

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved in Part	Appeal Number:	1705424
Decision Date:	9/6/17	Hearing Date:	06/05/2017
Hearing Officer:	Susan Burgess-Cox	Record Open to:	07/24/2017

Appellant Representative:

MassHealth Representative:
Yous Khieu



*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:	Approved in Part	Issue:	Eligibility
Decision Date:	9/6/17	Hearing Date:	06/05/2017
MassHealth Rep.:	Yous Khieu	Appellant Rep.:	
Hearing Location:	Tewksbury 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 28, 2016, MassHealth denied the appellant's application for MassHealth benefits for failure to provide information necessary to complete the application. (130 CMR 516.001; Exhibit 1). The appellant's representative filed an appeal in a timely manner. (130 CMR 610.015(B); Exhibit 2; Exhibit 3). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits for failure to provide information necessary to complete the application.

Issue

Whether MassHealth was correct in denying the appellant's application for failure to provide information necessary to complete the application.

Summary of Evidence

The MassHealth representative, from the Chelsea MassHealth Enrollment Center, appeared by telephone and presented documents that were incorporated into the hearing record as Exhibit 5. The MassHealth representative testified that an application for long-term care was received on November 4, 2016. The appellant was admitted into a long-term care facility on October 12, 2016. MassHealth sent the appellant an information request on November 18, 2016 seeking information on or before December 18, 2016. (Testimony; Exhibit 5). MassHealth issued a denial on December 28, 2016 for failure to provide information necessary to complete the application. (Testimony; Exhibit 5). The appellant provided some information on December 29, 2016 and MassHealth sent a second information request on January 3, 2017 with all information due by February 2, 2017. MassHealth issued a final denial for failure to provide information necessary to complete the application on February 13, 2017. (Testimony; Exhibit 5).

On November 18, 2017, MassHealth requested the following information from the appellant:

- A current pension stub showing gross pension amount;
- Navy Federal Credit Union Account # 7031852141 statements from November 2015 to November 2016;
- Navy Federal Credit Union Account # 3041708136 statements from November 2015 to November 2016;
- Eastern Bank Account # 00192458717 Statements from November 2015 to November 2016;
- VYStar Credit Union statements from November 2015 to November 2016;
- Agreement to Sell property on Water Street in Saugus, MA;
- Deed and current tax value of property in Saugus, MA;
- Agreement to Sell property in Kingsland, Georgia;
- Deed and tax assessment of property in Kingsland, Georgia;
- Statement regarding a personal needs allowance account;
- GE Stock statements showing transfer and verification of a cure;
- Verification of vehicle transfers from 2014. (Testimony; Exhibit 5).

Counsel for the appellant appeared in person with the appellant's son who was appointed as the appellant's permanent guardian on August 2, 2016. (Exhibit 3). Counsel for the appellant presented documents that were incorporated into the hearing record as Exhibit 6.

At the hearing counsel for the appellant presented the following documents that were provided to MassHealth through at least two separate correspondences prior to the hearing:

- SC-1 Form;
- Nursing Facility Screening Form;
- Account Statement from the Nursing Facility;
- Social Security Benefit Statements;
- 2016 1099-R forms showing gross distribution of GE Pension Trust funds;
- Statements from Navy Federal Credit Union showing net deposits for GE Pension Trust funds;
- Navy Federal Credit Union Statements for Account #7031853141 & 3041708136 from March 2017 through May 2017;
- Eastern Bank Statements for Account #00405851288 from December 2016 and April 2017 showing a balance of \$100.68 for each statement;
- Documents from legal proceedings in Camden County, Georgia involving the appointment of a guardian for the appellant. (Testimony; Exhibit 6).

The MassHealth representative testified that he did not receive any of these documents. At the hearing, the MassHealth representative repeatedly referred to a verification request sent in January 2017, after the appellant filed a request for hearing. Most of the documents in that second request were statements after the date of the notice on appeal including statements from Eastern Bank from December 2016 through April 2017.

Counsel for the appellant noted that the appellant submitted statements from Eastern Bank back to 2015 for the savings account as well as verification that the checking account has closed. The appellant's son testified that the appellant currently has only one account with Eastern Bank. The MassHealth representative responded that the appellant satisfied the request for accounts associated with Eastern Bank.

Regarding statements from Navy Federal Credit Union accounts, the MassHealth representative testified that MassHealth did not receive statements from November 2015 to November 2016. The appellant's son testified that the two accounts with Navy Federal Credit Union are frozen so the bank will not accept a request for past statements. The appellant's son was able to obtain statements from March 2017 forward. These statements show that the appellant receives two deposits from General Electric for a pension each month. (Exhibit 6; Exhibit 8). Counsel for the appellant provided documents from a 2014 petition for guardianship filed by the appellant's daughter in Camden County, Georgia. (Exhibit 6). The court documents contain a statement of assets, income and other sources of funds, liabilities and expenses of the appellant. (Exhibit 6). This statement lists the accounts from Navy Federal Credit Union as ones held jointly by the appellant and her daughter. (Exhibit 6). As discussed below, the appellant

had extensive issues with accounts associated with her daughter.

Regarding VyStar Credit Union statements from November 2015 to November 2016, the appellant's son testified that this account closed in 2014 due to inactivity. At the hearing, the appellant's son testified that he had requested documents but had not received a response.

Regarding the property in Saugus, Massachusetts, the MassHealth representative testified that a title search of the appellant revealed an ownership interest of the appellant in a property on Water Street in Saugus, Massachusetts from 1987. The appellant's son responded that he is the current owner of the appellant's former home on Water Street in Saugus, Massachusetts and the property has changed ownership interests at least three times since the appellant owned the home with her husband who passed away at least 15 years ago. A copy of a quitclaim deed from 2006 conveying an interest in the property to the appellant's son was incorporated into the hearing record. (Exhibit 6). The appellant is not listed as grantor or grantee on the 2006 deed presented at the hearing. An affidavit from the appellant's son and information provided on the application indicate that the appellant has interest in a parcel of land on Water Street in Saugus, Massachusetts valued at \$24,900. (Exhibit 4; Exhibit 6). The records presented by the appellant do not provide verification of this interest.

Regarding the property in Kingsland, Georgia, counsel for the appellant presented documents at the hearing regarding a petition for appointment of a guardian from the appellant's daughter with a list of assets indicating that the appellant jointly holds property in Kingsland, Georgia with her daughter. (Exhibit 6).

Regarding the GE Stock Statements, the appellant's son testified that the stock was sold by the appellant's daughter who took advantage of the appellant. The appellant's son testified that his sister acted under authority she assumed through an invalid Power of Attorney. The appellant's son testified that the appellant at one time had a power of attorney naming her daughter as her attorney-in-fact should the appellant be found incompetent. The appellant's son testified that the appellant's daughter acted under this authority transferring funds from accounts that the appellant held on her own to joint accounts with her daughter. The appellant's son testified that the actions of the appellant's daughter were taken before the appellant was deemed incompetent.

Actions taken by the daughter under this authority included, taking funds from accounts with Navy Federal Credit Union, utilizing those funds to open an account with VyStar Credit Union, and transferring property in Kingsland, Georgia to herself and the appellant as joint owners.

As stated above, the appellant's son provided documents regarding a proposed guardianship filed by the appellant's daughter. The documents contain affidavits from the appellant's son and another daughter in opposition to the appointment. Both state that the daughter seeking guardianship took advantage of the appellant, sold assets and left accounts with zero balances. The son present at the hearing was appointed as the appellant's permanent guardian on August 2, 2016. (Exhibit 3). The appellant's son testified that upon learning of this new appointment, his sister broke into the appellant's house, took her car and motorcycles and transferred title to herself.

Counsel for the appellant argued that MassHealth can consider assets for which the appellant cannot obtain verification as to their value as inaccessible as the appellant's son has provided testimony regarding the taking of the property by his sister and documentation of a guardianship petition that was objected to by both himself and another sister.

The record was held open to give the appellant the opportunity to present additional evidence as well as providing MassHealth the opportunity to review records presented before and during the hearing. During the record open period counsel for the appellant provided:

- A statement from VyStar regarding the account closure;
- A quitclaim deed from 2006 for property at 179 Water Street, Saugus, MA that does not list the appellant as a grantor or grantee;
- A warranty deed for property in Kingsland, Georgia that the appellant transferred to herself and her daughter as joint tenants with the right of survivorship in October 2013;
- Tax bill for property in Kingsland, Georgia sent to the appellant and her daughter;
- A resident statement from the long-term care facility showing a \$0 balance;
- Statements from Eastern Bank from November 2015 to June 2017;
- A MassHealth SC-1 Form;
- A MassHealth Clinical Eligibility Determination;
- A 1099-DIV form from MetLife showing dividend distributions for 2016. (Exhibit 8).

The MassHealth representative responded to this submission stating that MassHealth still has not received all of the information necessary to complete the application. (Exhibit 9). The MassHealth representative listed the following items as outstanding:

- Navy Federal Credit Union Statements from November 2015 to March 2016;

- MetLife Stock Shares value;
- GE Pension stubs; and
- GE Stocks. (Exhibit 9).

At the hearing, the MassHealth representative requested a statement from Navy Federal Credit Union regarding the status of the accounts in question.

Findings of Fact

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

1. MassHealth received an application for long-term care benefits on November 4, 2016.
2. The appellant was admitted into a long-term care facility on October 12, 2016 and seeking MassHealth coverage as of December 1, 2016.
3. MassHealth sent the appellant an information request on November 18, 2016 seeking the following information on or before December 18, 2016:
 - A current pension stub showing gross pension amount;
 - Navy Federal Credit Union Account # 7031852141 statements from November 2015 to November 2016;
 - Navy Federal Credit Union Account # 3041708136 statements from November 2015 to November 2016;
 - Eastern Bank Account # 00192458717 Statements from November 2015 to November 2016;
 - VYStar Credit Union statements from November 2015 to November 2016;
 - Agreement to Sell property on Water Street in Saugus, MA;
 - Deed and current tax value of property in Saugus, MA;
 - Agreement to Sell property in Kingsland, Georgia;
 - Deed and tax assessment of property in Kingsland, Georgia;
 - Statement regarding a personal needs allowance account;
 - GE Stock statements showing transfer;
 - Verification of vehicle transfers from 2014;
4. MassHealth did not receive all of the information as of December 18, 2016.
5. On December 28, 2016, MassHealth issued a denial notice for failure to provide information necessary to complete the application.

6. The appellant provided some information on December 29, 2016.
7. MassHealth issued a second information request on January 3, 2017 with all information due by February 2, 2017.
8. A representative of the appellant's guardian filed a request for hearing on January 17, 2017.
9. MassHealth did not receive all of the information requested from the second request.
10. On February 13, 2017, MassHealth issued a final denial for failure to provide information necessary to complete the application.
11. A hearing was scheduled for June 5, 2017.
12. Prior to and during the appeal proceedings, the appellant sent the following documents to MassHealth:
 - SC-1 Form;
 - Nursing Facility Screening Form;
 - Account Statement from the Nursing Facility;
 - Social Security Benefit Statements;
 - 2016 1099-R forms showing gross distribution of GE Pension Trust funds;
 - Statements from Navy Federal Credit Union showing net deposits for GE Pension Trust funds;
 - Navy Federal Credit Union Statements for Account #7031853141 & 3041708136 from March 2017 through May 2017;
 - Eastern Bank Statements for Account #00405851288 from December 2016 and April 2017 showing a balance of \$100.68 for each statement;
 - Documents from legal proceedings in Camden County, Georgia involving the appointment of a guardian for the appellant;
 - A statement from VyStar regarding the account closure;
 - A quitclaim deed from 2006 for property at 179 Water Street, Saugus, MA that does not list the appellant as a grantor or grantee;
 - A warranty deed for property in Kingsland, Georgia that the appellant transferred to herself and her daughter as joint tenants with the right of survivorship in October 2013;
 - Tax bill for property in Kingsland, Georgia sent to the appellant

- and her daughter;
 - A resident statement from the long-term care facility showing a \$0 balance;
 - Statements from Eastern Bank from November 2015 to June 2017;
 - A 1099-DIV form from MetLife showing dividend distributions for 2016.
13. During the course of the appeal proceedings, MassHealth acknowledged receipt or no longer requested verification of the following items:
- Eastern Bank Account # 00192458717 Statements from November 2015 to November 2016;
 - VYStar Credit Union statements from November 2015 to November 2016;
 - Agreement to Sell property on Water Street in Saugus, MA;
 - Deed and current tax value for property on Water Street in Saugus, MA;
 - Agreement to Sell property in Kingsland, Georgia;
 - Deed and tax assessment for property in Kingsland, Georgia;
 - Statement regarding a personal needs allowance account;
 - Verification of vehicle transfers from 2014;
 - SC-1 Form; and
 - Nursing Facility Screening Form.
14. The MassHealth representative determined that the appellant still had not provided:
- A current pension stub showing gross pension amount;
 - Navy Federal Credit Union Account # 7031852141 statements from November 2015 to November 2016;
 - Navy Federal Credit Union Account # 3041708136 statements from November 2015 to November 2016;
 - GE Stock statements showing transfer in 2014;
 - Current MetLife stock shares value.
15. The accounts from Navy Federal Credit Union were at one time held jointly with the appellant's daughter.
16. A title search of property of the appellant revealed an ownership interest in a property on Water Street in Saugus, Massachusetts from 1987.
17. The appellant's son is the current owner of the appellant's former home

on Water Street in Saugus, Massachusetts.

18. The property of the appellant's home has changed ownership interests at least three times since the appellant owned the home with her husband who passed away at least 15 years ago.
19. A 2006 quitclaim deed for property on Water Street in Saugus, Massachusetts does not list the appellant as grantor or grantee.
20. The appellant may still have an interest in a parcel of land on Water Street in Saugus, Massachusetts valued at \$24,900.
21. The appellant did not provide verification of this interest.
22. The appellant's GE Stock was sold by the appellant's daughter.
23. The appellant at one time had a power of attorney naming her daughter as her attorney-in-fact should the appellant be found incompetent.
24. The appellant's daughter acted under this authority transferring funds from accounts that the appellant held on her own to joint accounts with her daughter.
25. Actions of the appellant's daughter were taken before the appellant was deemed incompetent.
26. The appellant's daughter transferred real property in Kingsland, Georgia held by the appellant alone to herself and the appellant as joint tenants.
27. The appellant's daughter sought to obtain guardianship of the appellant in January 2014.
28. The appellant's son and another daughter objected to the guardianship petition as the daughter seeking guardianship took advantage of the appellant, sold assets and left accounts with zero balances.
29. The son at the hearing was appointed as the appellant's permanent guardian on August 2, 2016.

Analysis and Conclusions of Law

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized person. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

Pursuant to 130 CMR 515.008, applicants or members must cooperate with MassHealth in providing information to establish and maintain eligibility, and must comply with all of the rules and regulations governing MassHealth, including recovery. MassHealth may request additional information and documentation, if necessary, to determine eligibility. (130 CMR 516.001).

To obtain the necessary information and documentation, MassHealth sends the applicant written notification requesting verifications to corroborate information necessary to determine eligibility, generally within five days of the receipt of the application. (130 CMR 516.001(C)). The notice must advise the applicant that the requested verifications must be received within 30 days of the date of the request, and of the consequences of failure to provide the information. (130 CMR 516.001(C)). If the requested information, with the exceptions of verification of immigration status, is not provided within 30 days of the date of the request, MassHealth benefits may be denied. (130 CMR 516.001(D)).

While the appellant initially received proper notice, MassHealth then asked for additional information after the appellant filed a request for hearing and again during the appeal process. The appellant was not provided with the opportunity to dispute the first notice before the agency issued a second notice. During the course of the appeal, the appellant provided most, if not all, of the information to satisfy the initial request.

A review of the records presented during the hearing demonstrated errors and omissions by both parties. MassHealth appeared to no longer require verification of certain items, such as a possible interest in a lot on Water Street in Saugus, Massachusetts, listed on the application at a value of \$24,900. However, they requested new information such as current bank statements and verification of an account with MetLife during the course of the appeal. On the other side, the appellant presented current bank statements from Navy Federal Credit Union showing the receipt of pensions in those accounts yet provided testimony related to the inability to obtain past statements as the accounts are frozen. No documentation or statements from the bank clearly demonstrate this

inaccessibility. Also, it is unclear why a tax return showing a gross balance for pensions received and bank statements showing net deposits do not satisfy a request for information regarding a pension. Most of the information stated by MassHealth as still outstanding was either new, satisfied or would not prevent an eligibility decision.

This appeal is approved in part to ensure the appellant receives proper notice of the items that remain outstanding as several are either new or not clearly defined in the initial request.

Order for MassHealth

Rescind the notice issued December 28, 2016 and send the appellant a notice requesting information honoring the application date of November 4, 2016. The notice shall provide the appellant 30 days of the date of the request to provide the information.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc: