

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Denied	Appeal Number:	1600586
Decision Date:	5/5	Hearing Date:	2/11/2016
Hearing Officer:	Sara E. McGrath	Record Open to:	3/24/2016

Appellant Representative:

MassHealth Representative:
Kim McAvinchey



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Verifications
Decision Date:	5/5	Hearing Date:	2/11/2016
MassHealth Rep.:	Kim McAvinchey	Appellant Rep.:	
Hearing Location:	Chelsea 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 December 7, 2015, MassHealth notified appellant that he is not eligible for MassHealth long-term care benefits he did not give MassHealth the information it needs to decide his eligibility within the required time frame (Exhibit 1). The appellant filed this appeal in a timely manner on January 4, 2016 (130 CMR 610.015(B)). Denial of assistance is a valid ground for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth notified appellant that that he is not eligible for MassHealth long-term care benefits because he did not give MassHealth the information it needs to decide his eligibility within the required time frame.

Issue

Whether MassHealth was correct in denying appellant's application for MassHealth long-term care benefits?

Summary of Evidence

The MassHealth representative testified that the appellant is an 82-year-old married male who was admitted to a skilled nursing facility on May 3, 2015. He submitted an application for MassHealth long-term care benefits on September 29, 2015, seeking benefits effective July 7, 2015. On October 8, 2015, MassHealth sent appellant an information request seeking information regarding, among other things, the couple's income and assets (Exhibit 4, pp. 32-34). On December 7, 2015, MassHealth denied the application because the appellant failed to submit information MassHealth needs to decide his eligibility (Exhibit 1). The MassHealth representative testified that as of the date of hearing, the following verifications had not been submitted:

1. Trust document, including all amendments and the schedule of beneficiaries. There is at least one trust known to MassHealth, the [Community Spouse] Revocable Trust.
2. Trustee's statement listing all assets in the trust and current value, as well as all assets moved in and out of the trust in the past 60 months, and statements as requested below for all trust accounts.
3. Monthly statements for all accounts from September 1, 2013 to present (checking, savings, IRA, retirement plans, investment plans, stocks, bonds, etc.) showing all activity and balances with explanation/proof for all transactions of \$1,000 and over. MassHealth has not received statements for the following known accounts: National Financial Services – Trust, MTL Insurance, Saks Fifth Avenue pension plan, Commonwealth Financial.
4. Closing statement on all accounts closed in the last 60 months and proof of disbursement of closing withdrawals. Federal income tax returns verify capital gains income which may indicate closed accounts.

(Exhibit 4, p. 1).

The MassHealth representative testified that appellant submitted a letter dated September 29, 2015 wherein he acknowledges that his application omits his wife's information and that the responses are his alone. He writes that for decades he and his wife have kept their income and assets almost entirely separate, although he lived with her in her home and contributed to some expenses such as cable and the utilities. Appellant writes that his wife is refusing to support him financially and she will not provide information or cooperate with the filing of the application for benefits. Appellant writes that he hereby assigns to MassHealth his rights to obtain spousal support from her (Exhibit 4, p. 2). The MassHealth representative testified that appellant relies upon the provisions of 130 CMR 517.010 in support of his position. She testified that MassHealth takes the position that appellant has not shown that cooperation is not in his best interest, and thus the provisions of 130 CMR 517.010 would not justify the community spouse's refusal to cooperate.

Appellant's attorney testified that appellant has submitted much of the information requested by MassHealth. Appellant submitted a letter dated October 27, 2015 from appellant to the MassHealth representative (Exhibit 5). Appellant writes that he is enclosing some of the requested income and asset information, but notes that some of the assets are owned by his wife and he does not have access to any further verification (Exhibit 5). Appellant's attorney argued at hearing that the provisions of 130 CMR 517.011 apply here. The hearing officer left the record open for MassHealth to obtain a legal opinion as to the applicability of 130 CMR 517.011 to the facts of this case. MassHealth submitted a legal opinion in a timely manner, arguing that because the applicable MassHealth regulation is inconsistent with federal law, it does not apply here (Exhibit 8). Appellant submitted a memorandum of law as well (Exhibit 10).

Findings of Fact

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

1. Appellant is an 82-year-old married male who was admitted to a skilled nursing facility on May 3, 2015.
2. Appellant submitted an application for MassHealth long-term care benefits on September 29, 2015, seeking benefits effective July 7, 2015.
3. On October 8, 2015, MassHealth sent appellant an information request seeking information regarding, among other things, the couple's income and assets (Exhibit 4, pp. 32-34).
4. On December 7, 2015, MassHealth denied the application because the appellant failed to submit information MassHealth needs to decide his eligibility (Exhibit 1).
5. Appellant acknowledges that certain documentation regarding his wife's income and assets has not been submitted to MassHealth (Exhibit 4, p. 2).
6. Appellant claims that his wife will not cooperate with the submission of documentation regarding her income and assets (Exhibit 4, p 2).
7. Appellant assigns to MassHealth his rights to obtain spousal support from the community spouse (Exhibit 4, p. 2).
8. Appellant's community spouse is his power-of-attorney (testimony).
9. Appellant and the community spouse filed joint tax returns prior to appellant's admission to a skilled nursing facility (testimony).

Analysis and Conclusions of Law

Once an application for MassHealth long-term care benefits has been submitted, the MassHealth agency requests all corroborative information necessary to determine eligibility (130 CMR 516.001(B)). When one spouse is institutionalized, the countable assets of both spouses must be evaluated (130 CMR 520.002(B)(2)(b)). Here, appellant alleges that his spouse refuses to submit verification of any of her assets, and argues that pursuant to 130 CMR 517.011, he should not be found ineligible due to his spouse's refusal to cooperate.

130 CMR 517.011, Assignment of Rights to Spousal Support, provides 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.

MassHealth takes the position that because this regulation is inconsistent with the provisions of 42 USC §1396r-5, the federal law supersedes and must be applied (Exhibit 8). Specifically, MassHealth argues that 42 USC §1396r-5 requires that prior to invoking the regulation related to the assignment of spousal rights, an applicant must verify the income and assets of both the applicant and the community spouse. MassHealth argues that a determination of whether 42 USC §1396r-5(C)(3) has been satisfied is not yet ripe because the couple's income and assets have not been verified. MassHealth appears to argue that because the MassHealth regulation permits the assignment of rights to spousal support at the verification stage of the eligibility process, the regulation is inconsistent with the federal law. I disagree, and find that the federal and state regulations are not inconsistent. Rather, the MassHealth regulation is more expansive and provides an additional opportunity for an applicant to claim spousal noncooperation and to assign his or her rights to spousal support.

Appellant argues that he has satisfied the provisions of 130 CMR 517.011(B)(1) by claiming that his spouse refuses to cooperate and by assigning his rights to obtain spousal support from his spouse (Exhibit 4, p. 2). I disagree and conclude that appellant has not satisfied the provisions of

130 CMR 517.011. Specifically, I find that appellant has not demonstrated by a preponderance of the evidence that his spouse will not cooperate. Appellant did not submit any evidence, other than his own statement in a letter, to demonstrate that the spouse will truly not cooperate (Exhibit 4, p. 2). Appellant did not produce any evidence from the community spouse, testimonial or otherwise, confirming her unwillingness to cooperate. Further, there was no evidence presented at or post-hearing regarding any efforts appellant has undertaken to compel the spouse to cooperate.¹ For these reasons, I conclude that appellant has not satisfied the requirements of 130 CMR 517.011.

Accordingly, the appeal is DENIED.

Order for MassHealth

None.

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.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc:

¹ This lack of evidence is especially troubling in light of the fact that the parties lived together and filed joint tax returns in the years prior to appellant's need for long-term care services. Further, I note that the community spouse is appellant's power-of-attorney, and signed in that capacity at least one of the checks recently paid to appellant's attorney (Exhibit 8, exhibit A). The spouse's role as power-of-attorney and her actions in that capacity further "muddy the waters" and make the noncooperation argument even less compelling.