

# Office of Medicaid BOARD OF HEARINGS

## Appellant Name and Address:

<b>Appeal Decision:</b>	Approved in Part	<b>Appeal Number:</b>	1203132
<b>Decision Date:</b>	7/13/12	<b>Hearing Date:</b>	04/04/2012
<b>Hearing Officer:</b>	Zohra Aziz		

## Appellant Representatives:

**MassHealth Representative:**  
Michelle Mattos, MEC at Taunton



*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

<b>Appeal Decision:</b>	Approved in Part	<b>Issue:</b>	LTC Verifications and Financial Eligibility
<b>Decision Date:</b>	7/13/12	<b>Hearing Date:</b>	04/04/2012
<b>MassHealth Rep.:</b>	Michelle Mattos	<b>Appellant Reps.:</b>	
<b>Hearing Location:</b>	Taunton MassHealth Enrollment Center		

## 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 5, 2011 MassHealth denied the appellant's long term care (LTC) application for failure to timely verify information as requested. (see 130 CMR 516.001 and exhibit 1). The appellant filed this appeal in a timely manner on December 12, 2011. (see 130 CMR 610.015(B) and exhibit 2).

Through notices dated February 6, 2012 and February 8, 2012 MassHealth denied the appellant's LTC application because MassHealth determined that the appellant's countable assets exceed program limits for MassHealth eligibility. (see 130 CMR 520.007; exhibits 13 and 14). The appellant filed this appeal in a timely manner on February 13, 2012.<sup>1</sup> (see 130 CMR 610.015(B), exhibit 15). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

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<sup>1</sup> As issues are similar in nature, matters were consolidated. (see 130 CMR 610.073).

MassHealth denied the appellant's LTC application for failure to timely verify information as requested.

MassHealth denied the appellant's LTC application because MassHealth determined that the appellant's countable assets exceed program limits for MassHealth eligibility.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 516.001 and 520.007, in initially determining that the appellant failed to verify information as requested and thereafter in determining that the appellant's countable assets exceeded program limits for MassHealth eligibility.

## Summary of Evidence

A MassHealth representative testified that on October 4, 2011<sup>2</sup> MassHealth received a long term care (LTC) application on behalf of the appellant. (exhibit 7). By way of background on October 26, 2011 MassHealth requested verification of information to be submitted on or before November 24, 2011 which was not complied with timely and through a notice dated December 5, 2011 MassHealth denied the appellant's LTC application for failure to timely verify information as requested. (exhibits 1 and 8). On December 21, 2012 MassHealth received some verifications and the appellant's application was re-stamped to reflect this date, which prompted another request for verification that was complied with timely and are not longer an issue. (exhibit 9). On February 1, 2012 MassHealth sent to the appellant an approval notice for LTC benefits effective December 1, 2011 with a patient paid amount (PPA) of \$5,216.24. (exhibit 4). However this notice was sent in error and MassHealth rescinds this action.<sup>3</sup> Through notices dated February 6, 2012 and February 8, 2012 MassHealth denied the appellant's LTC application because MassHealth determined that the appellant's countable assets exceed program limits for MassHealth eligibility. (exhibits 13 and 14). The appellant 84 years old and entered the nursing facility on August 16, 2011. (exhibit 7). The nursing facility is seeking LTC coverage effective December 2, 2011.

The MassHealth representative testified that at issue is an annuity that was purchased on March 5, 2009 in the amount of \$312,976.84. It is a 10 year annuity that calls for 11 equal annual payments in the amount of \$31,933.68 with the first payment on March 5, 2009 and the last payment on March 5, 2019. (exhibit 10). The terms of the annuity satisfy section (1) of MassHealth regulation 130 CMR 520.007(J) but does not satisfy section (2) of the regulation because the appellant's spouse is named as the remainder beneficiary in the first position. For the annuity to satisfy the criteria of the MassHealth regulation, it must name the Commonwealth of Massachusetts as the remainder beneficiary in the first position, not the appellant's spouse. (see 130 CMR 520.007(J)). Hence, the annuity is a countable asset. The MassHealth representative testified that if the

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<sup>2</sup> The MassHealth representative indicated that the application was processed on October 21, 2011.

<sup>3</sup> Although the appellant timely appealed this notice, MassHealth has since rescinded its action and the approval notice dated February 1, 2012 no longer applies and was not addressed at hearing.

annuity were not at issue, the appellant's countable assets would be within program limits for MassHealth eligibility.

The appellant was represented by Attorney Hogan along with a Geriatrics case manager who indicated the annuity was updated on January 11, 2012 to reflect the Commonwealth of Massachusetts as the remainder beneficiary in the first position. (exhibit 11). This was done as a temporary measure to expedite the application process pending the outcome of this appeal. It is the appellant's position that pursuant to 130 CMR 520.007(J)(2), the appellant's spouse can be named in the first position and the appellant is seeking a ruling on this from the hearing officer. The appellant is seeking to change the annuity back to naming the appellant's spouse as the remainder beneficiary in the first position.

On July 3, 2012 the MassHealth representative notified the Board of Hearings (the Board) that she made an error at hearing. The annuity at issue as initially presented naming the appellant's spouse as the remainder beneficiary in the first position does satisfy the MassHealth regulations and is acceptable to MassHealth. (exhibit 17). MassHealth has since corrected it error and notified the appellant's representative of the approval effective December 2, 2011, the date sought by the nursing facility. (see exhibits 16 and 17 ).<sup>4</sup> The MassHealth representative indicated that she was informed that the issuing company of the annuity will not allow for the appellant to change the annuity back to naming the appellant's spouse in the first position without a ruling from the hearing officer. (Id.).

## Findings of Fact

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

1. On October 4, 2011 MassHealth received a LTC application on behalf of the appellant. (exhibit 7).
2. The appellant 84 years old and entered the nursing facility on August 16, 2011. (exhibit 7).
3. The nursing facility is seeking coverage effective December 2, 2011.
4. The nursing facility is seeking LTC coverage effective December 2, 2011.
5. On October 26, 2011 MassHealth requested verification of information to be submitted on or before November 24, 2011 which was not complied with timely. (exhibit 8).
6. Through a notice dated December 5, 2011 MassHealth denied the appellant's LTC application for failure to timely verify information as requested. (exhibit 1).

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<sup>4</sup> The hearing record was re-opened to allow for this response.

7. On December 21, 2012 MassHealth received some verifications and the appellant's application was re-stamped to reflect this date which prompted another request for verification that was complied with timely and are not longer an issue. (exhibit 9).
8. On February 1, 2012 MassHealth, in error, sent to the appellant an approval notice for LTC benefits effective December 1, 2011 with a patient paid amount (PPA) of \$5,216.24. (exhibit 4).
9. This notice was rescinded by MassHealth at hearing.
10. Through notices dated February 6, 2012 and February 8, 2012 MassHealth denied the appellant's LTC application because MassHealth determined that the appellant's countable assets exceed program limits for MassHealth eligibility. (exhibits 13 and 14).
11. At hearing. MassHealth asserted that at issue is an annuity that was purchased on March 5, 2009 in the amount of \$312,976.84. (exhibit 10).
12. This annuity named the appellant's spouse as the remainder beneficiary in the first position. (exhibit 10).
13. MassHealth asserted that in order of the annuity to be acceptable to MassHealth, it must name the Commonwealth of Massachusetts as the remainder beneficiary in the first position, not the appellant's spouse.
14. The annuity was updated by the appellant on January 11, 2012 to reflect the Commonwealth of Massachusetts as the remainder beneficiary in the first position. (exhibit 11).
15. On July 3, 2012 the MassHealth notified the Board of Hearings (the Board) that the annuity is no longer at issue and naming the appellant's spouse as the remainder beneficiary in the first position does satisfy the MassHealth regulations; thus is acceptable to MassHealth. (exhibit 17).
16. MassHealth has since corrected it error and notified the appellant's representative of the of the approval effective December 2, 2011, the date sought by the nursing facility. (see exhibits 16 and 17).
17. Through a notice dated April 11, 2012 MassHealth approved the appellant's LTC application effective December 2, 2011. (exhibit 16).

## **Analysis and Conclusions of Law**

### 130 CMR 516.001: Overview

(A) Eligibility Process. The eligibility process consists of the activities conducted for the purpose of determining, re-determining, and maintaining eligibility.

(B) Filing an Application. To apply for MassHealth, a person or his or her eligibility representative must file a Senior Medical Benefit Request (SMBR) at a MassHealth Enrollment Center or MassHealth outreach site.

(C) Corroborative Information. The MassHealth agency requests all corroborative information necessary to determine eligibility.

(1) The MassHealth agency sends the applicant written notification requesting the corroborative information generally within five days of the receipt of the SMBR.

(2) The notice advises the applicant that the requested information must be received within 30 days of the date of the request, and of the consequences of failure to provide the information.

(D) Receipt of Corroborative Information. If the requested information, with the exception of verification of citizenship, identity, and immigration status, is received within 30 days of the date of the request, the SMBR is considered complete. The completed SMBR activates the MassHealth eligibility process for determining the coverage type providing the most comprehensive medical benefits for which the applicant is eligible. If such information is not received within 30 days of the date of the request, MassHealth benefits may be denied.

(1) Except as provided in 130 CMR 515.003(C), if the requested information is received within 30 days of the date of the denial, the date of receipt of one or more of the verifications is considered the date of reapplication.

(2) The date of reapplication replaces the date of the denied SMBR. The applicant's earliest date of eligibility for MassHealth is based on the date of reapplication.

(3) If a reapplication is subsequently denied and not appealed, the applicant must submit a new SMBR to pursue eligibility for MassHealth. The earliest date of eligibility for MassHealth is based on the date of the new SMBR.

(E) Missing or Inconsistent Information on the SMBR.

(1) If an SMBR is received at a MassHealth Enrollment Center or MassHealth outreach site and the applicant did not answer all required questions on the SMBR, the MassHealth agency is unable to determine the applicant's eligibility for MassHealth.

(2) The MassHealth agency requests responses to all of the unanswered questions necessary to determine eligibility. The MassHealth agency must receive such information within 14 days of the date of the request for the information.

(3) If responses to all unanswered questions necessary to determine eligibility are received within 14 days of the date of the notice, referenced in 130 CMR 516.001(E)(2), the SMBR activates the MassHealth agency's eligibility process for determining:

(a) the coverage type providing the most comprehensive medical benefits for which the applicant is eligible, based on the date the SMBR was received by the MassHealth agency; or

- (b) the need to request any corroborative information necessary to determine eligibility, as provided in 130 CMR 516.001(C) and (D).
- (4) If responses to all unanswered questions necessary for determining eligibility are not received within the 14-day period referenced in 130 CMR 516.001(E)(2), the MassHealth agency notifies the applicant that it is unable to determine eligibility for MassHealth and returns the incomplete SMBR to the applicant with the notice. The date that the incomplete SMBR was received will not be used in any subsequent eligibility determinations.
- (5) Inconsistent answers are treated as unanswered.

The date of application is the date that a completed SMBR is received at a MassHealth Enrollment Center or MassHealth outreach site. An SMBR is considered complete as provided in 130 CMR 516.001(D). (see 130 CMR 516.002(A)).

The begin date of MassHealth Standard, Essential, or Limited coverage may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided. If more than one SMBR has been submitted and not denied, the begin date will be based on the earliest SMBR that is approved. (see 130 CMR 516.005).

Pursuant to 130 CMR 610.071, the hearing officer shall not exclude evidence at the hearing for the reason that it had not been previously submitted to MassHealth, provided that the hearing officer may permit the MassHealth representative reasonable time to respond to newly submitted evidence. The effective date of any adjustments to the appellant's eligibility status shall be the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted. (130 CMR 610.071(A)(2)). The requested information was submitted prior to the close of the hearing record and MassHealth has had an opportunity to review the information submitted.

#### 130 CMR 520.007(J) Annuities, Promissory Notes, Loans, Mortgages, and Similar Transactions.

(1) Treatment of Annuities Established Before February 8, 2006. Payments from an annuity are countable income in accordance with 130 CMR 520.009. If the annuity can be converted to a lump sum, the lump sum, less any penalties or costs of converting to a lump sum, is a countable asset. Purchase of an annuity is a disqualifying transfer of assets for nursing facility residents as defined at 130 CMR 515.001 in the following situations:

- (a) when the beneficiary is other than the applicant, member, or spouse;
- (b) when the beneficiary is the applicant, member, or spouse and when the total present value of projected payments from the annuity is less than the value of the transferred asset (purchase price). In this case, the MassHealth agency determines the amount of the disqualifying transfer based on the actuarial value of the annuity compared to the beneficiary's life expectancy using the life-expectancy tables as determined by the MassHealth agency, giving due weight to the life-

- expectancy tables of institutions in the business of providing annuities;
  - (c) when the terms of the annuity postpone payment beyond 60 days, the MassHealth agency will treat the annuity as a disqualifying transfer of assets until the payment start date; or
  - (d) when the terms of the annuity provide for unequal payments, the MassHealth agency may treat the annuity as a disqualifying transfer of assets. Commercial annuity payments that vary solely as a result of a variable rate of interest are not considered unequal payments under 130 CMR 520.007(J)(1)(d).
- (2) Treatment of Annuities Established on or after February 8, 2006. In addition to the requirements in 130 CMR 520.007(J)(1), the following conditions must be met.
- (a) The purchase of an annuity will be considered a disqualifying transfer of assets unless
    - (i) the Commonwealth of Massachusetts is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual;
    - (ii) the Commonwealth of Massachusetts is named as such a remainder beneficiary in the second position after the community spouse, or minor or disabled children; or
    - (iii) the Commonwealth of Massachusetts is named as such a remainder beneficiary in the first position if the community spouse or the representative of any minor or disabled children in 130 CMR 520.007(J)(2)(a)(ii) disposes of any such remainder for less than fair-market value.
  - (b) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(1) and (J)(2)(a) and is irrevocable and non-assignable, or unless the annuity satisfies 130 CMR 520.007(J)(2)(c).
  - (c) The purchase of an annuity is considered a disqualifying transfer of assets unless the annuity satisfies 130 CMR 520.007(J)(2)(b), or unless the annuity names the Commonwealth of Massachusetts as a beneficiary as required under 130 CMR 520.007(J)(2)(a) and the annuity is
    - (i) described in Section 408(b) or (q) of the Internal Revenue Code of 1986;
    - (ii) purchased with the proceeds from an account or trust described in Section 408(a), (c), or (p) of the Internal Revenue Code of 1986;
    - (iii) purchased with the proceeds from a simplified employee pension described in Section 408(k) of the Internal Revenue Code of 1986; or
    - (iv) purchased with the proceeds from a Roth IRA described in Section 408A of the Internal Revenue Code of 1986.

(see 130 CMR 520.007(J))

Initially MassHealth determined that the annuity at issue did not satisfy the criteria of the MassHealth regulations because it named the appellant's spouse as the remainder beneficiary in the first position. MassHealth determined that the annuity was a countable asset and therefore,



the appellant's assets were in excess of the allowable limits for MassHealth eligibility. (see exhibits 13 and 14). Thereafter, MassHealth reconsidered the annuity and determined that the annuity as initially presented, naming the appellant's spouse as the remainder beneficiary in the first position, does satisfy the MassHealth regulations and is acceptable to MassHealth. Through a notice dated April 11, 2012 MassHealth approved the appellant's LTC application effective December 2, 2011 as requested by the nursing facility. (exhibit 16).

In accordance with the 130 CMR 610.071(A)(2), this appeal is therefore APPROVED IN PART and to preserve the October 4, 2011 date of application.

## **Order for MassHealth**

Rescind denial notices dated December 5, 2011, February 6, 2012 and February 8, 2012. Accept the verifications as timely submitted and implement the approval notice dated April 11, 2012.

## **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.

## **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.

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Zohra Aziz  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Sherry Anderson