

Office of Medicaid  
**BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1803606
<b>Decision Date:</b>	3/9/18	<b>Hearing Date:</b>	February 26, 2018
<b>Hearing Officer:</b>	Stanley M. Kallianidis		

**Appellant Representative:**

**MassHealth Representative:**

Kellie Mace, Taunton



*Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Office of Medicaid*  
*Board of Hearings*  
*100 Hancock Street, 6<sup>th</sup> Floor*  
*Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Joint Assets/Hardship
<b>Decision Date:</b>	3/9/18	<b>Hearing Date:</b>	February 26, 2018
<b>MassHealth Rep.:</b>	Kellie Mace	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Taunton		

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Notice dated 12/19/17 was sent to the appellant stating that MassHealth had denied her application for MassHealth benefits due to excess assets (Exhibit 1). The appellant filed this appeal on 01/18/18 and, therefore, it is timely (see Exhibit 2 and 130 CMR 610.015). A denial of MassHealth benefits is grounds for appeal (130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits due to excess assets.

## Issue

Pursuant to 130 CMR 520.007(G)(11), should the appellant's jointly held real estate be deemed non-countable?

## Summary of Evidence

The MassHealth representative testified that the appellant's September 29, 2017 application was denied due to excess assets (Exhibits 1 & 3). The countable assets include bank accounts and life insurance worth \$756.00, and jointly owned real estate worth \$2835.00. The excess assets were \$1591.00 (Exhibit 1).

The real estate in question is a home in Louisiana with a tax valuation of \$5670.00. The property is jointly owned by the appellant and three of her children. The appellant and her children did not sign an agreement to sell the property. Therefore, her half of the property worth \$2835.00 was deemed a countable asset. This asset puts the appellant over the \$2000.00 asset limitation (Exhibit 4).

The appellant's attorney testified that the appellant's three sons, all adopted, jointly own the property. One of the sons uses the property as his principal place of residence. He has multiple physical and psychological impairments and is only intermittently employed. If the property were sold, he would have no other place to live. This would cause an undue hardship for the son. The attorney contended that, by regulation, such property is an excluded resource. She submitted sworn statements from the appellant and the son attesting to the hardship that the sale of the property would cause him. She also testified that the other two sons are severely disabled, with the whereabouts of one being currently unknown, while the other is under guardianship (Exhibit 5).

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on September 29, 2017 (Exhibit 3).
2. The appellant's application was denied due to a failure to provide verification that the recipient's assets had been reduced below \$2000.00 (Exhibit 1).
3. The countable assets include bank accounts and life insurance worth \$756.00, and jointly owned real estate worth \$2835.00. The excess assets were \$1591.00 (Exhibit 1).
4. The real estate in question is a home in Louisiana with a tax valuation of \$5670.00. The property is jointly owned by the appellant and three of her sons (Exhibit 4).
5. One of the sons uses the property as his principal place of residence. He has multiple physical and psychological impairments and is only intermittently employed (Exhibit 4).



6. If the property were sold, the son would have no other place to live. This would cause an undue hardship for him (Exhibit 4).

## **Analysis and Conclusions of Law**

130 CMR 520.007(G)(11) Undue Hardship: Jointly Owned Assets.

(a) The MassHealth agency will continue to exclude otherwise countable property, including a former home, when it is jointly owned and the sale of the property by an individual would cause the other owners to lose housing.

(b) Loss of housing would result when the property serves as the principal place of residence for one (or more) of the other owners, and sale of the property would result in loss of that residence, and no other housing would be readily available for the displaced other owner. If undue hardship as defined in 130 CMR 520.007(G)(11) ceases to exist, the property becomes a countable asset.

In the instant case, I have found that the appellant applied for MassHealth on September 29, 2017. The appellant's application was denied due to a failure to provide verification that the recipient's assets had been reduced below \$2000.00. The countable assets include bank accounts and life insurance worth \$756.00, and jointly owned real estate worth \$2835.00. The excess assets were \$1591.00.

I have further found that the real estate in question is a home in Louisiana with a tax valuation of \$5670.00. The property is jointly owned by the appellant and three of her sons. One of the sons uses the property as his principal place of residence. He has multiple physical and psychological impairments and is only intermittently employed. If the property were sold, the son would have no other place to live. This would cause an undue hardship for him.

Given the above facts and regulation, specifically, that the sale of the Louisiana jointly owned property would cause the son to lose his residence and he has no other place to go, the home is non-countable in a determination of the appellant's eligibility.

Accordingly, the appeal is approved as the appellant's assets are now below the \$2000.00 limit.

## **Order for MassHealth**

Disregard appellant's jointly-owned real estate from countable assets. Approve appellant's application if otherwise eligible.

## **Implementation of this Decision**

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc: