

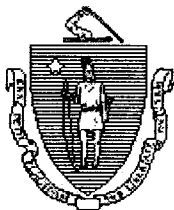
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:

Appeal Decision:	Approved	Appeal Number:	1709521
Decision Date:	12/12/17	Hearing Date:	09/11/2017
Hearing Officer:	Christopher Jones	Record Open to:	

Appellant Representative:

MassHealth Representative:
Cara Miller



*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	Issue:	LTC – Verifications / Spousal Verifications
Decision Date:	12/12/17	Hearing Date:	09/11/2017
MassHealth Rep.:	Cara Miller	Appellant Rep.:	
Hearing Location:	Tewksbury 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 April 10, 2017, MassHealth denied the appellant's application for MassHealth long-term-care benefits because the appellant failed to verify his spouse's assets. Exhibit 3; 130 CMR 515.008. The appellant filed this appeal in a timely manner on April 27, 2017.¹ Exhibit 3; 130 CMR 610.015(B). 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 because he failed to verify his spouse's assets and income.

¹ This matter was originally scheduled for August 21, 2017, but the hearing was rescheduled at the appellant's attorney's request. See Exhibit 2.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 515.008 and 130 CMR 517.011, in determining that the appellant must verify his spouse's financial information in order to qualify for MassHealth benefits.

Summary of Evidence

The appellant is over the age of 65, and he entered the nursing facility on November 25, 2016. The appellant filed an application for long-term-care benefits on February 24, 2017, and the nursing-facility is requesting that benefits start on December 31, 2016. The appellant's wife filed for divorce on January 9, 2017 "as of" November 25, 2016. The appellant's wife also sent a letter to MassHealth asserting her "rights of spousal refusal pursuant to 130 CMR 517.011" on or around December 15, 2016. The MassHealth representative sought an opinion from MassHealth's legal department about whether the appellant needed to verify his spouse's financial information.² On August 16, 2017, MassHealth's legal memorandum in response states:

The applicant ... has not met the requirements under the non cooperation regulations. There has been no assignment, nor has any hardship been documented. (See 130 CMR 520.019(L)). Further, although a divorce is pending it has not been finalized. Accordingly, the applicant's application is incomplete without documentation of the spouse's assets.

See Exhibit 4.

The parties agreed at the hearing that no other verifications were missing other than the financial information regarding the appellant's spouse. The appellant's representative explained that this was a second marriage for both the appellant and his now ex-wife. He testified that they had a prenuptial agreement, which documents the appellant and his ex-wife's intent to keep their finances completely separated. More important he pointed out that an assignment of spousal support was submitted to MassHealth on April 24, 2017, and a Divorce Nisi order was issued on June 19, 2017. As of the hearing, the appellant's divorce had been finalized. The appellant's attorney also had arguments to support his belief that the appellant would face a hardship if the application were not approved. The appellant's daughter further testified that she has attempted on multiple occasions to get information from her father's ex-wife and she said that her father's ex-wife and her ex-step-brother were very rude and uncooperative.

The MassHealth representative understood the situation, but she said that it seemed really suspicious that a spouse would file for divorce just as a person enters a nursing facility and seeks MassHealth benefits.

² The MassHealth representative also sought clarification of whether certain gifts and loans to family members were disqualifying transfers. This issue is not part of this appeal.

Findings of Fact

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

1. The appellant is over the age of 65, and he entered the nursing facility on November 25, 2016.
2. The appellant filed an application for long-term-care benefits on February 24, 2017, and the nursing-facility is requesting that benefits start on December 31, 2016. The appellant's wife filed for divorce on January 9, 2017 "as of" November 25, 2016.
3. The appellant's wife also sent a letter to MassHealth asserting her "rights of spousal refusal pursuant to 130 CMR 517.011" on or around December 15, 2016.
4. On April 10, 2017, MassHealth denied the appellant's application for failing to verify the appellant's spouse's financial information.
5. On April 20, 2017, the appellant assigned all of his rights to spousal support to MassHealth.
6. On August 16, 2017, MassHealth legal department confirmed that if the appellant assigns his right to spousal support MassHealth, he did not need to verify her assets.
7. The appellant's spousal asset verifications are the only outstanding verification issue.

Analysis and Conclusions of Law

Generally speaking, MassHealth members must establish financial eligibility, which includes showing that their assets are below a threshold and that they reduced their assets in accordance with state and federal law. See 130 CMR 520.000. To qualify for long-term-care benefits, an applicant must complete an application and cooperate with the MassHealth agency by submitting corroborative information. See 130 CMR 516.001(B). If the requested verifications are received within 30 days, "the application is considered complete" and MassHealth continues to "determine the coverage type ... for which the applicant is eligible." 130 CMR 516.001(C). MassHealth may deny an application where the member has failed to provide requested information within 30 days. 130 CMR 516.001(C). If a MassHealth member fails to cooperate with MassHealth, and submit the documentation requested, MassHealth will deny the member's application. See 130 CMR 515.008(C).

One exception to the general rule that an applicant must verify their assets is 130 CMR 517.011, which states:

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.

Here, the appellant has properly assigned any and all rights to support from his then-community spouse to MassHealth, and the obligation to provide asset verification was alleviated. MassHealth's legal memorandum supports this outcome. Therefore this appeal is APPROVED. MassHealth may issue any asset/disqualifying transfer notices it deems appropriate.

Order for MassHealth

Continue processing the appellant's February 24, 2017 application, seeking no further verifications regarding his ex-wife.

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.

Christopher Jones
Hearing Officer
Board of Hearings