

**Office of Medicaid  
BOARD OF HEARINGS**

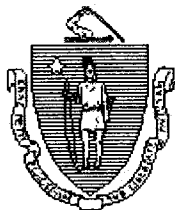
**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1713783
<b>Decision Date:</b>	11/27/17	<b>Hearing Date:</b>	November 2, 2017
<b>Hearing Officer:</b>	Stanley M. Kallianidis	<b>Record Open Date:</b>	November 16, 2017

**Appellant Representative:**

**MassHealth Representative:**

Stephanie DeSousa, Taunton



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	Verifications
<b>Decision Date:</b>	11/27/17	<b>Hearing Date:</b>	November 2, 2017
<b>MassHealth Rep.:</b>	Stephanie DeSousa		

## 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 6, 2017, 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 2, 2017 (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 516.001, 517.011, whether or not MassHealth was correct in denying the appellant benefits where her community spouse refuses to cooperate with the application process?

## Summary of Evidence

The MassHealth representative testified that the appellant's May 17, 2017 application was denied due to a failure to provide timely verifications (Exhibit 3). A verification request was sent out to the appellant (Exhibit 4). The verifications were not submitted and a Notice of Denial was issued on July 6, 2017 (Exhibit 1). The missing verifications at issue were the assets of the appellant's community spouse. During the application process, the community spouse submitted an affidavit that he and the appellant maintain separate bank and financial accounts, do not comingle their funds, and that he refuses to financially support her. He also submitted a joint federal tax return that they filed in 2016 (Exhibit 5). Notwithstanding the April 12, 2017 affidavit, the MassHealth representative testified that MassHealth does not allow a community spouse's refusal of financial support.

The appellant's attorney argued that, under MassHealth's regulations, an applicant cannot be denied benefits due to a refusal of support from the community spouse. He submitted a second affidavit from the community spouse, dated October 31, 2017. According to the affidavit, he has not divorced his spouse due to her mental condition. They have always maintained separate financial accounts and are not beneficiaries of each other's life insurance. The appellant recently sold her condominium, but he has not received any proceeds. Also, they filed a joint tax return in 2016, because the appellant was unable to file on her own. Finally, the spouse reiterated that he refuses to financially support the appellant (Exhibit 6).

The record was left open for two weeks for documentation of the appellant's incapacity (Exhibit 7). During the record-open period, the attorney submitted a letter from the appellant's physician dated November 12, 2017. According to the letter, the appellant has dementia and is unable to function mentally or physically. Consequently, she "cannot handle her own affairs, including assignment of any rights to spousal support" (Exhibit 10).

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on May 17, 2017 (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 assets of the appellant's community spouse (Exhibit 4).

4. According to the community spouse's April 12, 2017 affidavit, he and the appellant maintain separate bank and financial accounts, do not comingle their funds, and that he refuses to financially support her (Exhibit 5).
5. According to the community spouse's October 31, 2017 affidavit, he has not divorced his spouse due to her mental condition; they have always maintained separate financial accounts and are not beneficiaries of each other's life insurance, and he has not received any proceeds from the sale of her condominium. Also, they filed a joint tax return in 2016, because the appellant was unable to file on her own. He reiterated that he refuses to financially support her (Exhibit 6).
6. According to a letter from the appellant's physician dated November 12, 2017, the appellant has dementia and is unable to function mentally or physically. She "cannot handle her own affairs, including assignment of any rights to spousal support" (Exhibit 10).

## **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).

### **517.011: 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): *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.

In the instant appeal, I have found that the appellant applied for MassHealth on May 17, 2017. The appellant's application was denied due to verifications that were not submitted. A Notice of Denial was issued on July 6, 2017. The missing verifications at issue were the assets of the appellant's community spouse.

The issue at hand is whether or not MassHealth was correct to deny the application in light of the community spouse's refusal to cooperate with the application process. MassHealth maintains that the refusal of the community spouse to verify his assets does not excuse the appellant from her obligation to document the couple's assets to MassHealth. The appellant argues that an application cannot be denied for missing verifications from a community spouse when such community spouse refuses to cooperate.

Through two affidavits of the community spouse, I have found that he does indeed refuse to cooperate in the appellant's application for benefits and that their assets have been kept separate. Furthermore, based on a letter from her physician, I have found that she is mentally incompetent and therefore cannot assign to MassHealth any rights to support from her community spouse.

In accordance with the above regulations and facts, I am in agreement with the appellant that her application cannot be denied based upon the refusal of her community spouse to cooperate in the application process. Specifically, she meets the criteria under 130 CMR 517.011 (B)(2): she cannot provide MassHealth with her spouse's assets due to his refusal and she is mentally incompetent to assign rights of support to MassHealth.

The appeal is therefore approved.

## **Order for MassHealth**

Reopen May 17, 2017 application and determine appellant's eligibility for MassHealth based solely on her assets.

## 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: