

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

**Social Security No.:**

**Appeal Decision:** Approved in part;  
Denied in part

**Appeal Number:** 0711322

**Decision Date:** 10/9/07

**Hearing Date:** September 24,  
2007

**Hearing Officer:** Stanley M.  
Kallianidis

**Appellant Representative:**

**MassHealth Representative:**

Paula Morin, Taunton



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

## APPEAL DECISION

<b>Appeal Decision:</b>	Approved in part; Denied in part	<b>Issue:</b>	Refusal to Cooperate
<b>Decision Date:</b>	10/9/07	<b>Hearing Date:</b>	September 24, 2007
<b>MassHealth Rep.:</b>	Paula Morin	<b>Appellant Rep.:</b>	

### 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 July 27, 2007, MassHealth denied the appellant's application for MassHealth benefits because MassHealth determined that the verification process had not yet been completed (see 130 CMR 515.008 and Exhibit 1). The appellant filed this appeal in a timely manner on August 24, 2007. The appellant's representatives were his son and daughter, who is his power of attorney (see 130 CMR 610.015 and Exhibit 2). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032).

### Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits.

### Issue

Pursuant to 130 CMR 517.010, has the appellant provided MassHealth with the necessary verifications to determine eligibility in light of his spouse's refusal to cooperate with the application process?

## Summary of Evidence

The MassHealth representative testified that the appellant's June 27, 2007 application was denied due to a failure to provide timely verifications (Exhibit 3). A verification request was sent out on June 29, 2007 (Exhibit 4). The verifications were not submitted and a Notice of Denial was issued on July 27, 2007 (Exhibit 1). The missing verifications at issue were the assets of the community spouse (Exhibit 4).

In place of these verifications, the appellant's children and representatives submitted a letter along with the appellant and his spouse's 1983 pre-nuptial agreement. It stated that, being that this was the second marriage for both, and, where each had their own children and assets from their first marriage, they agreed to waive all rights and claims to each others estate and property in the event of the other's death, or in the event of an annulment or divorce (Exhibit 5). The MassHealth representative testified that this did not negate the requirement that the appellant's spouse verify her assets as they were countable for MassHealth purposes.

The appellant's representatives testified that the appellant is unable to provide the verifications requested because his spouse is refusing to cooperate with the verifications process. They submitted a September 19, 2007 letter from the appellant's spouse into the record. According to her letter, prior to their marriage, they "executed a prenuptial agreement that outlined our intention to keep our monies and assets completely separate." She concluded her letter with the following: "[The appellant] and I have kept our finances separate, and I refuse to provide any further information regarding my accounts, assets or income in support of his application for MassHealth as is my right pursuant to 130 CMR 517.010" (Exhibit 6).

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on June 27, 2007 (Exhibit 3).
2. The appellant's application was denied due to a failure to provide verifications (Exhibits 1 & 4).
3. The missing verifications at issue were the assets of the community spouse (Exhibit 4).
4. According to a 1983 pre-nuptial agreement between the appellant and his spouse, they agreed to waive all rights and claims to each others estate and property in the event of the other's death, or in the event of an annulment or divorce (Exhibit 5).

5. The appellant's spouse is refusing to cooperate with the verifications process (Exhibit 6).

## **Analysis and Conclusions of Law**

The applicant or member must cooperate with MassHealth in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of the MassHealth program including recovery (130 CMR 515.008(A)). If the requested information is not received, MassHealth benefits may be denied (130 CMR 516.001).

In the instant appeal, I have found that the appellant applied for MassHealth of June 27, 2007. The appellant's application was denied due to his failure to verify the assets of his community spouse. The MassHealth representative testified that the appellant's prenuptial agreement did not negate the requirement that the appellant's spouse verify her assets as they were countable for MassHealth purposes.

With regard to the appellant's prenuptial agreement, I agree with the MassHealth representative that Medicaid laws do not recognize asset limitations that may be set forth in prenuptial agreements. Moreover, in this case, the provisions of the appellant's prenuptial agreement have not been triggered yet because that none of its applicable conditions, i.e., death, divorce or annulment has been met.

With regard to the community spouse's refusal to cooperate, the regulations at 130 CMR 517.010 states as follows:

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.

According to the appellant's representatives, the appellant is unaware of his spouse's assets due to her refusal to cooperate. Based upon his inability to verify her assets, section "(A)" of the above regulation does not apply to his situation. Under section "(B)", the only applicable subsection is "(1)," as the appellant has a durable power of attorney and no claim of hardship has been made. Therefore, pursuant to the above regulation, the appellant must first assign any rights of support he may have from the community spouse to MassHealth before he can claim eligibility under a spouse's refusal to cooperate waiver.

The appeal is therefore approved in part and denied in part.

## **Order for MassHealth**

Reopen June 27, 2007 application. Allow appellant thirty days from date of decision to assign any rights of support he may have from his spouse to MassHealth. Upon execution of such assignment, determine appellant's eligibility for MassHealth.

## **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.

## **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.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc: