

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1007332
<b>Decision Date:</b>	5/27/10	<b>Hearing Date:</b>	May 17, 2010
<b>Hearing Officer:</b>	Stanley M. Kallianidis		

**Appellant Representative:**

**MassHealth Representative:**

Karen Jackson, 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	<b>Issue:</b>	Verifications
<b>Decision Date:</b>	5/27/10	<b>Hearing Date:</b>	May 17, 2010
<b>MassHealth Rep.:</b>	Karen Jackson	<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 January 7, 2010, 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 January 19, 2010 (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(B), does the appellant's assignment of spousal support rights to MassHealth entitle her to a determination of eligibility?

## **Summary of Evidence**

The MassHealth representative testified that the appellant's September 23, 2009 application was denied due to a failure to provide timely verifications (Exhibit 3). A verification request was sent out to the appellant on November 25, 2009 (Exhibit 4). The verifications were not submitted and a Notice of Denial was issued on January 7, 2010 (Exhibit 1). The missing verifications at issue were the appellant's spouse's assets and income (Exhibit 4).

The appellant's attorney testified that the appellant's spouse refuses to cooperate with the application process. The spouse submitted an affidavit to MassHealth attesting to his refusal. The appellant submitted an assignment of spousal support rights to MassHealth along with her application (Exhibit 5).

## **Findings of Fact**

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on September 23, 2009 (Exhibit 3).
2. The appellant's application was denied due to a failure to provide verifications (Exhibit 1).
3. The missing verifications at issue were the appellant's spouse's income and assets (Exhibit 4).
4. The appellant's spouse submitted an affidavit to MassHealth attesting to his refusal to cooperate with the application process (Exhibit 5).
5. The appellant submitted an assignment of spousal support rights to MassHealth along with her application (Exhibit 5).

## Analysis and Conclusions of Law

### 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.

In the instant appeal, I have found that the appellant applied for MassHealth on September 23, 2009. The appellant's application was denied due to her failure to verify her spouse's income and assets. The appellant's spouse submitted an affidavit to MassHealth attesting to his refusal to cooperate with the application process. Additionally, the appellant submitted an assignment of spousal support rights to MassHealth along with her application. Given this assignment of rights, the appellant is entitled to a determination of eligibility in light of the above regulation notwithstanding her spouse's refusal to cooperate with the process.

The appeal is therefore approved.

## **Order for MassHealth**

Reopen September 23, 2009 application and 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.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc: