

Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1813276
Decision Date:	10/01/18	Hearing Date:	July 23, 2018
Hearing Officer:	Stanley M. Kallianidis		

Appellant Representative:

MassHealth Representative:

Stephanie DeSousa, Taunton



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Asset Inaccessibility
Decision Date:	10/01/18	Hearing Date:	July 23, 2018
MassHealth Rep.:	Stephanie DeSousa		
Hearing Location:	Taunton		

Authority

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

Jurisdiction

Notice dated May 4, 2018 was sent to the appellant stating that MassHealth had denied his application for MassHealth benefits due to excess assets (Exhibit 1). The appellant filed this appeal on May 25, 2018 and, therefore, it is timely (see Exhibit 2 and 130 CMR 610.015). A denial of MassHealth benefits is grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits due to excess assets.

Issue

Pursuant to 130 CMR 520.006, is the appellant's asset in question temporarily inaccessible?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on March 21, 2018 (Exhibit 3). The application was denied due to excess assets (Exhibit 1). The countable assets in question were \$16,196.00 in a bank account held in a revocable trust (the Trust) established by the appellant's spouse on January 29, 1999 (Exhibit 4). The appellant's spouse died on February 14, 2017. The Trust assets are considered countable, the MassHealth representative explained, because of the spouse's will which left his estate to his wife, the appellant (Exhibit 5).

The appellant's representative contended that the bank account held by the Trust in question is inaccessible and therefore a non-countable asset. She referenced two letters from the appellant's attorney, dated December 18, 2017 and July 19, 2018 (Exhibit 6 & 7).

According to the attorney, the Trust was created on January 29, 1999 by the appellant's spouse as Donor and sole Trustee. He referenced Article Thirteen of the Trust as a basis for its inaccessibility. According to Article Thirteen of the Trust, upon the spouse's death, State Street Bank and Trust Company (State Street) would assume the role of Trustee. Any successor Trustee must be a corporate Trustee having at least 50 years of experience in trust management. State Street's fiduciary department is no longer operating, and its successor, US Trust/Bank of America will not accept appointment due to the limited assets of the Trust. Currently, he is unable to find a corporate trustee with 50 years of trust management willing to be Trustee. All assets of the Trust are therefore inaccessible, he contended, and the only avenue is to petition the Probate Court to appoint an individual rather than corporate Trustee. The cost of this would be between \$5,000.00- \$7,000.00 with the outcome in doubt (Exhibit 6 & 7).

According to Article Three of the Trust, upon the death of the appellant, the assets will be divided into two trusts, a Marital Trust and a Family Trust. The appellant is the beneficiary of the Marital Trust and their children are the beneficiaries of the Family Trust. The amount to be distributed to the Marital Trust, if any, is the minimum amount that would allow the Trust to qualify for the federal estate tax deduction (Exhibit 4).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on March 21, 2018 (Exhibit 3).
2. The application was denied due to excess assets (Exhibit 1).
3. The assets that MassHealth are counting are \$16,196.00 in a bank account held in a

revocable Trust established by the appellant's spouse on January 29, 1999 (Exhibit 4).

4. The spouse died on February 14, 2017 (testimony).
5. MassHealth is counting the Trust assets due to the spouse's will which left his estate to his wife, the appellant (Exhibit 5).
6. The Trust was created on January 29, 1999 by the appellant's spouse as Donor and sole Trustee (Exhibit 6).
7. According to Article Thirteen of the Trust, upon the spouse's death, State Street Bank and Trust Company (State Street) would assume the role of Trustee. Any successor Trustee must be a corporate Trustee having at least 50 years of experience in trust management (Exhibit 4).
8. According to Article Three of the Trust, upon the death of the appellant, the assets will be divided into two trusts, a Marital Trust and a Family Trust. The appellant is the beneficiary of the Marital Trust and their children are the beneficiaries of the Family Trust. The amount to be distributed to the Marital Trust, if any, is the minimum amount that would allow the Trust to qualify for the federal estate tax deduction (Exhibit 4).
9. State Street's fiduciary department is no longer operating, and its successor, US Trust/Bank of America will not accept appointment due to the limited assets of the Trust. Currently, the appellant's attorney is unable to find a corporate trustee with 50 years of trust management willing to be Trustee (Exhibits 6 & 7).

Analysis and Conclusions of Law

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.

130 CMR 520.006(B) states that the 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.

Pursuant to 130 CMR 520.006(C)(1), The date of accessibility is the date of application or acquisition whichever is later...

In the instant case, I have found that the appellant applied for MassHealth on March 21, 2018, and that her application was denied due to excess assets. The assets that MassHealth are counting are \$16,196.00 in a bank account held in a revocable Trust established by the appellant's spouse on January 29, 1999. The spouse died on February 14, 2017, and MassHealth is counting the Trust assets due to the spouse's will which left his estate to his wife, the appellant.

The Trust was created by the appellant's spouse as Donor and sole Trustee. According to Article Thirteen of the Trust, upon the spouse's death, State Street would assume the role of Trustee. Also according to Article Thirteen, any successor Trustee must be a corporate Trustee having at least 50 years of experience in trust management. I have further found that State Street's fiduciary department is no longer operating, and its successor, US Trust/Bank of America will not accept appointment due to the limited assets of the Trust. Currently, the appellant's attorney is unable to find a corporate trustee with 50 years of trust management willing to be Trustee.

MassHealth's basis for counting the Trust assets based upon the terms of the spouse's will is incorrect. The distribution of these assets is solely dependent on the terms of the Trust. According to Article Three of the Trust, upon the death of the appellant, the assets will be divided into two trusts, a Marital Trust and a Family Trust. The appellant is the beneficiary of the Marital Trust and their children are the beneficiaries of the Family Trust. The amount to be distributed to the Marital Trust, if any, is the minimum amount that would allow the Trust to qualify for the federal estate tax deduction.

Based upon the above, the most that the appellant's would be entitled to would be the assets of only the Marital Trust, and not the Family Trust. Moreover, the amount to be distributed is unknown. It could be little or even nothing if there is no federal estate tax to be paid from the spouse's estate. More importantly, there is not even a current Trustee for the Trust, and where a corporate trustee with 50 years' worth of experience cannot be found, the Trust bank account, regardless of its value to the appellant, is clearly inaccessible at this point in time. In accordance with the regulation cited above, the Trust cannot be considered a countable asset towards the appellant's eligibility.

The appeal is therefore approved.

Order for MassHealth

Re-determine appellant's eligibility disregarding Trust assets.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc: