

Office of Medicaid BOARD OF HEARINGS

Appeal Decision:	Denied	Appeal Number:	1806786
Decision Date:	5/23/18	Hearing Date:	04/09/2018
Hearing Officer:	Casey Groff	Record Open to:	04/20/2018

Appearance for Appellant:

Appearance for MassHealth:

Karen Ryan of the Tewksbury MassHealth
Enrollment Center



*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:	Denied	Issue:	Eligibility; Inaccessible Assets
Decision Date:	5/23/18	Hearing Date:	04/09/2018
MassHealth's Rep.:	Karen Ryan	Appellant's 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 February 9, 2018, MassHealth denied Appellant's application for long-term care services because MassHealth determined that Appellant's assets exceeded eligibility limits. See Exhibit 2; 130 CMR 520.003; 130 CMR 520.004. Appellant filed this appeal in a timely manner on March 16, 2018. See Exhibit 1; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. See 130 CMR 610.032. A hearing took place on April 9, 2018. At the conclusion of the hearing, the record was left open for Appellant to submit additional information by April 13, 2018. See Exhibit 6. MassHealth was given an opportunity to respond by April 20, 2018. Id. Both parties made timely submissions and the record closed on April 20, 2018.¹

Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth long-term care benefits because it determined that Appellant's ownership interest in jointly held stocks are countable to Appellant and exceed eligibility limits.

¹ On April 19, 2018, Appellant's attorney replied to MassHealth's submission. See Exhibit 9. Because Appellant responded after her deadline passed, without a request to re-open the record, her response was not considered into evidence. On April 29, 2018, Appellant requested her response be re-considered. The request was denied, but noted as part of the record pursuant to 130 CMR 610.081. See Exhibits 9 and 10.

Issue

The appeal issue is whether MassHealth was correct in determining that Appellant's ownership interest in jointly held stocks are accessible assets, and therefore countable to Appellant in a MassHealth eligibility determination.

Summary of Evidence

A representative from MassHealth appeared at the hearing and testified that Appellant is 94 years-old and was admitted to a nursing facility on January 6, 2017. Appellant submitted an application to MassHealth for long-term care services on August 30, 2017 seeking coverage effective as of June 1, 2017. MassHealth denied the application on February 9, 2018 due to excess assets in accordance with 130 CMR 520.003 and 130 CMR 520.004. MassHealth counted the following assets, including a total of six stocks, in making its determination:

<u>Asset</u>	<u>Current Value</u>
Newburyport Checking Acct xx8731	\$7.85
Newburyport Savings Acct xx95193	\$1,070.79
Total Bank Account:	\$1,078.64
<i>Joint Stocks with Daughter</i>	
Ford	\$9,998.69
Citigroup	\$1,286.56
Northrup Grummon	\$40,956.96
<i>Joint Stocks with Son</i>	
Ford	\$9,996.41
Citigroup	\$1,286.56
Northrup Grummon	\$40,956.96
Total Stocks	\$104,482.14
Total Countable Assets	\$105,560.53
<u>MA Asset Limit</u>	<u>-\$2,000.00</u>
Excess Asset Amount	\$103,560.78

Of the six stocks, Appellant owns three as a joint tenant with her son and three as a joint tenant with her daughter. The MassHealth representative testified that securities, such as stocks, are countable assets under MassHealth regulation 130 CMR 520.007(D). Because the stocks were held jointly, MassHealth attributed fifty percent of the stocks' current value as countable to Appellant when making its calculation. The MassHealth representative testified that on February 11, 2018, Appellant's attorney requested that MassHealth consider the jointly owned stock as inaccessible under 130 CMR 520.006 because Appellant's children refuse to sell and both owners' signatures are required to liquidate. The MassHealth representative stated that MassHealth does not consider the stocks to be inaccessible because Appellant, as a joint owner, has legal access to the stocks and the stocks are not subject to legal proceedings, as set forth in

130 CMR 520.006. MassHealth argued that it had not received clear, definitive verification from the stock company that Appellant cannot sell or surrender her share or that any effort had been made to access her stock interest.

Appellant's attorney appeared at the hearing and provided the following factual background: Appellant suffers from hypertension, chronic kidney disease, and progressive dementia. Appellant is widowed and has a son and daughter, both of whom lived with Appellant in the family home prior to her admission in the nursing facility. See Exhibit 5, p. 1. The son was Appellant's primary caregiver when she lived in the community. Id. Appellant's daughter is totally disabled as determined by the Social Security Administration ("SSA"). Id. at 2. In 2011, after her husband passed away, Appellant added her children as joint owners of the stocks. Titles of all six stock certificates read: "[Appellant's Name] **and** [Child's Name] as Joint Tenants." See Exhibit 5, p. 3 and Attachment ("Attm.") 4. Computershare is the company that manages the stocks. According to Computershare, since the stocks are jointly owned, neither owner can liquidate the stocks without the consent of the other. Appellant's attorney submitted into evidence, a Computershare "Transfer Request Form" with corresponding instructions indicating that to transfer the shares into another account "[a]ll current registered holders or a legally authorized representative must sign the 'Authorized Signatures' section..." See Exhibit 5, Attm. 4. Additionally, the form notes that "[t]he signature(s)...must correspond exactly with the name(s) as shown upon the face of the stock certificate or Computershare statement for book-entry shares, without alteration...The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature." Id.

Appellant's attorney explained that the children have refused to liquidate the stock. Appellant submitted an affidavit, dated February 11, 2018 signed by Appellant's children stating that "[Appellant] cannot cash in these shares of stock without our consent since the accounts are held jointly. We refuse to consent to the same. We are both not working as a result of caring for our mother or a disability. We need these assets to live on." See Exhibit 5, Attm. 6. Appellant's attorney also stated that the son has been, and is still, taking care of Appellant's daughter and they need the assets to replace the loss of income resulting from both not working, as well as their mother's income being redirected to her patient paid amount. See Exhibit 5, p. 3. Appellant's attorney argued that the children's refusal to liquidate renders the stocks inaccessible to Appellant because she has "no legal access" to them as set forth under 130 CMR 520.006.² Accordingly, because the stock is an inaccessible asset, it is not countable, pursuant to 130 CMR 520.007. See Exhibit 5, p. 5.

Through a record open period, Appellant's attorney submitted additional evidence and legal arguments in support of her position that the stocks were not countable. Appellant cited to a Mass. Practice Series excerpt indicating that "[i]naccessible assets include property that is subject to legal proceedings, such as divorce or probate, bank accounts that require two signatures and in which the co-holder refuses to release the funds and property that the applicant cannot sell because there is no market." See 24 Mass. Prac., Estate Planning § 29.6 (3d ed.) .

² Appellant's attorney stated that Appellant was capable of signing, however because the children refuse to sign, the stocks are inaccessible.

Additionally, Appellant submitted a June 15, 2011 Fair Hearing Decision, which she argued supported her position that jointly owned stock when held in an account titled in two names and requires joint signatures, is an inaccessible asset unless the other owners consent.³ See Exhibit 7, Attm. 4.

Appellant also raised the argument that during the application process “[t]here was a significant lapse of time until the real substantive issue of [Appellant] being over assets was communicated. See Exhibit 7. Appellant argued that “[h]ad the asset issue been brought forward sooner, Appellant may have been able to transfer all the stock to [her] disabled daughter...thereby minimizing or even preventing the hardship of losing the stock and the start date. Id. In support thereof, Appellant provided the MassHealth notices leading up to the denial for excess assets, including two requests for information dated September 12, 2007 and November 30, 2017, respectively, itemizing the outstanding verifications, and neither of which identified the issue that Appellant was over assets. See Exhibit 7, Attms. 5 and 6. A review of these notice indicate that MassHealth requested, among other items, proof of ownership and the current market value for the six stocks. Id. On January 5, 2018, MassHealth notified Appellant that her application was denied for failure to verify. Id. at Attm. 7. Appellant appealed the verifications denial, however the issue became moot, when after a subsequent production, MassHealth determined it was satisfied with the verifications. Id. Appellant then withdrew the verifications appeal, however, appealed MassHealth’s February 9, 2018 notice, which is the basis of this decision.

Finally, Appellant argues an alternative basis for approving her appeal exists under 130 CMR 520.007(G)(11)(a), which provides that MassHealth “will continue to exclude otherwise countable property, including a former home, when it is jointly owned and the sale of property by an individual would cause the owners to lose housing.” Appellant argues that this provision implicates assets other than a house and “[b]y losing the stock to nursing home expenses, the Appellant’s children would not have the stock to live off of and pay the house expenses.” See Exhibit 7.⁴

Findings of Fact

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

1. Appellant is 94 years-old and was admitted to a nursing facility on January 6, 2017. (Testimony).
2. Appellant is widowed and has a son and daughter, both of whom lived with Appellant in the family home prior to her admission to the nursing facility. (Testimony; Exhibit 5, p. 1).

³ This decision is discussed in more detail in the “Analysis and Conclusions of Law” section below.

⁴ As a separate matter, Appellant’s attorney disagreed with the value at which MassHealth calculated Appellant’s stocks. Appellant stated that one-half of the total value of the stocks as of the requested start date of June 1, 2017 is \$80,294.34. See Exhibit 5, p. 3. MassHealth testified that it used whatever the stocks’ current value was in making its determination that it totaled \$104,294.34.

3. Appellant's daughter has been determined totally disabled by SSA. (Testimony; Exhibit 2). Appellant's son does not work in order to care for his sister. (Testimony).
4. On August 30, 2017, Appellant submitted an application to MassHealth for long-term care services, seeking a benefit start date of June 1, 2017. (Testimony; Exhibit 4).
5. MassHealth issued two requests for information, dated 9/12/17 and 11/30/17, respectively. Both notices requested information relating to six stocks, including proof of ownership and their current market value. (Exhibit 7, Attms. 5 and 6).
6. On January 5, 2018, MassHealth notified Appellant that her applications were denied due to failure to verify. (Testimony; Exhibit 7, Attm. 7).
7. Appellant appealed the denial; however before hearing, MassHealth informed Appellant that it was satisfied with the verifications and MassHealth continued to process the application to determine financial eligibility. (Exhibit 7).
8. In reviewing the verifications to make an eligibility determination, MassHealth identified six stocks; three of which Appellant jointly owns with her son and three she jointly owns with her daughter. (Testimony; Exhibit 4).
9. Taking fifty percent of the stocks' value, MassHealth attributed \$104,482.14, as countable to Appellant. (Testimony, Exhibit 2).
10. On February 9, 2018, MassHealth denied Appellant's application for long-term care services due to having excess assets in the amount of \$103,560.78. (Testimony; Exhibit 2).
11. On February 11, 2018, Appellant's attorney requested that MassHealth consider the jointly owned stock as inaccessible under 130 CMR 520.006 because Appellant's children refuse to sell the stock and both owners' signatures are required to liquidate. (Testimony; Exhibit 4). Appellant's children signed an affidavit, dated February 11, 2018, indicating that they refused to sell because they needs the funds to live off of. (Testimony; Exhibit 6, Attm. 6).
12. In 2011, after her husband passed away, Appellant added her children as joint owners of the stocks. (Testimony).
13. Titles of all the stock certificates read: "[Appellant's Name] **and** [Child's Name] as Joint Tenants." (Exhibit 5, p. 3; Exhibit 5, Attm. 4).
14. Computershare, the company which manages all six stocks, requires authorized signatures which "correspond exactly with the name(s) shown upon the face of the stock certificate or Computershare statement for book-entry shares" in order to transfer any shares. (Exhibit 5, Attm. 4).

Analysis and Conclusions of Law

For an individual applying for long-term-care benefits, MassHealth has an asset limit of \$2,000. 130 CMR 520.003. In determining eligibility, MassHealth counts “assets to which the applicant ... *would be entitled whether or not these assets are actually received when failure to receive such assets results from the action or inaction of the applicant....*” 130 CMR 520.007 (emphasis added). MassHealth considers securities, such as stocks, as countable assets.⁵ 130 CMR 520.007(D). MassHealth, however, will not count “a security for which there is no market value or that is inaccessible in accordance with 130 CMR 520.006.” *Id.* The MassHealth regulation governing inaccessible assets states in full:

520.006: Inaccessible Assets

(A) Definition. An inaccessible asset is an asset to which the applicant or member *has no legal access*. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth *for the period* that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

- (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and
- (2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. *The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled*

- (1) *from the date of application or acquisition, whichever is later*, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or
- (2) *from the period beginning six months after the date of application or acquisition, whichever is later*, if

- (a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or
- (b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may

⁵ Securities include, but are not limited to, stocks, bonds, options, futures contracts, debentures, mutual funds including money-market mutual funds, and other financial instruments. Tradable securities are valued at the most recent closing-bid price, and nontradable securities are valued at current equity value. 130 CMR 520.007(D).

include a provider), is making a good-faith effort to contact the missing trustee or to secure the appointment of a competent trustee.

130 CMR 520.006(D).

It is undisputed that Appellant owns the stocks as a joint tenant with her children. Because the stocks are owned jointly, MassHealth “presumed [the stocks] to be owned in equal shares and counted [Appellant’s interest] proportionately...”⁶ See 130 CMR 520.005(B). The issue on appeal is therefore, whether the children’s refusal to sell the stock renders the Appellant with “no legal access” to her portion of the shares (and makes the stocks, therefore, inaccessible). See 130 CMR 520.006(A).

Based on the evidence, testimony, and legal authority, Appellant has not met her burden in establishing beyond a preponderance of the evidence that she has no “legal access” to the stocks and that the stocks are therefore inaccessible. While the term “legal access” is not further defined, the provisions set forth in 130 CMR 520.006 are instructive. The language suggests that inaccessible assets are those where there is some barrier that *temporarily* prevents the applicant from obtaining legal access to the asset, such as adjustment of a cash surrender value of a life insurance policy or where there is a legal proceeding to determine whether the applicant owns the property or asset (e.g. probate and divorce suits). See 130 CMR 520.006(B).⁷ Here, there is no legal or otherwise formal proceeding currently pending that marks any similarity to the examples provided in 130 CMR 520.006(B). In fact, Appellant argues she has no obligation to take any affirmative action to sell her interest because the children’s refusal to sell, alone, is enough to render the asset “inaccessible.” The regulation, however, goes on to state that MassHealth “considers accessible to the applicant...all assets to which the applicant... is *legally entitled*, from the date of application or acquisition, whichever is later...” 130 CMR 520.006(C)(1) (emphasis added). Appellant, since at least 2011, has had legal title to the stock and chose to add her children as joint owners at that time. She never relinquished her ownership rights and thus was legally entitled to the stocks at the time of her MassHealth application. See *Id.* The co-owners refusal to sign does not prevent Appellant from seeking available legal avenues to sell the portion of her shares to which she is legally entitled, such as initiating a partition action.

Appellant basis her argument, in part, on a reference to a Mass. Practice Series excerpt which includes, as an example of an inaccessible asset, “bank accounts that require two signatures and in which the co-holder refuses to release the funds.” See 24 Mass. Prac., Estate Planning § 29.6

⁶ 130 CMR 520.005(B) states in full: “Any asset, other than a joint bank account, jointly owned by two or more individuals, is presumed to be owned in equal shares and counted proportionately unless a different distribution of ownership is verified or unless assets are being assessed in accordance with 130 CMR 520.016. When such a different distribution of ownership is verified, the MassHealth agency attributes the countable value of the assets to the applicant or member or the spouse in proportion to the ownership interest.”

⁷ The regulation also extends the time for an authorized representative of an applicant who cannot competently represent his or her interest, to make good-faith efforts to secure a guardian or conservator. See 130 CMR 520.006(C). Here, there is no contention that Appellant lacks the competency to represent her interests.

(3d ed.). The text however, does not cite to any statute, regulation, or case law that would otherwise support this contention. It is unclear from where this example derives. Similarly, Appellant's reference to the 2011 Fair Hearing Decision is not persuasive. In that appeal, MassHealth denied the appellant's request for long-term care services for failure to produce verifications,⁸ including failure to provide a signed letter from the appellant's nephew, with whom she jointly owned several stocks, indicating his refusal to sell and liquidate the stocks. *Id.* During a record open period the appellant submitted a refusal letter from the co-owner pertaining to some but not all of the stocks. The decision indicates that MassHealth accepted the refusal letter as sufficient verification to treat the stocks it referenced as non-countable assets in accordance with 130 CMR 520.007(D) because both signatures were required to sell the stocks. *Id.* at 5. However, the appellant failed to produce a similar declaration about the remaining stocks "as MassHealth requested." Accordingly, the appeal was approved as to those stocks referenced in the refusal letter, but denied with respect to the stocks for which appellant could not secure such a letter. *Id.* Unlike the present case, the issue in the 2011 appeal dealt with verifications. The hearing officer relied on the MassHealth representative's assertion that a refusal letter would be sufficient verification to treat the stocks as inaccessible and the issue for the hearing officer was essentially to determine whether those verifications were received. Appellant's submission of a single hearing decision from seven years ago is not persuasive authority to show MassHealth has, or had, any widespread practice of accepting similar verifications, i.e. refusal letters, as proof that jointly held stocks are inaccessible.

Additionally, Appellant argues that had MassHealth brought the excess assets issue sooner, Appellant may have been able to transfer the stock to her disabled daughter. It does not appear, however, that Appellant raised the inaccessibility issue during any time during the verifications stage. Because MassHealth had requested, and received, ownership information regarding the six stocks, it appropriately identified the stocks as countable and applied half of the current market value to Appellant pursuant to 130 CMR 520.005(B). It was not until February 11, 2018, two days after MassHealth issued the denial notice, that Appellant requested MassHealth consider the jointly owned stock inaccessible under 130 CMR 520.006 and submitted the affidavit, signed by the children the same day, asserting their refusal to sell. Given Appellant's legitimate interest in supporting her disabled daughter, it appears Appellant, not MassHealth could have advanced the process by disclosing her circumstances sooner and explored alternative options, such as those Appellant now raises and are set forth under 130 CMR 520.019(D)(3) regarding permissible transfers.

Finally, Appellant argues that treating the stocks as countable property would cause the owners to lose housing, and therefore should be excluded in determining financial eligibility under 130 CMR 520.007(G)(11)(a). Under this provision, MassHealth "will continue to exclude otherwise countable property, including a former home, when it is jointly owned and the sale of property by an individual would cause the owners to lose housing." 130 CMR 520.007(G)(11)(a). Appellant argues that the regulation implicates assets other than a house. This provision, however, falls under MassHealth's treatment of *real estate* when determining financial eligibility. Appellant's testimony indicates that the children continue to live in the family home

⁸ This hearing decision also addressed the issue of disqualifying transfers.

and therefore have housing. This provision does not pertain to the use of other assets (i.e. assets that are not real estate) to pay for housing *expenses*.

For the foregoing reasons, Appellant has not proven by a preponderance of the evidence that she has “no legal access” to the stocks. See 130 CMR 520.006(A). MassHealth correctly attributed half of the current value of the stocks as countable to Appellant. The appeal is DENIED insofar as Appellant’s six stocks are not inaccessible assets and are therefore countable in an eligibility determination.

As Appellant had a colorable claim and dispute about the countability of excess assets, I find it appropriate to now allow Appellant 30 days from the date of this decision to reduce her assets to \$2,000 in accordance with 130 CMR 520.004 and without violating the transfer of resource provisions set forth in 130 CMR 520.018 and 130 CMR 520.019.

Order for MassHealth

Allow Appellant 30 days from the date of this decision to submit proof that she has reduced her assets to \$2,000 in accordance with 130 CMR 520.004 and without violating the transfer of resource provisions. If she does, proceed with a further eligibility determination honoring the August 30, 2017 application date at issue; any future eligibility determination regarding the reduction of assets should have an appealable notice. If necessary, MassHealth should re-calculate the value of the stocks in accordance with 130 CMR 520.007(D) and 130 CMR 520.005(B).

If Appellant does not reduce assets within 30 days, the denial notice of February 9, 2018 stands.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA, 01876-1957