

**Office of Medicaid  
BOARD OF HEARINGS**

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	1800448
<b>Decision Date:</b>	3/6/18	<b>Hearing Date:</b>	February 20, 2018
<b>Hearing Officer:</b>	Stanley M. Kallianidis		

**Appellant Representative:**

**MassHealth Representative:**

Liz Landry, 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>	3/6/18	<b>Hearing Date:</b>	February 20, 2018
<b>MassHealth Rep.:</b>	Liz Landry		

### 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 9, 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 December 11, 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 his community spouse refuses to cooperate with the application process?

## Summary of Evidence

The MassHealth representative testified that the appellant's April 21, 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 November 9, 2017 (Exhibit 1). The missing verifications at issue were the assets of the appellant's community spouse. MassHealth was notified that the appellant's spouse refuses to provide them with her financial information. The MassHealth representative explained that, notwithstanding this refusal, the application was denied for a lack of verifications because 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. She testified that the appellant and his spouse have been estranged for over a decade. The appellant's spouse was asked to provide financial information during the application process, but she refused. The attorney submitted a signed statement from the community spouse, dated December 8, 2017. According to the community spouse's statement, she is refusing to provide any of her financial information to MassHealth regarding her husband's MassHealth application. Also, the attorney submitted a determination from the appellant's physician regarding his health care proxy. According to the physician's statement, the appellant "lacks the capacity to make and/or to communicate health care decisions" (Exhibit 5).

The attorney alternatively contended that it would be a hardship for the appellant if his application were to remain denied. She indicated that the appellant's nursing home is closing at the end of March 2018, and without an active MassHealth application, he would have no place to go (Exhibit 5). Finally, the attorney submitted a different decision from another hearing officer where an appeal over the issue of a spouse's refusal to cooperate was approved (Exhibit 6).

## Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on April 21, 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 a signed statement from the community spouse dated December 8, 2017, she is refusing to provide any of her financial information to MassHealth regarding her husband's MassHealth application (Exhibit 5).
5. According to the appellant's physician, the appellant "lacks the capacity to make and/or to communicate health care decisions" (Exhibit 5).
6. The appellant's current nursing facility is closing at the end of March 2018, and without an active MassHealth application, he would have no place to go (Exhibit 5).

## 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 April 21, 2017. The appellant's application was denied due to verifications that were not submitted. A Notice of Denial was issued on November 9, 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 her assets does not excuse the appellant from his obligation to document the couple's assets to MassHealth. The appellant though his attorney argues that an application cannot be denied for missing verifications from a community spouse when such community spouse refuses to cooperate.

Based upon the community spouse letter dated December 8, 2017, I have found that she does indeed refuse to cooperate in providing both the appellant and MassHealth with her asset information in conjunction with her husband's application for benefits. Furthermore, based on a letter from the appellant's physician, I have found that he is mentally incompetent and therefore cannot assign to MassHealth any rights to support from his community spouse.

In accordance with the above regulations and facts, I am in agreement with the appellant that his application cannot be denied based upon the refusal of his community spouse to cooperate in the application process. Specifically, he meets the criteria under 130 CMR 517.011 (B)(2): he cannot provide MassHealth with his spouse's assets due to her refusal and he is mentally incompetent to assign rights of support to MassHealth. While not necessary, the appellant also meets the criteria under 130 CMR 517.011(B)(3), in that his current nursing home is closing and without an active Medicaid application and no other place to go, he would be in a situation of undue hardship.

The appeal is therefore approved.

## **Order for MassHealth**

Reopen April 21, 2017 application and determine appellant's eligibility for MassHealth based solely on his 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: