

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Social Security No.:

Appeal Decision:	Approved	Appeal Number:	0607185
Decision Date:	8/10/06	Hearing Date:	08/03/2006
Hearing Officer:	Jeanne Travers Jabour		

Appellant Representative:

MassHealth Representative:

Peter O'Rourke



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

APPEAL DECISION

Appeal Decision:	Approved	Issue:	130 CMR 517.010(B)(3)
Decision Date:	8/10/06	Hearing Date:	08/03/2006
MassHealth Rep.:	Peter O'Rourke	Appellant Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center Room 2	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 June 5, 2006, MassHealth denied the Appellant's application for MassHealth long term care (LTC) benefits because MassHealth determined that verifications of spousal finances necessary to determine eligibility were not submitted to MassHealth (130 CMR 516.001 and Exhibit 1). The Appellant filed this appeal in a timely manner on June 30, 2006 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the Appellant's LTC application for benefits.

Issue

Was MassHealth correct, pursuant to 130 CMR 516.001 and 517.010(B)(3), in determining that verifications needed to establish eligibility for LTC remained outstanding.

Summary of Evidence

The Appellant's representative testified that he and his wife have been separated and living independently of each other for twenty-one years, but have never filed for a legal separation or a divorce during that time. They have not only maintained separate residences, but have filed separate tax returns and maintained separate finances, assets, households and lives (Testimony and Exhibit 4). The Appellant has recently become quite ill, requiring hospitalization and is presently living in an assisted living facility following stays with his daughters and his wife while awaiting a bed in nursing home and assisted living facilities (Testimony and Exhibit 4). The Appellant has been advised that his illness will require a nursing home level of care and as a result of this information an application for LTC was submitted to MassHealth on April 26, 2006 (Testimony).

The MassHealth representative testified that information needed to determine the Appellant's eligibility for LTC remains outstanding at this time because the Appellant's wife has refused to cooperate and supply the missing information regarding her personal finances, life insurance policies, vehicle registration and household bills (Testimony). As a result of her refusal to cooperate and supply this information to MassHealth, a denial notice was issued to the Appellant on June 5, 2006 (Testimony and Exhibit 1).

Efforts to secure the further cooperation of the Appellant's wife were initiated, but were not successful (Testimony). The Appellant's wife provided a written, signed and dated statement refusing to participate and/or cooperate in any MassHealth application process for the Appellant (Testimony and Exhibit 4). As a result of the Appellant spouses' refusal to assist the Appellant in establishing eligibility for MassHealth, the Appellant's representative took a timely appeal of the denial notice with the Board of Hearings (BOH) on June 30, 2006, seeking to secure a determination that the Appellant's spouse is a non-cooperative spouse, pursuant to 130 CMR 517.010(B)(3), requesting that MassHealth be allowed to determine his eligibility without her participation (Testimony and Exhibits 2 and 4). The MassHealth representative testified that a decision was needed from the BOH declaring the Appellant's spouse non-cooperative and invoking the application of 130 CMR 517.010(B)(3) as appropriate so that an eligibility determination can be made for the Appellant. MassHealth added that the Appellant has timely submitted all information necessary for an eligibility determination based on his current finances and circumstances (Testimony).

Findings of Fact

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

1. The Appellant and his wife have been separated and living independently of each other for twenty-one years, but have never filed for a legal separation or a divorce during that time. They have not only maintained separate residences, but have filed separate tax returns and maintained separate finances, assets, households and lives (Testimony and Exhibit 4).

2. The Appellant has recently become quite ill, requiring hospitalization and is presently living in an assisted living facility following stays with his daughters and his wife while awaiting a bed in nursing home and assisted living facilities (Testimony and Exhibit 4).
3. The Appellant has been advised that his illness will require a nursing home level of care and as a result of this information an application for LTC was submitted to MassHealth on April 26, 2006 (Testimony).
4. The information MassHealth needed to determine the Appellant's eligibility for LTC remains outstanding at this time because the Appellant's wife has refused to cooperate and supply the missing information regarding her personal finances, life insurance policies, vehicle registration and household bills (Testimony).
5. As a result of the wife's refusal to cooperate and supply her personal information to MassHealth, a denial notice was issued to the Appellant on June 5, 2006 (Testimony and Exhibit 1).
6. Efforts to secure the further cooperation of the Appellant's wife were initiated, but were not successful (Testimony).
7. The Appellant's wife provided a written, signed and dated statement refusing to participate and/or cooperate in any MassHealth application process for the Appellant (Testimony and Exhibit 4).
8. As a result of the Appellant spouse's refusal to assist the Appellant in establishing eligibility for MassHealth, the Appellant's representative took a timely appeal of the denial notice with the Board of Hearings (BOH) on June 30, 2006, seeking to secure a determination that the Appellant's spouse is a non-cooperative spouse, pursuant to 130 CMR 517.010(B)(3), requesting that MassHealth be allowed to determine his eligibility without his wife's participation (Testimony and Exhibits 2 and 4).
9. MassHealth testified it requires a decision from the BOH declaring the Appellant's spouse non-cooperative and invoking the application of 130 CMR 517.010(B)(3) as appropriate so that an eligibility determination can be made for the Appellant.
10. The Appellant has timely submitted all information necessary for an eligibility determination to be made based on his current finances and circumstances (Testimony).

Analysis and Conclusions of Law

When an applicant's spouse refuses to cooperate and provide necessary information in the application process in order for MassHealth to determine the applicant's eligibility for LTC benefits, and that the denial of eligibility would cause *an undue hardship* of the applicant,

MassHealth may not render that applicant ineligible for that reason.

517.010: Assignment of Rights to Spousal Support

An institutionalized 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 the lack of information concerning the assets of the community spouse, would otherwise result in undue hardship.

The Appellant has established that he and his spouse are presently estranged and have been for a significant period of time (Testimony and Exhibit 4). They have been, and continue to lead separate lives in every meaningful way (finances, households, socially, etc.) (Testimony and Exhibit 4). The Appellant's wife has refused to participate in the MassHealth process and has supplied a handwritten, dated and signed letter to that effect (Testimony and Exhibit 4). The Appellant's representative testified that he has become quite ill and has been advised that he now needs nursing home level of care (Testimony). MassHealth and the Appellant's representative stipulate that the Appellant has been unable to establish his eligibility for MassHealth LTC due to his wife's non-cooperation, all to his detriment (Testimony and Exhibits 1 and 4). Clearly, the Appellant's circumstances thus establish that he has squarely met the intention of 130 CMR 517.010(B)(3) in that a denial of his eligibility, *due to the lack of information concerning the assets of the community spouse*, would otherwise result in undue hardship to him – no LTC benefits to assist in the nursing home level of care he now requires.

Therefore, the Appellant's appeal is approved and MassHealth may determine his eligibility without use of information from, or consideration of, the Appellant's community spouse.

Order for MassHealth

Rescind the denial notice dated June 5, 2006, and determine the Appellant's eligibility for LTC

benefits independent of any information, whatsoever, related to his community spouse. Provide written determination of eligibility to the Appellant and his representative.

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.

Jeanne Travers Jabour
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Brian McGuinness, Tewksbury Enrollment Center

Appellant Representative: