

**Division of Medical Assistance
BOARD OF HEARINGS**

Appellant Name and Address:

Social Security No.:

Appeal Decision: Approved

Appeal Number: 0307174

Decision Date: 6/30/03

Hearing Date: June 23, 2003
Taunton

Hearing Officer: Suzanne S. Davis

Appellant Representative:

Division Representative:

Justine Ferreira



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Division of Medical Assistance
Board of Hearings
Two Boylston Street
Boston, MA 02116*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	130 CMR 520.003; 520.006
Decision Date:	6/30/03	Hearing Date:	June 23, 2003 Taunton
Division Rep.:	Justine Ferreira	Appellant Rep.:	

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 April 17, 2003, the Division notified the appellant that her application for long-term-care benefits was denied for failure to provide the requested verifications (130 CMR 520.003 and Exhibit A). Appellant's daughter acting as her attorney-in-fact pursuant to a DPOA dated 10/12/95 filed this appeal in a timely manner on May 6, 2003 (130 CMR 610.015 and Exhibit A). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by the Division

The Division denied appellant's long-term-care application for failure to provide verifications.

Issue

Whether the Division was correct, pursuant to 130 CMR 516.001, in determining that appellant's application should be denied because she has failed to provide verifications or whether the refusal of her spouse to co-operate will not cause ineligibility.

Summary of Evidence

Documents were submitted into evidence (Exhibits A-K). Appellant's attorney-in-fact appeared in person and her other daughter appeared telephonically. The Division representative testified that appellant submitted an application for long-term-care benefits on 1/29/03. Appellant was admitted to the nursing home on 7/11/02 (Exhibit B). Appellant is married and her husband lives in Rhode Island. She sent a request for verifications on 2/3/03. Appellant submitted information about assets held in her name but no information about assets in her husband's name. She also submitted joint U.S. Tax Returns for 1999, 2000 and 2001 (Exhibit E). The application was denied on 3/3/03 for lack of verifications. The SC-1 and screening were submitted and the reapplication date is 3/11/03. She sent another request for verifications this time specifically listing assets that she believes are held in the husband's name (Exhibit D). Nothing further was submitted and the reapplication was denied on 4/17/03 (Exhibit A).

Appellant's daughter who is also her attorney-in-fact stated that appellant and her husband were happily married until she entered the nursing home. This is a second marriage for both and appellant's husband's children have been applying pressure on him to "save his estate" for them. There was no prenuptial agreement. Appellant is now seriously demented and her husband has some similar issues (Exhibits H-I). The daughter's attorney as well as appellant's husband's attorney tried to convince the husband to be forthcoming but he refuses. The most that his attorney could accomplish was to have him sign an affidavit documenting his refusal (Exhibit J).

The Division representative stated that regulation 130 CMR 517.010 might apply (Exhibit G). She stated that appellant has verified spend-down of assets in her name below \$2000.00 (Exhibit F).

Appellant's daughter submitted an assignment of any rights to support from her husband signed by appellant (Exhibit K). This hearing officer noted that there is a doctor's letter indicating that appellant is incompetent to make decisions. The daughter then endorsed her mother's assignment as her attorney-in-fact. She stated that the nursing home is paid through 4/30/03.

Findings of Fact

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

1. Appellant submitted an application for long-term-care benefits on 1/29/03.
2. Appellant was admitted to the nursing home on 7/11/02 (Exhibit B). She has paid through 4/30/03.

3. Appellant is incompetent due to her dementia (Exhibit I).
4. Appellant is married and her husband now lives in Rhode Island.
5. This was an apparently happy second marriage. Appellant and her husband have children from former marriages but not from their marriage.
6. The couple resided together in Massachusetts.
7. Appellant through her attorney-in-fact was able to provide detailed information about assets in appellant's name and also provided copies of her joint tax returns for 1999, 2000 and 2001.
8. The joint return indicates that there are substantial assets that generate interest and dividend income in the amount of approximately \$45,000.00/year (Exhibit E, Schedule B). These investments remained fairly unchanged between 1999 and 2001.
9. Appellant's husband has refused to participate in the application process. He has refused to provide any information about assets held in his name (Exhibit J).
10. Assets held in appellant's name have now been spent-down below the \$2000.00 limit.
11. Appellant signed an assignment of rights for support dated 5/4/03. That document was witnessed and further endorsed by her attorney-in-fact (Exhibit K).

Analysis and Conclusions of Law

The total value of countable assets owned by or available to individuals applying for MassHealth long-term-care may not exceed \$2000.00 for a single individual [130 CMR 520.003(A)(1)]. When the institutionalized spouse is married her community spouse can keep one-half of their combined total countable assets not to exceed \$90,660.00 [130 CMR 520.016(B)(2)(a)(i)]. In this case there is reason to believe from the tax returns that appellant's husband has countable assets in his name that exceed the Division's limit. Thus, the Division representative was correct to seek all information related to his assets and to deny the case when the information was not forthcoming.

Appellant and her family, however, are on the horns of a dilemma. Appellant has spent-down all of her own assets and is unable to access the funds held in her husband's name. Appellant's husband has moved out of state and refuses to cooperate with the application process and also refuses to pay for her care (Exhibit J). Appellant's daughter indicated that appellant's husband is under pressure from his children and may be mentally and/or emotionally fragile. Regardless, he is not cooperating.

An institutional 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 Division 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 Division determines that the denial of eligibility, due to lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.

(130 CMR 517.010)

Appellant has met this test. Her physician has stated that she is incompetent and I have so found. Additionally, she signed an assignment of rights that may not have been enforceable due to her incompetency except that her daughter with the authority of appellant's Durable Power of Attorney has endorsed the assignment. The testimony about the second marriage and the pressures of children from a first marriage was entirely believable even without the terse affidavit from appellant's spouse. Thus, I conclude that appellant should not be found ineligible for failing to provide verifications or for failing to access her husband's substantial assets. This appeal is APPROVED.

Order for the Division

- Confer with TPL to see if there is another assignment form that must be completed.
- Open appellant's LTC case effective on or after 4/30/03 depending on the SC-1.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact the Taunton MassHealth Enrollment Center (MEC). If the MEC has problems implementing this decision, you should report this in writing to the Director of the Board of Hearings, Division of Medical Assistance, at the address on the first page of this decision.

Suzanne S. Davis
Hearing Officer
Board of Hearings
Division of Medical Assistance