

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2508838
Decision Date:	10/28/2025	Hearing Date:	07/15/2025
Hearing Officer:	Alexandra Shube	Record Open to:	09/08/2025

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via Telephone:

Lynn Bloomquist, Tewksbury MEC
Karen Ryan, Tewksbury MEC



*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:	LTC; Assets
Decision Date:	10/28/2025	Hearing Date:	07/15/2025
MassHealth's Rep.:	Lynn Bloomquist; Karen Ryan	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center, Remote	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 May 23, 2025, MassHealth denied the appellant's application for MassHealth long-term care benefits because MassHealth determined that he was over the allowable asset limit (see 130 CMR 520.003 and Exhibit 1). The appellant filed this appeal in a timely manner on June 10, 2025 (see 130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

At the request of the appellant's representative, the record was ultimately held open until August 25, 2025 for the appellant's representatives to submit proof of spend down. MassHealth was given until September 8, 2025 to review and respond to the appellant's submission.

Action Taken by MassHealth

MassHealth denied the appellant MassHealth benefits because he was over the allowable asset limit.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.003, in determining that the appellant was over assets to qualify for MassHealth benefits.

Summary of Evidence

The representatives for the appellant and MassHealth both appeared at hearing via telephone. The MassHealth representative testified as follows: the appellant is an individual over the age of 65 and a resident of a nursing facility. On February 26, 2025, MassHealth received an application for long-term care benefits on behalf of the appellant. On May 23, 2025, MassHealth denied the application for being over the allowable asset limit. This is the notice under appeal. The appellant had \$12,731.86 in a bank account and \$1,176 in his personal needs allowance (PNA) account, combining for \$13,907.86 in total assets. The total assets put the appellant \$11,907.86 over the \$2,000 allowable asset limit. MassHealth requires proof that the assets have been spent down and he is within the allowable limit.

The appellant's representative did not dispute the amount but argued that the assets were inaccessible at the time because the appellant was deemed incompetent and there was no conservator appointed. At the time of the application, the appellant's representative was only appointed as guardian (and had been since June 2024). The petition for conservatorship was filed on [REDACTED] 2025. The appellant's representative was appointed conservator on [REDACTED] 2025 and received the appointment paperwork on July 14, 2025, the day before hearing. The appellant's representative noted that on June 26, 2025, he submitted the petition for conservator and proof of spend down of the PNA (or RFMS) account, and argued that MassHealth should have considered the remaining assets inaccessible.

MassHealth noted that it did not view the assets as inaccessible. The case was denied on May 23, 2025 and MassHealth was not made aware of the filing of conservator until June 26, 2025. The appellant has been guardian since 2024 and, as of hearing, has access to all accounts as the appellant's conservator. Pursuant to 130 CMR 520.006, assets are deemed inaccessible six months from the date of application or acquisition. That clock is running out soon and, as the appellant has access to the assets now, there is nothing preventing him from completing the spend down as part of this appeal.

At the request of the appellant, the record was held open until August 15, 2025, and then extended until August 25, 2025. MassHealth was initially given until August 29, 2025 to review and respond, but that was extended until September 8, 2025, after the appellant asked for an extension.

On September 8, 2025, MassHealth responded that it reviewed the appellant's submissions and

determined that the appellant was still over the allowable asset limit. There were two retainer accounts (one with the conservator's office and one with an attorney's office) each containing \$2,500 (as of July 30, 2025 and August 8, 2025, respectively); an RFMS account with the conservator's office containing \$2,835.69 (as of August 14, 2025); and an RFMS account with the facility (the PNA account) containing \$242 (as of August 5, 2025). Available assets totaled \$8,077.69, putting the appellant \$6,077.69 over the allowable asset limit.

The appellant's conservator responded on September 8, 2025 that she had concerns with the regulation used in MassHealth's determination of assets and with the requirements of a conservator to provide services to a ward including, but not limited to, termination of the conservatorship. She argued that the regulation does not specifically identify retainer accounts, only accounts to which the applicant has access. She argued that the appellant does not have access to either of the retainer accounts. She explained that if she is unable to hold back funds for the filing fees, publication fees, Guardian ad Litem fees, and the costs of representation or self-representation, she, as a fiduciary, would be at risk for fine, sanction, or licensure complaint. She felt that these funds have been set aside in other cases she has and questioned the inconsistency.

The record was considered closed and there were no further communication.

Findings of Fact

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

1. The appellant is an individual over the age of 65 and is a resident of a nursing facility (Testimony and Exhibit 5).
2. On February 26, 2025, MassHealth received an application for long-term care benefits on behalf of the appellant (Testimony and Exhibit 5).
3. On May 23, 2025, MassHealth denied the application for being over the allowable asset limit (Testimony and Exhibit 1).
4. The appellant had \$13,731.907.86 in total assets, putting him \$11,907.86 over the allowable asset limit (Testimony and Exhibit 5).
5. On June 10, 2025, the appellant timely appealed the May 23, 2025 denial notice (Exhibit 2).
6. At the time of the application, the appellant was deemed incompetent and his representative had guardianship. The appellant's representative filed for conservatorship on [REDACTED] 2025, and was appointed conservator on [REDACTED] 2025, although didn't receive the appointment paperwork until July 14, 2025 (Testimony and Exhibit 2).

7. The record was held open until August 15, 2025, and then extended until August 25, 2025 for the appellant to provide proof of spend down. MassHealth was initially given until August 29, 2025 to review and respond to the appellant's submission, but that was extended until September 8, 2025. (Exhibits 6 and 7).
8. On September 8, 2025, the MassHealth representative responded that she reviewed the appellant's submission and he was still \$6,077.69 over assets (Exhibit 7).

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)). Countable assets include "deposits in a bank, savings and loan institution, credit union, or other financial institution," and 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)).

520.006: Inaccessible Assets

(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) the applicant or member cannot competently represent his or her interests, **has no guardian or conservator** capable of representing his or her interests, **and the authorized**

representative (which may include a provider) of such applicant or member **is making a good-faith effort to secure the appointment of a competent guardian or conservator; or**

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

(130 CMR 520.006).

The assets were inaccessible from the application date until the conservator got appointed on July 9, 2025. Since the time the assets became available on July 9, 2025, the conservator had reasonable time within the record open period to complete the spend down but did not. As such, the appellant, with \$8,077.69 in assets as most recently verified, is still over the allowable asset limit.

As to the conservator's argument that the appellant does not have access to the funds in the retainer accounts, the argument is not persuasive. The funds in those accounts are so that the conservator and attorney can pay the appellant's bills on his behalf from those accounts. The funds still belong to the appellant, are countable to the appellant, and can be spent down on his behalf by the conservator. To argue that these assets were either made inaccessible or no longer available to the appellant once they were placed in a retainer account is to suggest that a disqualifying transfer took place. Regardless, even if these funds were not counted, the appellant's RFMS guardianship account (\$2,835.69 as of August 14, 2025) and PNA (\$242 as of August 5, 2025), still put the appellant over the allowable \$2,000 asset limit.

As such, the appellant is over the asset limit and 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.

Alexandra Shube
Hearing Officer
Board of Hearings

[REDACTED]

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