

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2012-2635C

HELEN GERSON,)
Plaintiff,)
)
v.)
)
MEDICAID BOARD OF HEARINGS,)
Defendant)
)

DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS AND IN SUPPORT OF THE AGENCY’S DECISION

Defendant, Medicaid Board of Hearings, Executive Office of Health and Human Services (the "Agency" or "MassHealth"), submits this memorandum in support of the Agency's Decision ("Decision") and in opposition to Plaintiff's Motion for Judgment on the Pleadings. This is an administrative appeal pursuant to M.G.L. c. 30A, § 14. Following a fair hearing, and after considering all of the evidence presented, the Hearing Officer affirmed the Agency’s Decision deeming the Plaintiff ineligible for MassHealth benefits as her assets are over the allowed limit as a result of her interest in a trust.

Pursuant to regulations governing MassHealth, the Agency correctly found that the trust in which Plaintiff has an interest is a countable asset because all of the property is available to her. As set forth below, the Agency’s Decision is supported by substantial evidence, not arbitrary, capricious or an abuse of discretion, and consistent with federal and state law. Therefore, this Court should deny Plaintiff’s motion in its entirety and affirm the Agency's Decision.

STATEMENT OF FACTS

The relevant factual and procedural background derives from the certified Administrative Record, which contains the decision of the Hearing Officer (the "Decision") and the Exhibits

Accordingly, as the Trust is a Medicaid Qualifying Trust and all its assets are countable in an eligibility determination, the Agency's Decision must be upheld. 130 CMR 520.022(B)(2).

B. Plaintiff's Discussion of *Cohen* is Misguided.

Gerson inexplicably argues that the Hearing Officer's reliance on *Cohen* "is wrong." *Plaintiff's Motion for Judgment on the Pleadings ("Plaintiff's MJOP")* at 8. This position is misguided. Plaintiff argues that in 1992 when the Trust was created the funds would not have counted towards Medicaid. *Plaintiff's MJOP*, 9-10. Plaintiff also claims that the Hearing Officer mistakenly relied on *Cohen* because *Cohen* improperly applied post-1993 law to trusts established before 1993. *Plaintiff's MJOP*, 11-17.

Plaintiff's contention that the funds would not have counted toward Medicaid in 1992 is both unsupported and inconsequential. Although Congress amended the Medicaid Qualifying Trust ("MQT") statute in 1993, the MQT statute as enacted in 1986 sought to rectify the state of affairs in which a grantor "was able to qualify for public assistance without depleting his assets." *Cohen*, 423 Mass. at 403. The 1993 Amendment made certain clarifications, but did not change the purpose of the preexisting statute. *See Cohen* at 406-07. Therefore, a statutory scheme existed at the time Gerson established the Trust that sought to count trust assets when determining Medicaid eligibility. Even assuming, *arguendo*, that Gerson's assets would not have counted at the time the Trust was executed, such an argument is inconsequential. As noted by the Hearing Officer, equity does not change the legal conclusion because "[m]y authority is limited to applying the MassHealth regulations in effect on the date the appellant seeks MassHealth long-term care coverage." (R., p. 4). In other words, the determination of whether