

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1601683
Decision Date:	6/23	Hearing Date:	01/19/2017
Hearing Officer:	Rebecca Brochstein	Record Open Date:	06/07/2017

Appearance for Appellant:

Appearances for MassHealth:
Lucy Gucciardi, Chelsea MEC



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

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Long-term care eligibility
Decision Date:	6/23	Hearing Date:	01/19/2017
MassHealth's Rep.:	Lucy Gucciardi	Appellant's Rep.:	
Hearing Location:	Chelsea 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 10, 2015, MassHealth denied the appellant's application for long-term care services for failure to provide requested verifications (Exhibit 1). The appellant filed this appeal in a timely manner on January 11, 2016 (130 CMR 610.015(B); Exhibit 2). The appeal was initially dismissed for lack of authority (Exhibit 3). Thereafter, the Board of Hearings held the appeal for a substantial period of time to allow for the appointment of a conservator for the appellant; the case was eventually set for hearing on January 19, 2017 (Exhibits 3-7). After hearing, the record was held open, and record-open period extended several times, for the appellant's conservator to obtain and submit additional verifications (Exhibits 9-10). Denial of benefits is a valid basis for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's long-term care application for failure to provide requested verifications.

Issue

The appeal issue is whether the appellant has provided sufficient information for MassHealth to process the long-term care application.

Summary of Evidence

The MassHealth representative testified that the appellant was admitted to a long-term care facility on August 14, 2014. A MassHealth long-term care application was submitted on her behalf on October 20, 2015, and the earliest possible date of coverage would be July 1, 2015. On December 10, 2015, MassHealth denied the application due to missing verifications. As of the hearing date, there were still some missing documents. See Exhibit 8.

The appellant was represented at hearing by her conservator.¹ She testified that she has been trying to obtain the missing documents but that the appellant's husband has not been cooperative in producing them. She stated that the husband had retained an attorney and that she planned to speak to him the following week. She noted that she had only recently been appointed as conservator and that she had not had much time to secure the necessary information.

The record was held open after hearing for the appellant's conservator to obtain and submit the missing verifications. She provided some of the missing information but was unable to obtain certain retirement account statements without the cooperation of the appellant's husband. She reported that the husband was refusing to turn over the retirement statements, and that she had filed a court action against him to compel their production. The record open period was extended several times to allow the court action to play out. The conservator eventually filed a contempt complaint against the husband, but he failed to appear in court and did not produce the documentation. On May 22, 2017, a probate court judge entered a contempt judgment against the husband. He again failed to appear in court at a review hearing on June 7, 2017. See Exhibit 10.

Findings of Fact

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

1. The appellant, who is 64 years old, was admitted to a long-term care facility on August 14, 2014.
2. The appellant is status post stroke with right hemiparesis and cognitive impairment, and has a longstanding psychiatric disorder.
3. On October 20, 2015, a long-term care application was submitted to MassHealth on the appellant's behalf. The earliest possible date of coverage would be July 1, 2015.

¹ The Motion to Appoint Special Conservator, filed by counsel for the nursing home administrator, indicates that the appellant "requires skilled nursing care for her diagnosis of a stroke with right hemiparesis, peression/psychosis [sic], cognitive impairment, and longstanding psychiatric disorder. [She] does not have the capacity or ability to make financial decisions, to obtain financial verifications, and to perform the steps necessary to secure MassHealth benefits." Her condition was described in the medical certificate that was filed with the conservatorship petition. See Exhibit 4.

4. On December 10, 2015, MassHealth denied the application due to missing verifications.
5. The Board of Hearings held the appeal pending the appointment of a conservator for the appellant.
6. On January 19, 2017, a hearing was held on the verification denial. As of that date the conservator had not yet been able to secure all of the information that MassHealth was requesting.
7. The hearing record was held open until February 28, 2017, for the conservator to obtain and submit the missing documentation. The conservator was able to produce some of the missing information but was unable to obtain certain retirement account statements without the husband's cooperation.
8. The conservator requested several extensions of the record-open period because the appellant's husband was refusing to turn over the retirement statements.
9. In March 2017, the appellant's conservator filed a court action to compel the husband to produce the retirement statements. He did not comply with the court order.
10. On April 5, 2017, the appellant's conservator filed a contempt action against the husband for failing to produce the retirement statements.
11. On May 22, 2017, after the husband had failed to produce the documents or to appear in court, a probate court judge entered a contempt judgment against him.
12. On June 7, 2017, the husband failed to appear at a review hearing.

Analysis and Conclusions of Law

Under 130 CMR 515.008(A), an applicant or member must cooperate with MassHealth in providing information necessary to establish and maintain eligibility. After receiving an application, MassHealth requests all corroborative information necessary to determine eligibility. 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. If the requested information is received within 30 days of the date of the request, the application is considered complete. If it is not received within that time frame, MassHealth benefits may be denied. 130 CMR 516.001(C) and (D).

In this case, there is no dispute the appellant has not provided all of the verifying information that MassHealth has requested. During the record-open period which followed the hearing, the appellant's representative provided the majority of the missing information. However, the remaining information – consisting of certain statements from the appellant's husband's retirement account – can only be accessed with his cooperation. To date, he has refused to

cooperate.

Under 130 CMR 517.011, an institutionalized spouse whose community spouse refuses to cooperate or whose whereabouts is unknown will not be ineligible due to (A) assets determined to be available for the cost of care in accordance with 130 CMR 520.016(B) . . . or (B) his or her inability to provide information concerning the assets of the community spouse when one of the following conditions is met: (1) the institutionalized spouse assigns to the MassHealth agency any rights to support from the community spouse; (2) the institutionalized spouse lacks the ability to assign rights to spousal support due to physical or mental impairment as verified by the written statement of a competent medical authority; or (3) the MassHealth agency determines that the denial of eligibility, due to the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.

The appellant in this case is in the nursing facility due to a stroke, hemiparesis, cognitive impairment, and longstanding psychiatric impairment. Based on information in the record, it is clear that she lacks the mental ability to assign rights her to spousal support to MassHealth. Further, to deny her MassHealth long-term care eligibility due to her husband's refusal to turn over information about his assets would result in undue hardship. She has been in the nursing facility for nearly three years and does not have another payment source for her care. The appellant's conservator has gone to great lengths to attempt to compel the husband to cooperate, but to no avail. Under these circumstances, I conclude that the appellant has met the requirements of 130 CMR 517.011.

For the foregoing reasons, this appeal is approved.

Order for MassHealth

Rescind the notice dated December 10, 2015. Deem the appellant to have provided sufficient information for MassHealth to determine her eligibility. Process the application using the application date of October 20, 2015.

Implementation of this Decision

If this decision is not implemented within 30 days after the date hereon, you should contact your MassHealth Enrollment Center. If you experience further 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Chelsea MEC