

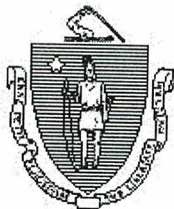
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1705944
Decision Date:	10/13/17	Hearing Date:	06/05/2017
Hearing Officer:	Samantha Kurkijy		

Appellant Representative:

MassHealth Representative:
John Keefe



*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	Issue:	Eligibility—Start Date
Decision Date:	10/13/17	Hearing Date:	06/05/2017
MassHealth Rep.:	John Keefe	Appellant Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center	Aid Pending:	No

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 January 30, 2017, MassHealth informed the appellant that she is eligible for MassHealth Standard benefits to cover her care in a nursing facility, with a benefit start date of September 19, 2016 and a monthly patient-paid amount (“PPA”) of \$2,149.48. (Exhibit 1.) The appellant filed this appeal on February 28, 2017, disputing the start date only. (130 CMR 610.015(B); Exhibit 2.) A determination regarding scope of assistance is a valid basis for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth notified the appellant that she is eligible for MassHealth Standard benefits to cover her care in a nursing facility, with a benefit start date of September 19, 2016 and a monthly PPA of \$2,149.48.

Issue

Whether MassHealth was correct in determining that the appellant’s MassHealth Standard benefit start date is September 19, 2016.

Summary of Evidence

The MassHealth representative appeared in person and testified that the appellant, who is over 65-years-old, was admitted to a nursing facility on June 17, 2016. She submitted an application for MassHealth benefits on November 22, 2016 and requested a benefit start date of September 10, 2016. The appellant initially was determined to be over assets for MassHealth benefits, as her assets were approximately \$196,000 and the limit for MassHealth benefits is \$120,900. The MassHealth representative stated that the appellant's assets were spent down when the community spouse purchased an annuity with an estimated lifetime value of \$56,107.50. The MassHealth representative explained that, because it was an income annuity, the annuity was a noncountable asset. On January 30, 2017, MassHealth determined that the appellant was eligible for MassHealth benefits with a benefit start date of September 19, 2016 and a monthly PPA of \$2,149.48. The appellant submitted an appeal to the Board of Hearings on February 28, 2017, challenging the start date only.

The MassHealth representative testified that the annuity was purchased using a 401k account, which should have been inaccessible. However, MassHealth has paperwork showing that the annuity was purchased on September 19, 2016, which is the benefit start date MassHealth determined for the appellant. The community spouse receives \$6,114.77 annually (\$509.64 per month) from the annuity. The MassHealth representative testified that even if the paperwork lagged, MassHealth has no way of giving an earlier benefit start date than the date the annuity was purchased, as that was when the appellant was asset-eligible for MassHealth benefits. The MassHealth representative questioned why the appellant was requesting a benefit start date of August 21, 2016 when the SC-1 from the nursing facility lists a requested benefit start date of September 10, 2016.

The community spouse, who is the authorized representative of the appellant, appeared in person with his attorney. The appellant submitted a memorandum of law with attachments, which was made part of the record and marked Exhibit 5. The memorandum of law and testimony are summarized below. The MassHealth representative declined the opportunity of a record open period to respond to the appellant's memorandum of law.

The appellant's memorandum of law clarified that when she submitted her application for MassHealth benefits on November 22, 2016, she initially requested a benefit start date of August 1, 2016. The appellant was determined to be over assets, and the community spouse paid \$18,000 to the nursing facility, of which \$10,157.40 consisted of private payment and \$7,842.60 consisted of PPA. This \$18,000 payment changed the requested benefit start date to August 21, 2016. The nursing facility issued a revised SC-1 which reflects this requested benefit start date.¹

The community spouse testified that his TIAA-CREF account was created in September 1967.

¹ The MassHealth representative did not challenge, either at hearing or in a post-hearing memorandum of law, the issue of the application of funds to private payment or PPA.

He had taken a job as an Assistance Professor at Curry College, and the TIAA-CREF Traditional Annuity ("TIAA Traditional") was included in his compensation package. The TIAA Traditional required a 5% monthly deduction from the community spouse's paycheck, which was matched by his employer. The community spouse left his job at Curry College in 1973. According to the appellant's memorandum of law,

[The community spouse] made no contributions to the traditional annuity at any time after leaving Curry College. The amount in the annuity was fixed as of the date of his retirement, subject to changes in value based upon the prevailing markets. A TIAA-Cref [sic] traditional annuity is a quasi-pension and not an accessible lump sum like an IRA or a 401k. The annuitant cannot simply withdraw all the funds from the TIAA-Cref [sic] traditional annuity. Instead, withdrawals are limited by TIAA-Cref [sic] to three narrow exceptions:

First, an annuitant can withdraw required minimum distributions (as determined under IRS regulations based upon the life expectancy of the annuitant);

Second, an annuitant can convert a TIAA-CREF traditional annuity into a lifetime pay out annuity; or

Third, an annuitant can convert a TIAA-CREF traditional annuity into a 'transfer payout annuity', which pays out the balance in the annuity in annual installments over a ten year period. The ten year payout is the fastest available payout method.

(Exhibit 5.)

Under his contract with TIAA, the community spouse had 120 days after he left his job or retired to withdraw funds from the TIAA Traditional. After the appellant was admitted to the nursing facility, the community spouse communicated with TIAA to determine whether he could withdraw funds from the annuity. He was informed he could not make a lump-sum withdrawal of the funds in the account,² and that he could either continue receiving Required Minimum Distributions (\$1,388.40 on a semi-annual basis, with the first payment issued on June 23, 2016) or could convert to a Transfer Payout Annuity, which would accelerate his payments over a 10-year period. On September 19, 2016, the community spouse's Minimum Distribution Option contract was converted to a Transfer Payout Annuity and he received his first payment of \$6,114.77 on September 19, 2016. The appellant's attorney stated the community spouse has not been able to make a lump sum withdrawal since the expiration of the 120 days in 1973. She

² Included in Exhibit 5 is a letter from TIAA dated March 2, 2017 informing the community spouse his Minimum Distribution Option contract had consisted of funds which could not be withdrawn from his account as a lump sum.

stated that she underlined the portion of the TIAA annuity statement which states that a TIAA Traditional annuity does not allow for transfers or lump-sum withdrawals.³

While MassHealth considered the TIAA Traditional a countable asset until the Minimum Distribution Option contract's conversion to a Transfer Payout Annuity, the appellant argues that the \$56,107.50 was inaccessible before the conversion and therefore not countable to the appellant or community spouse pursuant to 130 CMR 520.006. The annuity was not in the nature of a 401k; the community spouse did not have the right to take a \$56,107.50 withdrawal and then convert to an annuity. Rather, the contract dictated that the maximum the community spouse could obtain was \$6,114.77 per year.⁴ While he could have obtained less than the \$6,114.77 per year, he could not have obtained \$56,107.50 as a lump sum, and there was no transfer or change made that would have affected that restriction. The community spouse explained that TIAA expects a 10-year payout and that cannot be speeded up or changed in any way. The September 19, 2016 date is a "red herring" because the funds were not available for a lump-sum distribution prior to that date. Nothing changed between August 21 and September 19 to make the funds less accessible. The community spouse took the most he could take under the contract. He did not have the authority or right to liquidate the TIAA Traditional during the period of August 21, 2016 to September 19, 2016, nor did he have authority to access the \$56,107.50 during this time period. Under the regulations, the money he took (\$6,114.77) would be considered income and not an asset. These were the funds that were available to him between August 21, 2016 and September 19, 2016, not the \$56,107.50.

Findings of Fact

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

1. The appellant, who is over 65-years-old, was admitted to a nursing facility on June 17, 2016. (Exhibit 6; Testimony.)
2. She submitted an application for MassHealth benefits on November 22, 2016 and requested a benefit start date of August 1, 2016. (Testimony.)

³ The portion of the statement highlighted by the attorney states that "[a]ll cash withdrawals and transfers must be made in 10 annual installments." (Exhibit 5.) The one that follows the underlined sentence reads as such: "If you have a Group Retirement Annuity or Retirement Choice contract, lump-sum cash withdrawals are available from TIAA Traditional within 120 days after termination of employment and are subject to a 2.5% surrender charge." (*Id.*)

⁴ The community spouse testified that he receives a monthly Social Security income of approximately \$1,236. The appellant has a monthly pension of approximately \$2,111 (although the January 30, 2017 MassHealth notice appears to indicate that the appellant receives \$2,419.23 monthly) and receives Social Security benefits in the amount of \$457. The community spouse also has a variable life insurance policy from which he could withdraw a lump sum, but he would still be under the \$120,900 limit. He stated that a lot of money is going to pay bills.

3. The appellant initially was determined to be over assets for MassHealth benefits, as her assets were approximately \$196,000 and the limit for MassHealth benefits is \$120,900. (Testimony.)
4. The community spouse paid \$18,000 to the nursing facility, of which \$10,157.40 consisted of private payment and \$7,842.60 consisted of PPA. This \$18,000 payment changed the requested benefit start date to August 21, 2016. (Exhibit 5; Testimony.)
5. On January 30, 2017, MassHealth determined that the appellant was eligible for MassHealth benefits with a benefit start date of September 19, 2016 and a monthly PPA of \$2,149.48. (Exhibit 1; Testimony.)
6. The appellant submitted a timely appeal to the Board of Hearings on February 28, 2017, challenging the start date only. (Exhibit 2.)
7. A TIAA Traditional account was created in September 1967 when the community spouse took a job as Assistance Professor at Curry College. The TIAA Traditional required a 5% monthly deduction from the community spouse's paycheck, which was matched by his employer. (Exhibit 5; Exhibit 6; Testimony.)
8. The community spouse left his job at Curry College in 1973. He had 120 days after he left his job or retired to withdraw funds from the TIAA Traditional. (Exhibit 5; Exhibit 6; Testimony.)
9. On September 19, 2016, the community spouse's Minimum Distribution Option contract was converted to a Transfer Payout Annuity. (Exhibit 5; Exhibit 6; Testimony.)
10. The new contract dictated that the maximum the community spouse could obtain was \$6,114.77 per year. (Exhibit 5; Exhibit 6; Testimony.)
11. The community spouse is not entitled to a lump sum distribution from the TIAA Traditional. (Exhibit 5; Exhibit 6; Testimony.)

Analysis and Conclusions of Law

Pursuant to 130 CMR 516.005,

The begin date of MassHealth Standard, Family Assistance, 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 application has been submitted and not denied, the begin date will be based on the earliest application that is approved.

“Countable assets are all assets that must be included in the determination of eligibility.” (130 CMR 520.007.) Under the MassHealth regulations, annuities may be considered countable assets. (130 CMR 520.007(J).) For annuities created before February 8, 2006, “[p]ayments 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.” (130 CMR 520.007(J)(1).)

Inaccessible assets are assets to which a member or applicant does not have legal access. (130 CMR 520.006(A).) Such assets are not countable in a MassHealth eligibility determination for the time period they are inaccessible. (*Id.*)

The appellant submitted an application for MassHealth benefits on November 22, 2016 and is seeking a benefit start date of August 21, 2016. On September 19, 2016, the community spouse converted his TIAA Traditional Minimum Distribution Option contract to a Transfer Payout Annuity and began receiving \$6,114.77, the maximum distribution, per year. MassHealth contends that the appellant became asset-eligible for MassHealth benefits as of the date of the conversion. I disagree, and find that the annuity is a non-countable asset.

The community spouse received a TIAA-CREF account as part of his compensation package for a job he began in 1967. In 1973, he left that job. According to a Quarterly Retirement Savings Portfolio Statement, included as part of Exhibit 5, lump sum withdrawals are not allowed for TIAA Traditional Retirement Annuity contracts. Presumably, based upon the testimony at hearing, the community spouse had either a Retirement Choice or Group Retirement Annuity contract, as lump-sum withdrawals from TIAA Traditional under those contracts are allowed within 120 days after employment has been terminated. Therefore, as of August 21, 2017, the requested benefit start date, the community spouse could not have received a lump-sum payment from the annuity, and the annuity is not a countable asset under 130 CMR 520.007(J)(1).

The September 19, 2016 conversion to a Transfer Payout Annuity has no consequence from a countable asset standpoint. The Transfer Payout Annuity requires 10 payments over the course of nine years. I find credible the community spouse’s testimony (affirmed in an affidavit submitted as part of Exhibit 5) that he was informed by TIAA-CREF that he could not obtain a lump-sum distribution of his funds under any circumstances and had the options of continuing to receive Required Minimum Distributions or a Transfer Payout Annuity that would pay over a 10-year period. Further, a letter from TIAA-CREF confirms that a TIAA Traditional cannot be distributed in a lump sum. I see nothing in the evidence presented that shows a lump-sum payment was an option for the appellant prior to September 19, 2016 or any point thereafter.

The appellant’s representative argues that the funds in the annuity are an inaccessible asset. I

disagree, as the community spouse has legal access to the funds. The issue is the manner in which these funds can be accessed. As the funds cannot be converted to a lump sum, the annuity is a noncountable asset under the MassHealth regulations.⁵

For the foregoing reasons, the appeal is approved.

Order for MassHealth

Change the appellant's benefit start date to August 21, 2016.

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.

Samantha Kurkijy
Hearing Officer
Board of Hearings

cc:

⁵ It is worth noting that a change in income may vary the appellant's PPA or trigger a deductible period.