

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2501278
Decision Date:	06/10/2025	Hearing Date:	2/27/2025
Hearing Officer:	Patrick Grogan	Record Open to:	4/25/25

Appearances for Appellant:



Appearance for MassHealth:

Sean Brescia, MassHealth Tewksbury

Interpreter:

N/A



*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, Eligibility over 65, Assets
Decision Date:	06/10/2025	Hearing Date:	2/27/2025
MassHealth's Rep.:	Sean Brescia	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 January 15, 2025, MassHealth concluded that the Appellant was not eligible for MassHealth benefits because MassHealth determined that the Appellant had more countable assets than MassHealth benefits allow. (see 130 CMR 520.003, 130 CMR 520.004 and Exhibit 1) The Appellant filed this appeal in a timely manner on January 27, 2025. (see 130 CMR 610.015(B) and Exhibit 2) Denial of assistance is valid grounds for appeal. (see 130 CMR 610.032)

Action Taken by MassHealth

MassHealth concluded that the Appellant was not eligible for MassHealth benefits because MassHealth determined that the Appellant had more countable assets than MassHealth benefits allow. (see 130 CMR 520.003, 130 CMR 520.004 and Exhibit 1)

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003 and 130 CMR 520.004, in determining that the Appellant was not eligible for MassHealth benefits because

the Appellant had more countable assets than MassHealth benefits allow. (see 130 CMR 520.003, 130 CMR 520.004 and Exhibit 1).

Summary of Evidence

At Hearing, the Appellant, a person over the age of 65, was seeking review of the denial of MassHealth benefits due to the Appellant having more countable assets than MassHealth benefits allow (see 130 CMR 520.003, 130 CMR 520.004 and Exhibit 1). The Appellant's Representative and a paralegal appeared telephonically on behalf of the Appellant. (Exhibit 2) MassHealth also appeared telephonically. MassHealth testified that the Appellant owned real property, the former home, that was valued at \$614,000 (Testimony, Exhibit 1). Additionally, MassHealth determined that the Appellant owned a bank account, containing \$1.00. (Testimony, Exhibit 1) MassHealth testified that the asset limit for a household of 1 is \$2,000.00, and the Appellant's assets exceed this limit (Testimony, Exhibit 1).

In the Fair Hearing Request Form, the Appellant stated "per M.G.L 118E §33, the house is not countable nor is it recoverable." (Exhibit 2) The Appellant, through the Appeal Representative and paralegal, expounded on this argument at Hearing. The Appellant contends that the house was not countable in 2018, when the Appellant was initially approved for MassHealth, because the Appellant had a long-term-care policy which met the requirements for exclusion in the eligibility determination. (Testimony, Exhibit 6) Since then, the Appellant has continued to be renewed for MassHealth benefits. (Testimony, Exhibit 6) In the most recent renewal process, MassHealth indicated that the house was countable. (Testimony, Exhibit 1) The Appellant contends that M.G.L 118E §33 controls, and the Appellant's coverage should be reinstated. (Exhibit 6)

Within the submission on behalf of the Appellant is the Long-Term Care Policy. (Exhibit 6, pgs. 43-59). The documentation indicates that the Appellant had purchased a 3-year policy. (Exhibit 6, pg. 58). Also included within the submission on behalf of the Appellant is a letter proving exhaustion of the benefit. (Exhibit 6, pg.66). The proof indicates that the policy was exhausted on February 5, 2021. (Exhibit 6, pg. 66)

On September 6, 2018, the Appellant was approved for MassHealth Standard to cover care in a long-term-care facility. (Exhibit 6, pgs. 70-71) The Appellant has continued to be renewed for coverage until the January 15, 2025 denial. (Testimony, Exhibit 1) Within the Appellants' renewal application, the Appellant indicated that the Appellant did not intend to return to living within the former home. (Exhibit 6, pg. 101)

During the Hearing, MassHealth forwarded for submission Exhibit 7. Within Exhibit 7, MassHealth summarized its argument that the Appellant had indicated an intent not to return home and that the long-term care policy does not meet the requisite requirements under the Regulations. (Exhibit 7, pg. 3) MassHealth concluded that the Appellant's real property, the former

home, is countable for eligibility purposes pursuant to MassHealth statutory and regulatory law. MassHealth cited to 130 CMR 529.007(G)(8)(d)¹ and M.G.L. 118E, § 25(2)(C) in support of the argument. (Exhibit 7, pg. 3).

The Record was left open for the Appellant until March 17, 2025 for the Appellant to submit a brief in response to the material and argument provided by MassHealth at Hearing, and until March 31, 2025 for MassHealth to respond with its own brief. (Exhibit 8) The Appellant's brief was received timely and marked as an exhibit. (Exhibit 9) MassHealth's brief was received timely and marked as an exhibit. (Exhibit 10.) The Appellant sought time to respond, and an extension to the Record Open period was granted: the Appellant had until April 11, 2025 to reply and MassHealth had until April 25, 2025 to respond. (Exhibit 11)

Within the submission on behalf of the Appellant, the Appellant again relies on the plain text of M.G.L 118E §33. (Exhibit 9) The Appellant takes issue with MassHealth's interpretation that the eligibility determination at renewal controls. (Exhibit 9) The Appellant states that MassHealth's reliance on 130 CMR 520.007(G)(8)(d) and M.G.L. 118E, § 25(2)(C) is misplaced. (Exhibit 9) The Appellant concludes that the policy met all statutory requirements at the time of admission, and that the Appellant's prior approval supports the position that the home remains noncountable and this determination "should not be scrutinized at some unfounded "at renewal" arbitrary timeframe." (Exhibit 9, pg.4)

Within the submission on behalf of MassHealth, MassHealth argues M.G.L 118E §33 applies to estate recoveries and placement of liens. MassHealth states that the statute has no application to a financial eligibility determination. MassHealth continues that the applicable Regulations cited by the Appellant, 130 CMR 515.011(B) and 130 CMR 515.012(C), likewise, apply to estate recovery and lien placement. (Exhibit 10, pg. 2) MassHealth contends that 130 CMR 520.007(G)(8)(d) does not provide a look back provision. (Exhibit 10, pg. 3) MassHealth quotes the MassHealth financial eligibility statute, found at MGL 118E § 25, concluding that although the law imposes some exemptions for income and resources, those exemptions are under certain circumstances that no longer apply to the Appellant. (Exhibit 10, pgs. 5-6). MassHealth concluded by explaining that since the Appellant has exhausted her long-term-care insurance benefits, the former home is no longer excluded for eligibility purposes. (Exhibit 10, pg. 7) MassHealth explained that at the time of the Appellant's application in 2018 and the renewal in 2019, the policy met the applicable criteria for exclusion pursuant to the law and Regulations. The Appellant's eligibility was not redetermined for several years due to the freeze provisions of the Public Health Emergency (PHE). Now that the freeze provisions have been lifted, and the Appellant is once again subject to a continuing eligibility determination through an annual review. (Exhibit 10, pg. 7) "As a general matter, MassHealth financial eligibility is not static and can change if an individual's assets or income change due to any number of circumstances and

¹ MassHealth cited to 130 CMR 529.007(G)(8)(d) in Exhibit 7. This appears to be a scrivener's error since there is no Regulation at 130 CMR 529.007. It appears that MassHealth intended to cite to 130 CMR 520.007(G)(8)(d). Subsequent MassHealth filings within this record cite to 130 CMR 520.007(G)(8)(d).

these changes can result in changes of eligibility for applicants and members upon review.” (Exhibit 10 pg. 7)

On April 9, 2025, the Appellant submitted a response to MassHealth’s position. (Exhibit 12) This response echoes the original brief, citing the same Regulatory and Statutory provisions espoused within the Appellant’s original brief. (Exhibit 9) Multiple arguments were submitted within the response with conclusory statements about the intent of the Regulations and Statutes at issue, with no supporting citations. (Exhibit 12) Attached to the response is a 2013 letter on which the Appellant relies. (Exhibit 12, pgs. 5-7) The letter was authored by the First Deputy General Counsel for the Executive Office of Health and Human Services in response to an inquiry on behalf of the Long Term Care Insurance Work Group about the changes to G.L. c.118E, §33 under Chapter 312 of the Acts of 2012. (Exhibit 12, pg. 5) The inquiry sought clarification regarding qualification for a waiver from certain MassHealth estate recovery requirements. (Exhibit 12, pg. 5) The letter is silent on the issue of eligibility determinations. (Exhibit 12, pgs. 5-7)

On April 24, 2025, MassHealth responded, citing to 130 CMR 520.007(G)(8), and reiterating its position that the former home is now a countable asset as the long-term-care insurance policy had lapsed. (Exhibit 13). The Record closed on April 25, 2025. On April 29, 2025, the Appellant responded, relying on an argument of fundamental fairness, without addressing the issue of continuing eligibility determinations². (Exhibit 14)

Findings of Fact

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

1. The Appellant is a person over the age of 65, who was seeking review of the decision that the Appellant did not qualify for MassHealth benefits due to the Appellant having more countable assets than MassHealth benefits allow (see 130 CMR 520.003, 130 CMR 520.004 and Exhibit 1).
2. The Appellant owns real property, the former home, that was valued at \$614,000 (Testimony, Exhibit 1).
3. Additionally, as of the time of Hearing, the Appellant owned a bank account, containing \$1.00. (Testimony, Exhibit 1)
4. The asset limit for a household of 1 is \$2,000.00, and the Appellant’s assets exceed this limit

² Despite the Record closing on April 25, 2025, and having received no request to extend the Record Open period, in an abundance of fairness to the Appellant, the late submission was accepted and incorporated into the Record. (Exhibit 14)

(Testimony, Exhibit 1).

5. The Appellant purchased a long-term care policy. (Exhibit 6, pgs. 43-59). The documentation indicates that the Appellant had purchased a 3-year policy. (Exhibit 6, pg. 58).
6. The Appellant was approved for MassHealth Standard to cover care in a long-term-care facility on September 6, 2018. (Exhibit 6, pgs. 70-71)
7. The policy's benefits were exhausted on February 5, 2021. (Exhibit 6, pg. 66)
8. The Appellant's eligibility was not redetermined for several years due to the freeze provisions of the Public Health Emergency (PHE). Now that the freeze provisions have been lifted, the Appellant is once again subject to annual review for a determination regarding continuing eligibility. (Exhibit 10, pg. 7, 130 CMR 516.007)
9. Within the Appellants' renewal application, the Appellant indicated that the Appellant did not intend to return to living within the former home. (Exhibit 6, pg. 101)

Analysis and Conclusions of Law

In the instant appeal, the Regulation found at 130 CMR 520.003 explains the income limitations:

520.003: Asset Limit

(A) The total value of countable assets owned by or available to individuals applying for or receiving MassHealth Standard, Family Assistance, or Limited may not exceed the following limits:

- (1) for an individual – \$2,000; and
- (2) for a couple living together in the community

For an individual over the age of 65, pursuant to 130 CMR 519.005(B):

519.005: Community Residents 65 Years of Age or Older

(B) Financial Standards Not Met. Except as provided in 130 CMR 519.005(C), individuals whose income, assets, or both exceed the standards set forth in 130 CMR 519.005(A) may establish eligibility for MassHealth Standard by reducing their assets in accordance with 130 CMR 520.004: Asset Reduction, meeting a deductible as described at 130 CMR 520.028: Eligibility for a Deductible through 520.035: Conclusion of the Deductible Process, or both.

Regarding excess assets and asset reduction, 130 CMR 520.003 explains:

520.004: Asset Reduction

(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.

Once a member has been approved, continuing eligibility requires annual renewals, with eligibility determinations to occur:

516.007: Continuing Eligibility

(A) Annual Renewals. The MassHealth agency reviews eligibility once every 12 months. Eligibility may also be reviewed as a result of a member's changes in circumstances or a change in MassHealth eligibility rules, or as a result of a member's failure to provide verification within requested time frames. The MassHealth agency updates eligibility based on information received as the result of such review. The MassHealth agency reviews eligibility

(1) by information matching with other agencies, health insurance carriers, and information sources;

(2) through a written update of the member's circumstances on a prescribed form;

(3) through an update of the member's circumstances, in person; or

(4) based on information in the member's case file.

(B) Eligibility Determinations. The MassHealth agency determines, as a result of this review, if

(1) the member continues to be eligible for the current coverage type;

(2) the member's current circumstances require a change in coverage type; or

(3) the member is no longer eligible for MassHealth.

Regarding a former home of an institutionalized individual, the Regulation at 130 CMR 520.007(G)(8)(d) states:

(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.

(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.

The Statute at M.G.L. 118E, § 25(2)(C) explains the provisions for exempt resources:

Section 25: Exempt income and resources

Section 25. For purposes of determining an individual's eligibility for Medicaid, the following income and resources shall be exempt and shall neither be taken into consideration nor, except as permitted under Title XIX, required to be applied toward the payment or part payment of Medicaid benefits:

...

(2) ownership of one's residence, including furniture, which is essential and appropriate to the needs of the household except as permitted by section 1902(a)(10)(C) of Title XIX. In the case of an applicant or recipient for whom a medical determination has been made, after notice and opportunity for an appeal and hearing, that he or she cannot reasonably be expected to return to live in the residence, the residence will be considered a countable asset unless:

...

(C) the applicant or recipient has obtained long term care insurance whose coverage meets the requirements of 211 C.M.R. 65.00.

Regarding estate recovery, the controlling Statute, M.G.L. 118E, § 33, states:

Section 33: Long term care insurance purchasers; liability for medical assistance

Section 33. No claim for costs of a nursing facility or other long-term care services shall be made by the division under section 31 or 32 if the individual receiving medical assistance was permanently institutionalized, had notified the division that the individual had no intention to return home and, on the date of admission to the nursing facility or other medical institution, had long-term care insurance that, when purchased or at any time thereafter, met the requirements of 211 C.M.R. 65.00.

The Appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). See

also Fisch v. Board of Registration in Med., [437 Mass. 128](#), 131 (2002); Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn., [11 Mass. App. Ct. 333](#), 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, [45 Mass. App. Ct. 386](#), 390 (1998).

Here, there is little factual dispute, rather the issue on appeal revolves around the interpretation of the Regulations and laws governing the eligibility determination, countable assets, long-term-care insurance, exhaustion of long-term-care insurance, and continuing eligibility. The Appellant purchased a long-term-care insurance policy. (Exhibit 6, pgs. 43-59). The Appellant was approved for MassHealth Standard to cover care in a long-term-care facility on September 6, 2018, while the long-term-care policy was active. (Exhibit 6, pgs. 70-71) The policy's benefits were exhausted on February 5, 2021. (Exhibit 6, pg. 66) The Appellant's eligibility was not redetermined for several years due to the freeze provisions of the Public Health Emergency (PHE). Now that the freeze provisions have been lifted, the Appellant is once again subject to annual review. (Testimony, Exhibit 10, pg. 7, 130 CMR 516.007) Within the Appellants' renewal application, the Appellant indicated that the Appellant did not intend to return to living within the former home. (Exhibit 6, pg. 101)

MassHealth has included the Appellant's former home as a countable asset in the most recent eligibility determination for continuing eligibility. (Exhibit 1). The home was not initially countable due to the long-term-care policy that protected the home's value from being a countable asset, since the policy adhered to the requirement of the Regulations. (130 CMR 520.007(G)(8)(d), M.G.L. 118E, § 25(2)(C)) The policy's benefits were exhausted on February 5, 2021, rendering the home countable within the continuing eligibility requirements of the Regulations. (Exhibit 6, pg. 66, 130 CMR 516.007) The sole reason the Appellant was continuously approved for MassHealth benefits AFTER February 5, 2021 was due to the protections afforded to the Appellant during the public health emergency related to the Covid pandemic. (Exhibit 10) Within the most recent continuing eligibility determination, after the protection of the PHE ended and with no long-term-care policy in effect to exclude the Appellant's home from being counted as an asset during the continuing eligibility determination, the Appellant's house is now a countable asset, rendering the Appellant over the asset limit for MassHealth. (130 CMR 516.007)

The Appellant's reliance on M.G.L 118E §33 is misplaced. M.G.L 118E §33 explicitly deals with recovery actions. MassHealth is not seeking recovery of payment for MassHealth coverage which the Appellant had received from 2018-2024. Nor is MassHealth seeking recovery of payment for MassHealth coverage since the exhaustion of the long-term-care policy, which was exhausted on February 5, 2021. The PHE protected the Appellant's former home from being counted as an asset during a continuing eligibility determination, since no continuing eligibility determinations were conducted during the PHE. Rather, within the recent continuing eligibility determination, without the benefit of the PHE, and without the benefit of a long-term-care policy, the former home is a countable asset. Pursuant to 130 CMR 520.007(G)(8)(d) and M.G.L. 118E, § 25(2)(C), where the Appellant has indicated no intent to return to the former home, the house is

properly deemed a countable asset.

On this record, the Appellant has not demonstrated the invalidity of MassHealth's determination that the Appellant does not qualify for MassHealth benefits due to the Appellant exceeding the asset limit. Accordingly, the Appellant has not met the burden, by a preponderance of evidence, to show that MassHealth's determination that the Appellant does not qualify for MassHealth benefits due to excess assets is invalid. Therefore, this 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.

Patrick Grogan
Hearing Officer
Board of Hearings

[REDACTED]

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