

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2504511
Decision Date:	6/6/2025	Hearing Date:	05/02/2025
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Stephanie Mowles – Quincy Intake



*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:	Approved in part; Denied in part	Issue:	Long Term Care; Coverage start date
Decision Date:	6/6/2025	Hearing Date:	05/02/2025
MassHealth's Rep.:	Stephanie Mowles	Appellant's Rep.:	
Hearing Location:	Telephonic	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 February 26, 2025, MassHealth approved the appellant's application for long-term care benefits as of January 17, 2025. (Exhibit 1.) The appellant filed this appeal in a timely manner on March 19, 2025. (Exhibit 2; 130 CMR 610.015(B).) Determinations regarding scope and amount of assistance, such as when assistance begins, are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth approved the appellant for long-term care benefits after her requested start date.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.004, 520.006, and 520.019(K), in determining that the appellant reduced available assets as of the date the cash-surrender value of life insurance policies was received by her pooled trust account.

Summary of Evidence

The facts in this case are undisputed. The legal questions turn on the effective date of spending asset via a check, and when inaccessible assets should be considered accessible.

The appellant submitted a long-term care application on January 7, 2025, seeking a long-term care coverage start date of December 18, 2024. As of December 23, 2024, the appellant's bank account held \$40,421.19. The appellant also had two life insurance policies with cash surrender values of \$6,693.73 and \$7,097.57. The appellant wrote two checks to the nursing facility on December 17, 2024, totaling \$11,704.83. These checks did not clear until December 24, 2024. Once those checks cleared, the appellant's bank account was under \$2,000.

The appellant has a pooled trust account with [REDACTED]. The appellant's power of attorney signed the Sponsor Agreement before a notary on December 17, 2024. The Sponsor Agreement identifies \$26,650 as the amount donated on December 17, 2024, and indicates that an additional donation of \$13,791.23 was expected before January 25, 2025. The trustee of [REDACTED] signed the agreement before a notary on December 19, 2024. The appellant has been deemed disabled by MassHealth since April 17, 2023.

The pooled trust account was funded with a check for \$26,650. The check was written on December 17, 2024, but it did not clear from the appellant's bank account until December 23, 2024. The appellant surrendered the life insurance policies to be cashed out on November 25, 2024. The life insurance company mailed out checks on or around December 3, 2024, but mailed them to an old address. The company needed to reissue checks, and this was done on or around December 26, 2024. The appellant's power of attorney never deposited these checks; instead, he signed them over to the pooled trust, and those checks cleared into the pooled trust account on January 17, 2025.

MassHealth's representative argued that the appellant's assets were not reduced until January 17, 2025, when checks from the life insurance policies were deposited into the appellant's pooled trust account. MassHealth's representative agreed that the deposit into the pooled trust account was a permissible transfer, but she argued the appellant retained assets until the date of the transfer. MassHealth argued the assets were accessible to the power of attorney when they received the checks, but before they were signed over to the pooled trust. Because the assets were accessible before the application was processed, MassHealth argues the assets should never be treated as inaccessible. MassHealth also considers the date the pooled trust account was created to be December 19, 2024, the day the trustee of the trust signed the Sponsor Agreement.

The appellant's attorney countered that the value of the life insurance policies should be deemed inaccessible from the date they were surrendered until the day they were deposited. Furthermore, those funds were contractually pledged to the pooled trust account when the Sponsor Agreement was signed by the appellant's power of attorney. The appellant's attorney testified that she had advised her client to not deposit the checks into the appellant's account to avoid this very situation, and she argued that assigning the checks to the pooled trust avoids the accessibility issue. She argued that the date of accessibility should be the date the check clears after it is deposited.

Both parties requested that this issue be decided by the hearing officer, rather than submitting additional legal arguments.¹

The Sponsor Agreement includes an “Acknowledgement and Waiver” section, which states in part “This Sponsor Agreement and the Trust both are Irrevocable.” Section 3.02 of the Guardian Community Trust governs the “Establishment of Trust Accounts”:

An account for an eligible beneficiary (hereinafter, a "Trust Account") shall be established for the sole benefit of that individual by a parent, grandparent or legal guardian, by the individual himself or herself, or by a court. A person desiring to establish a Trust Account for an eligible beneficiary, or the eligible beneficiary himself or herself (hereinafter, the “Sponsor”) shall execute an agreement adopting the terms of this Trust (hereinafter, the “Sponsor Agreement”). **The Trust shall become effective** with respect to such beneficiary **upon execution** of the Sponsor Agreement **by the Sponsor and the Trustee**, and the individual thereafter shall be considered a Designated Beneficiary for purposes of this Agreement; provided, however, that the Trustee may, in its discretion, decline to accept a Sponsor Agreement presented to it. Upon acceptance, a Trust Account shall be established for the Designated Beneficiary, and the Sponsor Agreement thereafter shall be held and administered in accordance with the Agreement herein. By executing a Sponsor Agreement, a Sponsor agrees to be subject to all terms and conditions of the Agreement herein, including any amendments hereto.

(Exhibit 8, pp. 20-21.)

Findings of Fact

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

- 1) The appellant submitted a long-term care application on January 7, 2025, seeking a long-term care coverage start date of December 18, 2024. (Exhibit 8.)
- 2) On December 17, 2024, the appellant’s power of attorney signed a Sponsor Agreement with [REDACTED]. The Sponsor Agreement identifies \$26,650 as being donated on December 17, 2024, and indicates that an additional donation of \$13,791.23 would be forwarded to the pooled trust. (Exhibit 8, pp. 17-18.)

¹ At the end of the hearing, the parties discussed an ongoing issue regarding the patient-paid amount, arising from a former residence that was now being rented. The parties agreed that this issue was not part of this appeal.

- 3) As of the morning of December 23, 2024, the appellant's bank held \$40,421.19. The appellant had two life insurance policies with cash surrender values totaling \$13,791.30. (Exhibit 8, pp. 43, 48, 51.)
- 4) On December 17, 2024, the appellant wrote a check to the pooled trust account for \$26,650, and two checks to the nursing facility totaling \$11,704.83. These checks did not clear until December 23 and 24, 2024, respectively. At that time the appellant's bank account was under \$2,000. (Exhibit 8, p. 43.)
- 5) The appellant surrendered the life insurance policies for adjustment on November 25, 2024. (Testimony by the appellant's attorney.)
- 6) The life insurance checks were originally issued on or around December 3, 2024, but they were mailed to the wrong address. Checks were reissued on or around December 26, 2024. These checks were signed over to the pooled trust account; they cleared on January 17, 2025. (Exhibit 8, p. 54.)

Analysis and Conclusions of Law

An individual applying for MassHealth long-term-care benefits must have countable assets below \$2,000. (130 CMR 520.003(A).) If an applicant has assets above this threshold, their earliest eligibility start date is either:

- (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.

(130 CMR 520.004(A)(1) (emphasis added).)

Bank accounts are "available only to the extent that the applicant or member has both ownership of **and access to such funds.**" (130 CMR 520.007(B)(2) (emphasis added).) Life insurance policies are counted using the "cash-surrender value" (130 CMR 520.007(E)(1).)

However, in order for an asset to be considered "excess," it must be countable. There are many reasons why an asset may be excluded, one of which is that the assets are "inaccessible." For instance, MassHealth "will consider the cash-surrender-value amount an inaccessible asset during the adjustment period." (130 CMR 520.007(E)(1); see also 130 CMR 520.006.)

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. **The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible** or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

- (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and
- (2) **the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.**

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

- (1) **from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b);** or
- (2) from the period beginning six months after the date of application or acquisition, whichever is later, if [a guardian, conservator, or trustee of an irrevocable trust is being sought]

(130 CMR 520.006 (emphasis added).)

Another form of exempted asset is a “pooled trust [established] in accordance with the trust rules at 130 CMR 520.021 through 520.024” (130 CMR 520.008(I).) Furthermore, transfers to a pooled trust are “permissible” under the disqualifying transfer rules. (130 CMR 520.019(D).)

A properly established pooled trust will be excluded from a disabled applicant’s or member’s countable assets. The funding of the pooled trust will not be subject to disqualifying transfer analysis if they meet the following requirements of 130 CMR 515.001.

- (1) The trust was created by a nonprofit organization.
- (2) **A separate account is maintained for each beneficiary of the trust**, but the assets of the trust are pooled for investment and management purposes.
- (3) **The account in a pooled trust was created for the sole benefit of the individual** by the individual, the individual's parents or grandparents, or by a legal guardian or court acting on behalf of the individual.

(4) The trust provides that the Commonwealth of Massachusetts will receive amounts remaining in the account upon the death of the individual up to the amount paid by the MassHealth agency for services to the individual. The trust may retain reasonable and appropriate amounts as determined by the MassHealth agency.

(5) The individual was disabled at the time his or her account in the pool was created.

(EOM 24-08 (Dec. 2024) (emphasis added).)

Bank Account Asset Reduction

MassHealth accepts that the checks written to the nursing facility reduced the appellant's assets as of the date they were written, December 17, 2024. MassHealth also accepts the \$26,650 check used to open the pooled trust account was transferred on the day it was written, rather than the date it cleared at the bank. This policy of asset reduction dating to the date checks are written is reasonable given that bank accounts are countable to the extent that funds are accessible. Once a check is written, especially where it is associated with a contractual obligation, those funds could be considered inaccessible as of the date pledged.²

MassHealth is also correct that the pooled trust account was not created until December 19, 2024, when the trustee signed the Sponsor Agreement. The effective date of trust accounts, under the trust language, is the date the Sponsor Agreement is signed by both the donor and the trustee. There was no "account in a pooled trust ... created for the sole benefit of the" appellant prior to December 19, 2024, therefore the transfer was initially disqualifying. The disqualifying transfer was cured (see 130 CMR 520.019(K)(1)(a) (describing revising a trust during the eligibility process)), and on December 19, 2024, the assets reduction no longer violated "the transfer of resource provisions," and the appellant became asset eligible. This appeal is DENIED in part to the extent that the appellant's pooled trust account was created on December 19, 2024. The appellant cannot be eligible for long-term care benefits before this day.

Life Insurance Asset Reduction

Regarding the life insurance policies, MassHealth's argument is that the life insurance proceeds were countable for some period of time between receipt by the power of attorney and January 17, 2025, when the checks cleared into the pooled trust account. Because this occurred before the application was processed, MassHealth sees no reason to treat the assets as inaccessible for any

² Fair hearing decisions apply only to the parties to the hearing and are not binding precedent in other proceedings. (130 CMR 610.085(A)(2).) This decision does not attempt to set policy for how MassHealth handles asset reduction through checks. If the agency presents a different policy in future hearings, it shall be afforded due consideration. (See 130 CMR 610.082(C)(3).)

period of time. Thus, the appellant remained over assets through January 17, 2025, when they reduced their assets.

The regulation requires that an inaccessible asset not be counted “for the period that it is inaccessible.” The regulation also makes the cash-value of life insurance policies non-countable from the date of surrender to the “date of acquisition.” Since MassHealth treats checks as reducing an applicant’s assets from the date written, the corollary would be to treat a check as acquired as of the date a check was written to the applicant. Even taking this strictest interpretation of when life insurance proceeds should be countable, there would be a week of asset eligibility between December 19 and December 26, 2024, when the insurance checks were issued. The appellant would then be ineligible as over-assets again until their assets were reduced through the transfer to the pooled trust, presumably on the day the power of attorney assigned the checks to the pooled trust account.³

I am not persuaded by this interpretation of countability. Bank accounts are countable to the extent that they are “accessible.” Even if the check was hand-delivered on the day it was written by the life insurance company, and the power of attorney deposited the check on the same day, the nature of the banking system would not allow those funds to be available for some time. The evidence shows that the appellant always intended for the value of their life insurance policies to be transferred directly to the pooled trust account. There is no evidence that the appellant’s power of attorney delayed transferring the check to the pooled trust account. More importantly, nothing was gained by anyone from the relay of the checks first to the power of attorney and then to the pooled trust account. Therefore, this appeal is APPROVED in part with regard to the life insurance policies’ cash value. The value of the life insurance policies was inaccessible from November 25, 2024, until January 17, 2025, when they were non-countable because they were deposited into a valid pooled trust account.

The appellant reduced the assets as of December 19, 2024. Therefore, the appellant is eligible for long-term care benefits as of December 19, 2024.

Order for MassHealth

Approve the appellant’s long-term care benefits as of December 19, 2024, the day on which the assets were reduced.

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

³ As I am not persuaded by this interpretation of when checks to an applicant should be counted as accessible, it is unnecessary to show that the appellant would be asset eligible before the relevant Haley calculation start date under 130 CMR 520.004.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

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