

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

Appeal Decision:	Approved; Remand	Appeal Number:	1412045
Decision Date:	1/14/15	Hearing Date:	12/23/2014
Hearing Officer:	Paul C. Moore		

Appellant Representative:

MassHealth Representative:

Rosa Perez, Springfield MassHealth
Enrollment Center (by telephone)



*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:	Approved; Remand	Issue:	Verifications; Spousal Refusal to Cooperate
Decision Date:		Hearing Date:	12/23/2014
MassHealth Rep.:	Rosa Perez	Appellant Reps.:	
Hearing Location:	Chelsea MassHealth Enrollment Center	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 November 13, 2014, MassHealth denied the appellant's application for MassHealth long term care benefits because MassHealth determined that the appellant failed to submit verifications in a timely manner (130 CMR 515.008; Ex. 1). The appellant filed this appeal in a timely manner on November 20, 2014 (130 CMR 610.015(B); Ex. 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for long term care benefits for failure to verify eligibility.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 515.008, in determining that appellant failed to submit verifications in a timely manner. A second issue is whether or not the community spouse is required to verify assets pursuant to 130 CMR 517.011.

Summary of Evidence

The MassHealth representative testified telephonically from the Springfield MassHealth Enrollment Center that the appellant submitted a Senior Member Benefit Request (MBR) to MassHealth on September 3, 2014, seeking long-term care benefits. The representative testified that the facility where the appellant resides is seeking an eligibility start date of August 11, 2014. She further testified that on September 30, 2014, a Request for Information was sent to the appellant seeking various verifications, including a copy of the deed under which the appellant and his wife hold title to real estate in Florida (Testimony, Ex. 6), as well as asset and income information of the appellant's wife, the community spouse. The representative testified that all verifications were received, except for asset and income information of the community spouse, who refuses to verify such information. She further testified that on November 13, 2014, MassHealth denied the appellant's application for long-term care benefits for failure to verify (Testimony). She concluded her testimony by noting that a letter the appellant sent to MassHealth stating that his wife refuses to cooperate in verifying assets, and that there is only one joint asset that they share (a condominium in Florida), is insufficient, and that the appellant must submit a notarized statement of legal separation in order for MassHealth to agree not to count the assets and income of the community spouse in the appellant's eligibility determination (Testimony).

The appellant's attorney¹ testified that under Massachusetts law, there is no "legal separation," and further, that the MassHealth representative's request for a notarized statement substantiating that the appellant and his wife are legally separated is not contained in any MassHealth regulation (Testimony). The appellant's attorney produced a signed, written statement of the appellant dated December 16, 2014 reflecting that the appellant has assigned any rights he may have to support from his community spouse to the MassHealth agency effective December 16, 2014 (Ex. 7).

In a letter dated September 2, 2014, admitted into evidence at the hearing, the appellant states in relevant part:

I married [the community spouse] when I was 80 years old. We both had assets acquired during our lives before we met and from previous marriages. During our marriage we have kept are (*sic*) personal assets separate including all assets from our previous marriages. We held only a joint checking account associated with our reverse mortgage on our principal residence which Wells Fargo required. The only joint asset is our principal residence. The only transfers between our personal accounts were to pay household bills etc. which became more and more difficult for me due to my Parkinson's condition and poor vision

¹On the Fair Hearing Request form filed with the Board of Hearings (BOH), the appellant designated another individual as his appeal representative (Ex. 2). On December 4, 2014, the BOH received a fax letter from the original appeal representative stating that she was no longer representing the appellant, and advising that Attorney Gennis would represent him at the appeal. Following the hearing, on January 6, 2015, the hearing officer received a letter from the appellant's son and power of attorney, stating that prior to the appeal hearing on December 23, 2014, he had appointed Attorney Gennis as the appeal representative (Ex. 8).

due to glaucoma and other vision problems. Over the past 2 years my wife has reached out to my family telling them that I was not able to take care of myself, i.e., shower, bathe, feed myself properly, walk unassisted, put my eyedrops in etc. She also told my children that she could not take care of me including feeding me properly. . . . When it became apparent that I could no longer take care of myself I decided that it was time to enter a facility that could take care of me and ensure my safety. As I explored my options I was asked to provide my financial information as was my wife – subsequently my wife refused to provide or disclose any of her financial information. She told me her assets from a previous marriage were hers and that she could not and would not pay for my care.

(Ex. 6).

The appellant's son (who is also his power of attorney) testified that the appellant is now 92 years old, and that the appellant's spouse lives apart from the appellant in Florida. He testified that the appellant and the community spouse have a reverse mortgage on the Florida condominium, and that the community spouse has a legal right to live there for the rest of her life. Currently, according to the appellant's son, the community spouse is paying the taxes and the insurance on the Florida condominium. The appellant's son also testified that the appellant has Parkinson's Disease, and that his health is declining. He knew that the appellant needed to be admitted to a facility because he visited him in Florida last winter, and could see that he was not doing well. He testified that the community spouse has "shut down," and is refusing to cooperate in providing any of her own financial information despite the appellant's son having explained to her the importance of doing so. He testified that the appellant moved back to the Boston area last June, and was admitted to Hebrew Rehabilitation Center in August, 2014 (Testimony).

The appellant's attorney testified that he is not arguing that a denial of eligibility for the appellant, due to the lack of lack of cooperation of the community spouse, would result in "undue hardship" as set forth in MassHealth regulations. Instead, the appellant's attorney testified, the appellant has simply assigned any rights to support from the community spouse to MassHealth, and that is all he is required to do (Testimony).

On or about January 12, 2015, the hearing officer received a letter from the appellant's attorney forwarding a copy of another MassHealth denial notice addressed to the appellant, dated December 29, 2014, which is identical in all respects to the notice that was appealed in the instant matter. The December 29, 2014 notice contains a different notice number, however. In his cover letter, the appellant's attorney inquired of the hearing officer "if [the hearing officer's] decision will cover this new denial or if in fact we must request another hearing" (Ex. 9).

Findings of Fact

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

1. The appellant is married, is 92 years old, suffers from Parkinson's Disease, and was admitted to a long-term care facility in August, 2014 (Testimony).
2. A MassHealth Senior Member Benefit Request (MBR) was submitted on the appellant's behalf on September 3, 2014, seeking coverage effective August 11, 2014 (Testimony).
3. MassHealth issued a Request for Information to the appellant on September 30, 2014, including proof of legal separation from his community spouse (Testimony).
4. The community spouse, who lives in Florida, refuses to provide MassHealth with any of her current asset or income information, which she maintains separately from the assets and income of the appellant (Testimony; Ex. 6).
5. The appellant provided MassHealth with all verifications of his own assets and income, including his pension payments and a deed to a condominium in Florida that he owns jointly with the community spouse (Testimony, Ex. 6).
6. The appellant did not provide MassHealth with a notarized statement that he is legally separated from his wife (Testimony).
7. Based on the appellant's failure to verify any of the community spouse's assets or income, MassHealth denied the appellant's Senior MBR via notice dated November 13, 2014 (Ex. 1).
8. The appellant timely appealed the MassHealth denial notice to the BOH on November 20, 2014 (Ex. 2).
9. On December 16, 2014, the appellant assigned to MassHealth his rights to support from the community spouse.

Analysis and Conclusions of Law

Pursuant to MassHealth regulation 130 CMR 515.008, "Responsibilities of Applicants and Members," an applicant for MassHealth benefits, such as the appellant, has a responsibility to cooperate with MassHealth in establishing eligibility, as follows:

(A) Responsibility to Cooperate. The applicant or member must cooperate with the MassHealth agency in providing information necessary to establish and maintain eligibility, and must comply with all the rules and regulations of MassHealth, including recovery and obtaining or maintaining other health insurance.

In addition, the federal Medicaid statute, binding on the MassHealth agency, regarding “Treatment of Income and Resources for Certain Institutionalized Spouses,” 42 U.S.C. §1396r-5(c), provides in pertinent part:

(2) Attribution of resources at time of initial eligibility determination:

In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter, regardless of any State laws relating to community property or the division of marital property—

(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

(B) resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) of this section (as of the time of application for benefits).

(3) Assignment of support rights:

The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

(C) the State determines that denial of eligibility would work an undue hardship.

(Emphasis added).

The federal law is mirrored in MassHealth regulation 130 CMR 517.011, “Assignment of Rights to Spousal Support,” 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); Treatment of a Married Couple’s Assets When One Spouse Is Institutionalized; 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 MassHealth agency 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 MassHealth agency 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.

(Emphasis added).

In the instant matter, I find the representations of the appellant and his son that the community spouse has refused to provide information about her assets that are held individually, to be credible. While federal law and MassHealth regulations impose an obligation on the community spouse to disclose assets and income, the community spouse's responsibility to disclose assets and income held individually is waived if the institutionalized spouse's right to support from the community spouse has been assigned to the MassHealth agency. Here, the appellant has, in fact, assigned to MassHealth any rights to support from the community spouse.

Moreover, the appellant is not required to submit further proof that he and the community spouse are legally separated, as I find that he has adequately supported this fact via both documentary and testimonial evidence in the record.

Based on the foregoing, I find that the appellant's Senior MBR is complete pursuant to MassHealth regulation 130 CMR 516.001(C), and that MassHealth has the information it needs to make an eligibility determination for the appellant.

Finally, I take jurisdiction of the second MassHealth denial notice issued to the appellant on December 29, 2014 (notice number 53208677), as it is identical in all relevant respects to the MassHealth notice of November 13, 2014.

Therefore, this appeal is APPROVED as to both MassHealth notice number 52918781 (November 13, 2014) and MassHealth notice number 53208677 (December 29, 2014), and REMANDED to MassHealth to proceed to an eligibility determination.

Order for MassHealth

Rescind denial notices dated November 13, 2014 and December 29, 2014. Proceed to a substantive determination of appellant's eligibility based on the September 3, 2014 application

date, and verifications submitted thereafter, without regard to the assets and income of the community spouse. Issue a new notice to the appellant of his eligibility or ineligibility for MassHealth long-term care benefits within 45 days of the date of this decision, including appeal rights.

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.

Implementation of this Decision

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.

Paul C. Moore
Hearing Officer
Board of Hearings

Copies to: