

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1703276
Decision Date:	5/31	Hearing Date:	04/14/2017
Hearing Officer:	Cynthia Kopka	Record Open to:	05/12/2017

Appellant Representative:

MassHealth Representative:
Eileen Smith



*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 – assets
Decision Date:	5/31	Hearing Date:	04/14/2017
MassHealth Rep.:	Eileen Smith	Appellant Rep.:	
Hearing Location:	Chelsea		

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 December 8, 2016, MassHealth denied Appellant's application for MassHealth benefits because Appellant's countable assets exceed MassHealth limits (Exhibit 1). Appellant filed this appeal in a timely manner on January 9, 2017 (Exhibit 2). 130 CMR 610.015(B). Denial of assistance is a valid ground for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied Appellant's application because Appellant's countable assets exceed MassHealth limits.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant's assets exceed MassHealth's limits.

Summary of Evidence

The MassHealth representative appeared in person and testified as follows. MassHealth received Appellant's application for long term care benefits on August 18, 2016. Appellant entered the

nursing facility on January 12, 2016 and sought coverage beginning October 1, 2016. On December 8, 2016, MassHealth denied the application because Appellant's assets exceeded MassHealth's limit. Specifically, MassHealth reviewed documents closest to the requested start date and determined that as of October 16, 2016, Appellant had \$102 in her personal needs allowance (PNA) account. Additionally, as of November 4, 2016, Appellant had \$12,993.00 in a joint account with her sister, who also applied for MassHealth. Appellant submitted to MassHealth checks that were illegible, but may have represented payments made to the nursing home. MassHealth also had a Blue Cross Blue Shield bill and a nursing facility bill for \$21,000.00 for October and November 2016. The MassHealth representative testified that to consider the assets spent down, she would need to see updated bank statements showing the lower balance after bills were paid. Further, if Appellant paid privately to spend her assets down, MassHealth would require Appellant to submit a private pay statement from nursing facility.

Appellant's attorney appeared in person and testified as follows. Appellant's attorney explained that the illegible checks showed payment to the nursing home, one of which was issued to pay Appellant's September 2016 bill. Appellant and her sister had a joint bank account and her sister passed away on October 15, 2016. At the time of application, Appellant and her sister's assets were comingled, which created a confusing situation. Since Appellant now solely owns the account, the issue is spending down the remaining assets to qualify.

Appellant's attorney submitted a memorandum in support of Appellant's position. Appellant's attorney argued that on December 8, 2016, MassHealth notified Appellant that her total resources equaled \$13,095.11 and that she needed to spend \$11,095.11 of her assets to be eligible. Appellant's attorney claimed that MassHealth attributed this amount of excess assets as of the application date, August 18, 2016. Appellant's attorney stated that on August 29, 2016, Appellant paid \$10,440.00 to the nursing facility, which reduced her excess asset amount to \$655.11. Following this, Appellant received bills from the nursing home for room and board for October and November 2016, each in the amount of \$10,440.00. Additionally, Appellant paid a Blue Cross Blue Shield bill for \$2,470.00 on November 28, 2016. Appellant's attorney argued that Appellant had spent down her assets prior to MassHealth's December 8, 2016 notice of denial, and pursuant to 130 CMR 520.004(A)(1)(b) and 520.004(C), her eligibility should begin on October 1, 2016 (Exhibit 4). Appellant's attorney testified that Appellant's income continued to be deposited into the account, which is why it remained over the asset limit.

The MassHealth representative testified that because Appellant requested coverage to start on October 1, 2016, MassHealth requires that Appellant be asset eligible as of the requested date. Appellant has the responsibility of showing that she is asset eligible. The most recent statements submitted to MassHealth at the time showed that Appellant's assets exceeded the \$2,000.00 limit.

The hearing record was held open through May 5, 2017 for Appellant to provide MassHealth with the following information: legible copies of checks, updated PNA account statements, bank statements from November 5, 2016 to the present, and a private pay letter from the nursing facility stating how any privately paid funds were applied. MassHealth had through May 12, 2017 to

respond (Exhibit 5). On May 4, 2017, Appellant's attorney provided Appellant's current PNA account statement showing a balance of \$132.04 as of October 3, 2016 and \$102.05 currently. Additionally, Appellant's attorney provided statements from Appellant's Bank of America account showing the following balances:

November 5 to December 7, 2016	\$11,672.64
December 8, 2016 to January 6, 2017	\$17,586.98
January 7 to February 3, 2017	\$8,537.68
February 4 to March 9, 2017	\$10,583.49
March 10 to April 6, 2017	\$10,134.77

The statement for January 7 to February 3, 2017 shows that Appellant issued check number 701 for \$11,095.11 to the nursing facility. Appellant's attorney also provided a letter from the nursing facility stating that Appellant privately paid for room and board a total of \$90,662.00 for dates of service from January 12, 2016 through September 30, 2016. Additionally, Appellant provided a statement regarding her sister's pension, showing that she will receive \$1,779.51 as a survivor benefit beginning October 16, 2016 (Exhibit 6).

Finally, Appellant's attorney submitted a letter arguing that as of the requested start date, October 1, 2016, Appellant's total countable assets equaled \$2,889.18 because Appellant did not own 100% of the money in the joint account held with her sister until the date of her sister's death, October 15, 2016 (Exhibit 6). Appellant's attorney argued that it is unreasonable to attribute ownership of 100% of the funds in the account to each sister, without providing documentation showing how the account should be broken down. Appellant's attorney also does not show how he arrived at the \$2,889.18 figure.

The MassHealth representative responded that based on the information produced by Appellant, MassHealth cannot approve the case. MassHealth needed to see on the bank statements that the assets had been reduced, and cannot subtract unpaid bills from the balance (Exhibit 8). The MassHealth representative also argued that check number 701 was illegible. Appellant's attorney responded that the check in question went to the nursing facility. According to Appellant's attorney, the nursing facility applied half of the check to Appellant's sister's remaining balance. By email on May 11, 2017, Appellant's attorney provided an updated bill from the nursing facility showing an amount due of \$8,367.86 and a Blue Cross Blue Shield bill for \$2,494.53. Appellant's attorney argued that once Appellant applies these bills against her most recent balance (\$10,134.77), her assets will be reduced to \$1,972.09 (Exhibit 9). The MassHealth representative reiterated that she cannot approve Appellant until the bank statement reflects that the assets were reduced (Exhibit 10). Appellant's attorney did not provide a further response or a request to extend the record open period.

Findings of Fact

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

1. On August 18, 2016, MassHealth received Appellant's application for long term care benefits.
2. Appellant entered the nursing facility on January 12, 2016 and sought coverage beginning October 1, 2016.
3. On December 8, 2016, MassHealth denied the application because Appellant's assets exceeded MassHealth's limit (Exhibit 1).
4. Per the most recent information MassHealth received at the time of the denial, Appellant had \$102 in her PNA account and \$12,993.00 in a joint account held with her sister until her sister passed away on October 15, 2016.
5. Subsequent bank statements submitted showed that Appellant's assets in the months prior to the denial were \$8,537.68 or greater (Exhibit 6).

Analysis and Conclusions of Law

The total value of countable assets owned by or available to an individual applying for MassHealth Standard for long term care assistance may not exceed \$2,000.00. 130 CMR 520.003(A)(1). Per 130 CMR 520.004, the amount of an applicant's total countable assets affects the start date for MassHealth long term care benefits:

(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.

(B) Evaluating Medical Bills. The MassHealth agency does not pay that portion of the medical bills equal to the amount of excess assets. Bills used to establish eligibility

(1) cannot be incurred before the first day of the third month prior to the date of application as described at 130 CMR 516.002: *Date of Application*; and

(2) must not be the same bills or the same portions of the bills that are used to meet a deductible based on income.

(C) Date of Eligibility. The date of eligibility for otherwise eligible individuals described at 130 CMR 520.004(A)(1)(b) is the date that his or her incurred allowable medical expenses equaled or exceeded the amount of his or her excess assets.

(1) If after eligibility has been established, an individual submits an allowable bill with a medical service date that precedes the date established under 130 CMR 520.004(C), the MassHealth agency readjusts the date of eligibility.

(2) In no event will the first day of eligibility be earlier than the first day of the third month before the date of the application, if permitted by the coverage type.

(D) Verification. The MassHealth agency requires the applicant to verify that he or she incurred the necessary amount of medical bills and that his or her excess assets were reduced to the allowable asset limit within required timeframes.

Here, MassHealth testified that as October 1, 2016, the requested start date, Appellant had \$12,993.00 in assets held in an account Appellant owned jointly with her sister, as well as a PNA account which held \$102.05. To date, MassHealth has not received verification that Appellant's total combined assets are less than the \$2,000.00 limit set forth in 130 CMR 520.003(A)(1). Nothing in the records submitted by Appellant show that Appellant's assets are below the limit. Appellant's attorney argued that once Appellant pays the \$8,367.86 bill to the nursing facility and the \$2,494.53 Blue Cross Blue Shield bill, she will be under the asset limit. Appellant's attorney argued in his hearing memorandum that Appellant was eligible as of the date she incurred medical bills equal to the amount of excess assets per 130 CMR 520.004(A)(1)(b). However, 130 CMR 520.004(A)(1)(b) not only requires Appellant to have incurred bills equal to the excess asset amount, but also to have reduced "the assets to the allowable asset limit within 30 days after the date of the notification of excess assets." In other words, in order for MassHealth to calculate an earlier start date pursuant to 130 CMR 520.004(C), Appellant would still have to reduce her assets below the limit. A "Haley calculation," codified in 130 CMR 520.004(C), is a tool MassHealth can use to provide a more favorable start date for an applicant who ultimately reduced her assets but was otherwise eligible at an earlier date. Here, nothing in the record established that Appellant has ever reduced her assets to below the allowable limit, and Appellant's attorney did not request an extension of the record open period in order to effectuate the spend down as proposed in his May 11, 2017 email.

In his post-hearing submission, Appellant's attorney argued that on October 1, 2016, Appellant did not own 100% of the funds in the Bank of America account, as she jointly owned the account with her sister. According to 130 CMR 520.005(C)(3), if an applicant claims partial ownership of the funds in the joint account, she must verify¹ the amount owned by each joint depositor. Appellant's attorney did not submit anything verifying what amount of the funds in the account was specifically owned by Appellant, apart from the bald statement that Appellant's assets as of October 1, 2016

¹ The acceptable forms of verifying partial ownership of a bank account are set forth in 130 CMR 520.005(D)(3).

were \$2,889.18. Even assuming Appellant only owned \$2,889.18, as her attorney asserted, this is still over MassHealth's asset limit. Finally, even if Appellant was to reduce the Bank of America account to \$1,972.09 as Appellant's attorney proposed in his May 11, 2017 email, Appellant's assets would still slightly exceed the asset limit when combined with Appellant's PNA account, which contains \$102.05. Appellant has not established that MassHealth erred in determining that her assets exceed MassHealth's eligibility requirements and 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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: