

## AFFIDAVIT OF COUNSEL

NOW COMES Pamela B. Greenfield, of Needham, Massachusetts, and hereby deposes

and states that:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts, with a principal place of business at of Samuel, Sayward & Baler, LLC, 858 Washington Street, Ste. 202, Dedham, Massachusetts 02026. I have served on the Board of Directors for the MassNAELA organization since January 2015.
2. Part of my law practice involves assisting elders with MassHealth long term care applications. Over the last 11 years I have processed and advised clients on over 100 MassHealth applications. About 90% of my practice involves advising on long term care planning and MassHealth applications. I have attended numerous administrative fair hearings during the past 11 years of practicing in elder law.
3. During this time I have seen a general lack of willingness and reasonableness from the MassHealth caseworkers to assist my clients in navigating the MassHealth process despite their very best efforts to comply with the agency's information requests. It bears mentioning that these clients are extremely vulnerable, elderly and in desperate need of health insurance coverage to pay for skilled nursing home care. The process puts a profound amount of stress and anxiety on families who are also attempting to deal with a loved one facing chronic, terminal or debilitating health issues.
4. Despite the difficult, cumbersome and user-unfriendly MassHealth application process I have come to accept over the years in my practice, I recently had a situation which truly made me stop in my tracks. This particular situation involved a straightforward application of a woman who had previously spent down \$170,000 on her care in a skilled nursing facility before applying for benefits once her funds ran out.
5. The application was submitted with all of the regularly provided verifications—years of bank statements, income records, real estate holdings, insurance information, etc. Following the typical Request for Further Information provided to the applicant by the caseworker, I timely filed all of the requested outstanding documentation.
6. Subsequently, I had several telephone and email conversations with the worker who indicated that he had all of the verifications requested but would be submitting the applicant's "income for life" annuity (which was purchased in 2015 while she was living on her own in the community to help manage the payment of her expenses) to the legal department for review.
7. Approximately one week later I received a denial notice for failure to provide requested verifications. This surprised me greatly because the worker indicated that he had all of the documentation he needed and was simply waiting for an answer from legal. I immediately emailed the worker to inquire about the denial and he indicated that he did have everything he

needed from me, was still waiting on a decision but “had to make a decision one way or the other” since his “deadline had passed” and that I could appeal the decision to preserve the initial application. This email exchange is attached here as Exhibit A.

8. Three weeks later, I received a hearing date from the board of hearings on the verifications matter. Having not heard from the worker as to the legal determination, I contacted him via email for an update. At this time the worker indicated that “the denial for verifications stands since MassHealth does not know the cash surrender value of the annuity.” This item was never requested at any point in the application process or on the request for information as the annuity is an “income only” product and currently inaccessible to the applicant. I asked if he had received the memorandum from the legal department and he replied, “Yes. I have it, but I have to wait until the day of the hearing to provide it to you.” See Exhibit B.

9. It is simply outrageous and a violation of due process that my client was erroneously denied benefits because the agency was waiting for a determination from its own legal department. Had she not been represented by counsel, she may not have had the foresight to appeal the notice and would have been denied retroactive coverage as a result of an inappropriate denial notice based on agency misconduct. Further, to withhold the legal decision from Appellant’s counsel in an effort to thwart efforts to settle and resolve the matter prior to hearing is arbitrary, capricious and an abuse of discretion. These actions demonstrate serious due process violations to a deserving applicant who requires skilled nursing home care and has complied with each and every MassHealth request.

SIGNED under the pains and penalties of perjury on this 29<sup>th</sup> day of May, 2018.

  
Pamela B. Greenfield

## RE: Denial for Verifications--Virginia Loughnane

Gillis, Gabe (EHS) <gabe.gillis@state.ma.us>

Mon 4/30/2018 3:44 PM

To: Pamela Greenfield <greenfield@ssbllc.com>;

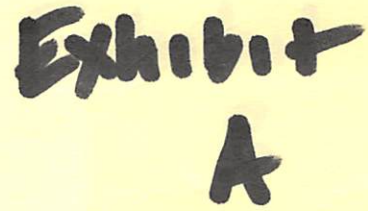


Exhibit  
A

Hi Pam,

Yes, still waiting on legal. I had to make a decision one way or the other since the deadline had passed. Of course you may appeal the denial to preserve the original application date if you haven't done so already.

Thank you,

~~Gabe Gillis~~  
MassHealth Enrollment Center  
Long Term Care Intake Unit  
45 Spruce St  
Chelsea, MA 02150  
617-551-2044 (office)  
617-889-3285 (fax)  
~~Gabe.gillis@state.ma.us~~

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**From:** Pamela Greenfield [mailto:greenfield@ssbllc.com]  
**Sent:** Monday, April 30, 2018 3:43 PM  
**To:** Gillis, Gabe (EHS)  
**Cc:** Michelle Mitchell  
**Subject:** Denial for Verifications--Virginia Loughnane

Hi ~~Gabe~~

Just wanted to check in with you regarding the denial for vers. I am assuming this is just because you are waiting for the decision from legal and not because you are missing something from me. Let me know.

Best,

Pam

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXNIPIT  
B

Pamela B. Greenfield, Esq.



SAMUEL, SAYWARD & BALER LLC  
858 Washington Street, Suite 202

Dedham, MA 02026

P 781-461-1020

F 781-461-0916

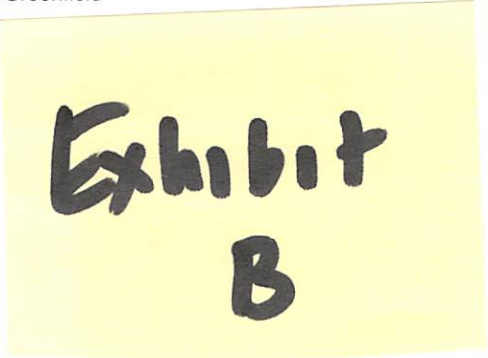
E [greenfield@sbllc.com](mailto:greenfield@sbllc.com)

[www.sbllc.com](http://www.sbllc.com)

5/24/2018

RE: Loughnane Hearing - Pamela Greenfield

RE: Loughnane Hearing



Gillis, Gabe (EHS) <gabe.gillis@state.ma.us>

Mon 5/21/2018 11:07 AM

To: Pamela Greenfield <greenfield@ssbllc.com>;

Yes. I have it, but I have to wait until the day of the hearing to provide it to you. The last email I sent is a synopsis of the legal opinion.

**Gabe Gillis**

MassHealth Enrollment Center

Long Term Care Intake Unit

45 Spruce St

Chelsea, MA 02150

617-551-2044 (office)

617-889-3285 (fax)

[gabe.gillis@state.ma.us](mailto:gabe.gillis@state.ma.us)

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**From:** Pamela Greenfield [mailto:greenfield@ssbllc.com]

**Sent:** Monday, May 21, 2018 8:05 AM

**To:** Gillis, Gabe (EHS)

**Subject:** Re: Loughnane Hearing

Have you received a decision from MassHealth legal???

Sent from my iPhone

On May 21, 2018, at 7:53 AM, Gillis, Gabe (EHS) <gabe.gillis@state.ma.us> wrote:

Hi Pam,

For now, the denial for verifications stands since MassHealth does not know the cash surrender value of the annuity. After learning the CSV, it appears the case will be denied due to excess assets. In addition, there may also be a period of ineligibility due to a transfer of assets for less than fair market value which occurred when the annuity was established since it is not actuarially sound.

Thank you,

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**Gabe Gillis**

MassHealth Enrollment Center  
Long Term Care Intake Unit  
45 Spruce St  
Chelsea, MA 02150  
617-551-2044 (office)  
617-889-3285 (fax)

**[gabe.gillis@state.ma.us](mailto:gabe.gillis@state.ma.us)**

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**From:** Pamela Greenfield [<mailto:greenfield@sbllc.com>]  
**Sent:** Friday, May 18, 2018 2:07 PM  
**To:** Gillis, Gabe (EHS)  
**Cc:** Michelle Mitchell  
**Subject:** [REDACTED] Hearing

**[REDACTED]**

Any news on this case? There is now a hearing scheduled.

Let me know.

Pam

Pamela B. Greenfield, Esq.  
<image001.jpg>  
SAMUEL, SAYWARD & BALER LLC  
858 Washington Street, Suite 202  
Dedham, MA 02026  
P 781-461-1020  
F 781-461-0916  
E [greenfield@sbllc.com](mailto:greenfield@sbllc.com)  
[www.sbllc.com](http://www.sbllc.com)



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