets |
| Decision Date: | 1/13/2025 | Hearing Date: | 12/10/2024 |
| MassHealth's Rep.: | Jernice Diaz | Appellant's Rep.: | [REDACTED] |
| Hearing Location: | Taunton MassHealth Enrollment Center | Aid Pending: | N/A |

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 25, 2024, MassHealth denied the appellant's application for MassHealth Standard for institutionalized individuals (aka Long Term Care/LTC) because it determined that the appellant had more countable assets than MassHealth benefits allow. (See 130 CMR 520.003; 520.004; Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on November 22, 2024. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

At the end of the hearing, the appellant's attorney requested that the record remain open until December 17, 2024 so she could submit a memorandum of law supporting her position, after which time the hearing record closed. (Ex. 7).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth for Long Term Care services because the appellant's assets exceeded the countable asset limit.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, 520.004, and 520.016, in determining that the appellant's assets exceeded the countable asset limit.

Summary of Evidence

MassHealth was represented by a benefits eligibility and referral social worker from the Taunton MassHealth Enrollment Center (MEC). The appellant was represented by her attorney. Both representatives attended the hearing by telephone.

In response to the hearing officer's inquiry, the parties confirmed that the appellant had filed appeals for two other MassHealth notices issued between November 21, 2023, and the current appeal, and with the parties' consent, the hearing officer took notice of these prior appeals, which showed the following. (Testimony; Ex. 8; Ex. 9). On December 4, 2023, MassHealth sent the appellant a notice stating that his Long Term Care coverage would end as of November 21, 2023, because he was no longer a resident of a nursing facility. (Ex. 8, pp. 6-7). The appellant's attorney filed an appeal on his behalf on January 31, 2024, but BOH dismissed the appeal on February 2, 2024, because the appellant had not signed the fair hearing request, there was no written authorization designating the attorney as his representative, and no legal document granting the attorney the authority to act on his behalf (Ex. 8, pp. 5, 1-2). On March 5, 2024, MassHealth sent the appellant a notice informing him that he was ineligible for MassHealth community benefits due to his income and assets exceeding the MassHealth limit. (Ex. 9, pp. 7-10). The appellant's attorney filed a timely appeal of this notice on May 3, 2024, but the appeal was later withdrawn after MassHealth contacted the appellant's attorney to have the current nursing facility submit a new SC-1. (Ex. 9, pp. 6, 2, 3).

The MassHealth representative testified that the appellant is over 65 years old and has a spouse living in the community. (Testimony; Ex. 3). The appellant was discharged from his previous nursing facility on [REDACTED] (Testimony; Ex. 5, pp. 3, 6). The appellant's attorney indicated that the appellant was first sent to a hospital because of the poor care he received at the first nursing facility, before being admitted to the current nursing facility in [REDACTED] (Testimony; Ex. 6, p. 2). The MassHealth representative stated that at the time of the appellant's admission to the current nursing facility, he was covered by Medicare until January 4, 2024. (Testimony). On May 31, 2024, the appellant's current nursing facility submitted an application for Long Term Care requesting a coverage start date of January 5, 2024. (Testimony). The MassHealth representative stated that MassHealth could not honor the requested start date of January 5, 2024 since the earliest date MassHealth could approve for the start of MassHealth coverage was the first day of the third calendar month before the month of application. (Testimony). Thus the earliest start date that could be approved in this case is February 1, 2024. (Testimony).

The MassHealth representative noted that during the eligibility determination process, the

appellant submitted documentation showing that as of August 2024, he and his spouse had countable assets totaling \$234,153.74. (Testimony). The assets consisted of one bank account in his wife's name containing \$229,548.49¹; one bank account held jointly containing \$681.32; a second bank account held jointly containing \$2,638.00; and the appellant's PNA account with the nursing facility containing \$1,285.93. (Testimony; Ex. 5, pp. 9-11). The MassHealth representative stated that the countable assets of \$234,153.74 exceed the spousal asset limit of \$154,140.00 and the appellant's asset limit of \$2,000.00 by \$78,013.49. (Testimony).

The appellant's attorney testified to the following. The appellant applied for and was initially approved for Long Term Care services in June 2023 when he was residing at the previous nursing facility. (Testimony; Ex. 6, p. 2). At that time, in order to reduce the level of appellant's household assets, the appellant's spouse converted her retirement accounts into annuities, making the Commonwealth the beneficiary. (Testimony; Ex. 6, pp. 2, 4-5). As a result of these annuities, the appellant's spouse currently receives monthly payments of \$5,791.91. (Testimony). However, because the appellant's spouse does not need to spend this amount, she had accumulated \$92,670 in her bank account by September 2024 (Testimony; Ex. 6, p. 2).

In [REDACTED] the appellant was discharged from his former nursing facility and, after hospitalization, was placed into the present nursing facility. (Testimony; Ex. 6, p. 2). Unfortunately, the current facility did not notify MassHealth of the appellant's admission to current facility until [REDACTED] (Testimony; Ex. 6, p. 2). The present application was filed in May 2024. (Testimony; Ex. 6, p. 2).

The appellant's attorney argued that MassHealth should exclude certain assets from its current determination, as the appellant's wife had already spent down her assets in a prior MassHealth application by purchasing annuities that generated a larger income stream. (Testimony). The attorney emphasized that these annuities were specifically purchased to reduce the appellant's countable assets, and MassHealth should not count them again. (Testimony). The situation became more complex when the appellant was discharged from the first nursing facility and admitted to the current one without the timely submission of an SC-1 form to MassHealth by the new facility. (Testimony). The attorney suggested that the funds from the annuities should not be considered assets since they had already been spent down, and advocated for the appellant to be allowed to use those funds to purchase another annuity. (Testimony).

Additionally, the attorney argued that the current application was essentially a re-application of the previously approved June 2023 MassHealth application. (Testimony). To qualify at that time, the appellant's spouse had purchased immediate annuities to reduce her assets. The attorney contended that this 2023 purchase should not be considered in determining her current assets for eligibility, as the annuity payments had already been converted into income. (Testimony). Further, the attorney stated that if these payments were excluded, the spouse's assets would fall below the eligibility threshold. (Testimony). If the annuity payments must be counted as assets, the attorney

¹ In calculating this figure, the MassHealth representative subtracted the amount of the spouse's income

requested that the spouse be allowed to purchase another annuity to reduce her assets, thereby allowing the appellant to qualify for MassHealth. (Testimony). The attorney also noted that had the appellant not been hospitalized and the new facility timely contacted MassHealth, the benefits would have continued uninterrupted. (Testimony). The appellant's attorney did state, however, that earliest start date of coverage that MassHealth could approved would be February 1, 2024. (Testimony).

Prior to the end of the hearing, the appellant's attorney requested that the record remain open for seven days to permit her to submit a memorandum setting forth her arguments. On December 17, 2024, the appellant's attorney submitted a memorandum stating the following:

...The applicant was denied benefits on [September 25, 2024] due to having more countable assets than is allowed by MassHealth...[A]t the hearing, I explained to you that the application dated [May 31, 2024] should be considered a reapplication for this applicant, as he had already been approved for benefits in [REDACTED] when he was a resident of [the first nursing facility] and he continued to receive benefits until he was hospitalized in [REDACTED]. In order for him to qualify, he converted his retirement account into an immediate annuity and increased his monthly income that he paid to the nursing home as his PPA. His wife had two retirement accounts and she converted her two accounts into two immediate annuities and named the Commonwealth as the beneficiary of her accounts to the extent that payments were made on behalf of her husband. By purchasing these annuities, the applicant's spouse had reduced her assets to less than \$150,000 in June of 2023 and she began to receive monthly annuity checks that, combined, totaled \$5791.91 and were deposited into her checking account.

The applicant was hospitalized in [REDACTED] and then transferred to a new nursing home (since the previous home had provided him with such poor care), namely [the current nursing facility]. Since he arrived at [the currently nursing facility] from the hospital, they used his Medicare days to pay for his care, but Medicare ran out on [January 4, 2024]. [The current nursing facility] never requested a new screen from [REDACTED] in January of 2024 and in fact, did not request a screen until March of 2024 and the applicant's spouse was not told that he was no longer on MassHealth. The spouse received a notice from MassHealth dated [March 5, 2024] stating that the applicant was not eligible for MassHealth benefits and she appealed that decision. The hearing officer advised us that since the nursing home had failed to file the SC-1 form in November that MassHealth benefits would be terminated. At that point, the spouse applied for MassHealth benefits again.

I had previously provided [the MassHealth representative] with copies of the annuity contracts showing that the spouse began receiving two checks each month in June of 2023 that combined for a net amount of \$5791.91. The spouse had not used any of these funds since she began to receive them, so by September of 2024, these

payments totaled \$92,670.00. If this amount is deducted from the spouse's total current assets of \$229,545 (this figure is on the Appeal Preparation Worksheet provided by [the MassHealth representative]), then she would be under asset at the amount of \$136,875.

Since the spouse had already been forced to convert her two retirement accounts to annuities in May of 2023 to provide her with an income stream and keep her under asset to allow her husband to qualify for Mass Health in June of 2023, we are asking that these payments not be counted as assets for the spouse.

Alternatively, if you determine that the annuity payments are excess assets, then we ask that you allow her to purchase a new immediate annuity with the \$92,670 so that she can keep her retirement money and allow the applicant to be eligible for MassHealth as of [February 1, 2024]. (Ex. 7).

Findings of Fact

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

1. The appellant is over 65 years old and has a spouse living in the community. (Testimony; Ex. 3).
2. The appellant applied for and was initially approved for Long Term Care services in [REDACTED] when he was residing at a previous nursing facility. (Testimony' Ex. 6, p. 2).
3. At that time, in order to reduce the level of appellant's household assets, the appellant's spouse converted her retirement accounts into annuities, making the Commonwealth the beneficiary. (Testimony; Ex. 6, pp. 2, 4-5).
4. As a result of these annuities, the appellant's spouse currently receives monthly payments of \$5,791.91. (Testimony).
5. However, because she does not need to spend this amount, she had accumulated \$92,670 in her bank account by September 2024 (Testimony; Ex. 6, p. 2).
6. The appellant was discharged to the hospital from his previous nursing facility on [REDACTED] (Testimony; Ex. 5, pp. 3, 6).
7. On December 4, 2023, MassHealth sent the appellant a notice terminating his MassHealth Long Term Care coverage as of [REDACTED] because he was no longer a resident of a nursing facility. (Ex. 8, pp. 6-7).
8. At the time of his admission to the current nursing facility in [REDACTED] the appellant was covered by Medicare through January 4, 2024. (Testimony).

9. The appellant's attorney filed an appeal of the December 4, 2023 termination notice on January 31, 2024, but BOH dismissed the appeal on February 2, 2024, because the appellant had not signed the fair hearing request, there was no written authorization designating the attorney as his representative, and no legal document granting the attorney the authority to act on his behalf (Ex. 8, pp. 5, 1-2).
10. By notice dated March 5, 2024, MassHealth informed the appellant that he was ineligible for MassHealth community benefits due to his income and assets exceeding MassHealth limits. (Testimony; Ex. 6, p. 2; Ex. 9, pp. 7-10).
11. This notice was timely appealed, but later withdrawn as the appellant was not seeking MassHealth community benefits.
12. On May 31, 2024, the appellant's current nursing facility submitted an application for Long Term Care requesting a coverage start date of January 5, 2024. (Testimony).
13. MassHealth determined that the appellant and his spouse had countable assets totaling \$234,153.74 as of August, 2024. (Testimony).
14. The assets consisted of one bank account in the appellant's wife's name containing \$229,548.49; one bank account held jointly containing \$681.32; a second bank account held jointly containing \$2,638.00; and the appellant's PNA account with the nursing facility containing \$1,285.93. (Testimony; Ex. 5, pp. 9-11).
15. The appellant's countable assets exceeded the spousal asset limit of \$154,140.00 and the appellant's asset limit of \$2,000.00 by \$78,013.49. (Testimony).
16. Through a notice dated September 25, 2024, MassHealth denied the appellant's application for LTC service because it determined that he had excess assets of \$78,013.49. (Testimony; Ex. 1;).
17. Based on the date of the application, the earliest start date MassHealth could approve is February 1, 2024. (Testimony).

Analysis and Conclusions of Law

Institutionalized individuals who are 65 years of age or older may be eligible for MassHealth Standard coverage if they have been determined medically eligible for nursing facility services by the MassHealth agency or its designated agent, contribute to the cost of their care and have countable assets of \$2,000 or less for an individual. (130 CMR 519.006(A)). For married couples where one spouse is institutionalized, the assets must not exceed the limits set forth in 130 CMR 520.016(B) regarding the treatment of a married couple's assets. (130 CMR 519.006(A)(4)).

130 CMR 520.016(B) states the following:

(B) Treatment of a Married Couple's Assets when One Spouse is Institutionalized.

(1) Assessment.

(a) Requirement. The MassHealth agency completes an assessment of the total value of a couple's combined countable assets and computes the community spouse's asset allowance as of the date of the beginning of the most recent continuous period of institutionalization of one spouse.

(b) Right to Request an Assessment. When one spouse has entered a medical institution and is expected to remain institutionalized for at least 30 days, either spouse may request the MassHealth agency to make this assessment, even if the institutionalized spouse is not applying for MassHealth Standard at that time. The period of institutionalization must be continuous and expected to last for at least 30 days.

(c) Right to Appeal. The MassHealth agency must give each spouse a copy of the assessment and the documentation used to make such assessment. Each spouse must be notified that he or she has the right to appeal the determination of countable assets and the community spouse's asset allowance when the institutionalized spouse (or authorized representative) applies for MassHealth Standard.

(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 [\$154,140]²;
2. a court-ordered amount; or
3. an amount determined after a fair hearing in accordance with 130 CMR 520.017.

(b) Compare the amount of the remaining assets to the MassHealth asset standard for one person, which is \$2,000. When the amount of the remaining

² MassHealth applies a cost of living adjustment to this figure on an annual basis. The amount in brackets is the present amount as of the date the appellant applied for MassHealth in 2024.

assets is equal to or below \$2,000, the institutionalized spouse has met the asset test of eligibility...

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. (130 CMR 520.016(B)(2)). At the time of the appellant's application for MassHealth in May, 2024, the couple's total countable assets were \$234,153.74. The community spouse was allowed the maximum spousal asset allowance amount of \$154,140.00 and MassHealth deducted this amount from the total asset amount leaving \$80,013.74 in countable assets. The appellant is allowed a MassHealth asset limit of \$2,000.00, leaving \$78,013.74 in excess assets. A preponderance of the evidence supports MassHealth's conclusion that, as of the date of application, the appellant's countable assets exceeded the eligibility limit for MassHealth Standard for long term care residents.

The appellant's attorney argued that the appellant and his spouse had already reduced their assets in a previous MassHealth Long Term Care application to qualify for services. However, such coverage was terminated by MassHealth notice dated December 4, 2023. The December 4, 2023 termination notice was dismissed by the Board of Hearings and I have no jurisdiction over such notice at this appeal. The appellant did not have MassHealth coverage for a period of months and was required to submit a new application to determine if he was eligible for MassHealth Long Term Care services. The appellant did not submit an application until May, 2024 and eligibility is determined as of that date. The fact that the appellant reduced assets with regard to a previous MassHealth application has no bearing on his financial eligibility with regard to his May 31, 2024 application.

The appellant's attorney asked for time for the community spouse to reduce her assets by purchasing an annuity. The community spouse may spend down her assets on an annuity, however it should be noted that the purchase of an annuity would not allow for retroactive coverage to February, 2024, rather the assets would be considered spent down as of the date of the purchase of the annuity, so long as such annuity meets the requirements set forth in the MassHealth regulations.

For the above reason, 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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