

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

SUPERIOR COURT
Docket No. 1884CV00129

JEAN MAAS,

Plaintiff

v.

MARYLOU SUDDERS,
Secretary of Executive Office of
Health and Human Services,

and

KIM LARKIN,
Director of the Board of Hearings
of the Office of Medicaid
of the Executive Office of
Health and Human Services,

Defendants

**AMENDED VERIFIED COMPLAINT AND PRAYER FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF PURSUANT TO M.G.L. c. 231A, s. 1, AND
FOR CERTIORARI REVIEW PURSUANT TO M.G.L. c. 249, s. 4**

Preliminary Statement

1. The Plaintiff's application for MassHealth long term care benefits was denied by the Executive Office of Health and Human Services ("EOHHS"). The Plaintiff has filed an appeal and is preparing for the administrative hearing. This Complaint seeks to remedy the harm caused by the EOHHS's conduct, specifically, failing to provide the Plaintiff with a clear statement of the specific reasons for issuing a MassHealth denial to the Plaintiff, by the acquiescence of the Board of Hearings ("BOH") to intentional denials of due process by the EOHHS, and by maintaining an invalid subpoena regulation and using it to refuse to issue the subpoena that the Plaintiff is required to receive under federal and

Massachusetts law. The administrative appeal is pending and the Plaintiff asserts that the issuance of the subpoena and receiving all of the reasons for the denial, including an explanation of any of the agency's changes in position, is necessary for preparation for the appeal hearing.

Jurisdiction and Venue

2. This Court has jurisdiction of this matter pursuant to M.G.L. c. 118E § 49, M.G.L. c. 30A, § 7, M.G.L. c. 30A § 11, M.G.L. c. 30A § 12, M.G.L. c. 231A and 130 CMR 610.052. The Plaintiff's federal claims arise pursuant to 42 U.S.C. § 1396a(a)(3) (related to right of appeal), the Due Process Clause of the U. S. Constitution and 42 U.S.C. §§ 1983 and 1988. The Plaintiff's claim for declaratory relief is brought pursuant to M.G.L. c. 30A § 7 and M.G.L. c. 231A § 1. The Plaintiff's claim for certiorari review is brought pursuant to M.G.L. c. 249 § 4.
3. Venue is proper whereas the Defendant EOHHS's primary place of business is in Suffolk County, and the Defendant BOH is part of the EOHHS.

Parties

4. The Plaintiff, JEAN MAAS (hereinafter "Plaintiff") is a disabled elder who resides in the Kimball Farms Nursing Care Center in Lenox, Massachusetts, and who is represented by her son, DOUGLAS R. MAAS, of 8 Park Place, Valatie, New York, as agent under her durable power of attorney dated February 25, 2016, attached as **Exhibit A**.
5. The Defendant, MARYLOU SUDDERS, is the Secretary of EOHHS, which under M.G.L. c. 118E § 1 is the single state agency responsible for supervision of the administration of the MassHealth program throughout Massachusetts, including the administrative "fair hearing" process.

6. The Defendant, KIM LARKIN, is the Director of the BOH of the Office of Medicaid of the EOHHS, which under M.G.L. 118E § 47 is supposed to be “independent of all other subdivisions and personnel” of the EOHHS.

Facts

7. During 2017, the Plaintiff, being a resident of the said Kimball Farms Nursing Care Center, filed an application for MassHealth long term care benefits.

8. By notice dated October 12, 2017, attached as **Exhibit B**, the Plaintiff’s application was denied.

9. The denial notice issued to the Plaintiff does not provide the reasons for the MassHealth denial.

10. On November 10, 2017, the Plaintiff, through her Plymouth lawyer, filed a timely notice of appeal with the BOH, requesting that the appeal be scheduled in the Taunton or Quincy BOH office.

11. The appeal request filed by the Plaintiff also noted that the Plaintiff had not been provided with the reasons for the denial, and requested “that the Board of Hearings issue an order or subpoena to the Office of Medicaid that the reasons be provided to the applicant no less than ten (10) days before the date of the appeal.”

12. The subpoena request is governed by M.G.L. c. 30A § 12, which states that “[a]ny party to an adjudicatory proceeding shall be entitled as of right to the issuance of subpoenas in the name of the agency conducting the proceeding. The party ... may make written application to the agency, which shall forthwith issue the subpoenas requested.” By way of contrast, the agency’s regulation, 130 CMR 610.052, states that “[i]f, in its discretion

... BOH allows such request, a subpoena will be issued within three business days of receipt of such request.”

13. On December 11, 2017, the Plaintiff received notice from the BOH that the appeal was scheduled for December 21, 2017 in the Springfield BOH office, not the Taunton or Quincy office, and no order or subpoena was issued by the BOH to the Office of Medicaid.
14. The BOH is aware that the Plaintiff’s lawyer is located at 118 Long Pond Road, Plymouth, Massachusetts, and should be aware that travel to and from 88 Industry Avenue, Springfield, Massachusetts would take a minimum of 2 hours each way, and may take 3-4 hours each way.
15. In a letter to the Defendant Larkin dated December 14, 2017, the Plaintiff again requested that the hearing be scheduled in the Taunton or Quincy office, and that an order or subpoena be issued by the BOH to the Office of Medicaid for the reasons for the denial.
16. On December 15, 2017, this Plaintiff’s lawyer was telephoned by Christopher Taffe, the Assistant Director of the BOH, regarding the Plaintiff’s request to reschedule the hearing due in part to this Plaintiff’s lawyer having surgery the day before the scheduled hearing and being on oxycodone on the day of the hearing, and Christopher Taffe agreed to reschedule the hearing.
17. On December 28, 2017, the Plaintiff received notice, attached as **Exhibit C**, that the hearing that the Assistant Director of the BOH had agreed to reschedule had instead been dismissed and that a good cause hearing was now necessary to determine whether the Plaintiff would even have the right to a fair hearing.

18. On January 11, 2018, the Plaintiff made another written request for a subpoena to the BOH, asking that the Office of Medicaid provide the Plaintiff, as soon as possible, with the reasons for the denial, and, if those reasons are inconsistent with any previous fair hearing decisions, an explanation of the Office of Medicaid's change in position and copies of those hearing decisions; see **Exhibit D**.
19. As of this date, the BOH has not issued any subpoena or other order to the Office of Medicaid to provide the Plaintiff with the reasons for the denial, and, despite the fact that 801 CMR 1.02(8) states that "[p]arties to an Adjudicatory Proceeding are encouraged to engage in voluntary discovery," the Defendant EOHHS has not provided those reasons and has not explained whether its position in this case is consistent with previous fair hearing decisions of the agency on similar facts and circumstances.
20. The Plaintiff's son, DOUGLAS R. MAAS, who filed the MassHealth application as agent under her durable power of attorney, has telephoned the MassHealth eligibility worker in charge of the case more than once to attempt to determine what the specific reasons for the denial were or schedule an appointment to review the Plaintiff's MassHealth file, but the MassHealth eligibility worker has not returned these phone calls.
21. The refusal to give MassHealth appellants the reasons for the denial and intentionally keep those reasons out of the applicant's MassHealth file has long been a pattern and practice of the Office of Medicaid. See **Exhibit E**, a copy of a May 27-28, 2009 email exchange between a MassHealth eligibility worker and a lawyer representing the Office of Medicaid, where the lawyer directed the worker to destroy an item that was in the appellant's MassHealth file to prevent the appellant from learning the reasons for the denial until the day of the fair hearing; this document can be found as page A103 in the

record appendix or addendum in Burt v. Director of the Office of Medicaid, 87 Mass. App. Ct. 1125 (2015). See also **Exhibit F**, the affidavit of Professor Mark W. Worthington of Western New England School of Law.

22. On January 18, 2018, on the date of a scheduled hearing on the Plaintiff's motion for a preliminary injunction, the Defendants filed with this Court a misleading affidavit signed by the Defendant Larkin on January 17, 2018, attached as **Exhibit G**, under which the Court could have inferred that the Plaintiff had no outstanding subpoena request with the BOH.
23. Later the same day that the Defendant had filed the Defendant Larkin's January 17, 2018 affidavit with this Court, BOH Hearing Officer Stanley Kallianidis, in an email also attached as **Exhibit H**, which email cc-ed EOHHS General Counsel Jesse Caplan, denied the issuance of a subpoena, in accordance with 130 CMR 610.052 and not M.G.L. c. 30A § 12, and made comments about the hearing officer's view of the Plaintiff's due process rights.
24. By notice dated February 1, 2018, attached as **Exhibit I**, the BOH rescheduled the Plaintiff's fair hearing, without being preceded by a so-called good cause hearing, for March 5, 2018, at 2:00 PM in its Taunton office.

Claims for relief

COUNT I: VIOLATION OF STATE AND FEDERAL MEDICAID RULES

25. This claim incorporates paragraphs 1-24 above.
26. The Defendants have intentionally violated the Plaintiff's rights to adequate notice and a subpoena, and the actions of the Defendants therefore were not taken within the scope of their official duties of employment.

27. The Defendant has an obligation under federal and state Medicaid laws to afford the appellant a full and fair hearing to challenge a disputed determination and has developed fair hearing regulations which direct how such fair hearing are conducted, at 130 CMR 610.001 and following. Under 130 CMR 610.012(A)(1), the fair hearing process “is an administrative, adjudicatory proceeding whereby dissatisfied applicants ... can, upon written request, obtain an administrative determination of the appropriateness of ... certain actions or inactions on the part of the MassHealth agency.”
28. The federal regulations governing Medicaid fair hearings are found at 42 C.F.R. Part 431, Subpart E. The Agency is required under both federal and state regulations to provide the reasons for the denial of an application in its notice to the applicant. See 42 C.F.R. 431.210(b), which requires that the notice contain “[a] clear statement of the specific reasons supporting the intended action.” (emphasis added) See 42 C.F.R. 435.913(a) (the “agency must include in each applicant’s case record facts to support the agency’s decision on his application”). Accord 42 C.F.R. 431.211 (requiring at least 10 days advance notice). See also 130 CMR 610.026 (a “notice concerning an intended appealable action must be ... adequate in that it must be in writing and contain: ... (2) the reasons for the intended action[.]”
29. The denial notice issued by the Office of Medicaid must “detail[] the reasons” sufficiently enough for the affected person to challenge both the application of the law to the person’s factual circumstances and the “factual premises” of the state’s action. Goldberg v. Kelly, 397 U.S. 254, 267-268 (1970). The explanation in the notice itself must be more than a “general explanation” or “conclusory statement[.]” Barnes v. Healy, 980 F.2d 572, 579 (9th Cir. 1992). The notice requirement “lies at the heart of due process,” Gray Panthers

v. Schweiker, 652 F.2d 146, 168 (D.C. Cir. 1980), “for if notice is inadequate other procedural protections become illusory,” David v. Heckler, 591 F.Supp. 1033, 1042 (E.D.N.Y. 1984).

COUNT II: VIOLATION OF DUE PROCESS

30. This claim incorporates paragraphs 1-24 above.
31. Under federal law, the reasons for the denial are required to be provided not at the fair hearing, but rather on the denial notice itself. The Defendant EOHHS routinely fails in this regard, and the Defendant BOH routinely allows the Defendant EOHHS to violate the rights of MassHealth applicants and appellants in this manner.
32. In addition to the Medicaid rules cited above, appellants in complaints for judicial review of decisions by all Massachusetts administrative agencies (including the Defendant’s MassHealth program) are granted the right to subpoenas pursuant to G.L. c. 30A § 12, but customarily and systematically the Defendant BOH’s hearing officers and the Director of the BOH have refused to honor or enforce such subpoenas in clear violation of the statute. This state action involves a protected property right.
33. To the extent that the reasons for the denial, if and when they have finally been provided to the Plaintiff, are inconsistent with previous fair hearing decisions (as has been the pattern and practice of the Office of Medicaid) and without full disclosures and explanations to the Plaintiff, the Office of Medicaid commits a further due process violation. Under M.G.L. c. 118E § 48, “[t]he decision of the referee shall be the decision of the division.” Thus, it is a violation of the duty of administrative consistency to issue eligibility determinations that ignore and are inconsistent with previous fair hearing decisions, as the Plaintiff is entitled as a matter of law to reasoned consistency in agency

decision-making by the Office of Medicaid. “A party to a proceeding before an agency has a right to expect and obtain reasoned consistency in the agency’s decisions.” Boston Gas Co. v. Dep't of Pub. Utilities, 367 Mass. 92, 104 (1975). The law prohibits an agency “from adopting significantly inconsistent policies that result in the creation of conflicting lines of precedent governing the identical situation. ...[T]he law demands a certain orderliness.” Davila-Bardales v. Immigration and Naturalization Service, 27 F.3d 1 (1994). “[A]n administrative agency must respect its own precedent, and cannot change it arbitrarily and without explanation, from case to case.” Mendez-Barrera v. Holder, 602 F.3d 21, 26 (1st Cir. 2010). Further, under the doctrine of offensive issue preclusion, also known as offensive collateral estoppel, the Office of Medicaid is prohibited from continuing to bring up issues where its position had already been ruled against, per Bellermann v. Fitchburg Gas and Electric Light Company, 470 Mass. 43, 60 (2014).

34. In Administrative Law & Practice, 38 Mass. Practice s. 10:49, pp. 627-629 (2016), author Gerald A. McDonough wrote: “The problem of consistency in state administrative agency adjudicatory proceedings is fundamental in that it strikes at the very heart of the problem of administrative justice. ... Generally speaking, a state administrative agency should adhere to the doctrine of stare decisis wherever possible in its administrative adjudications. As a general proposition, a state administrative agency, just as courts, should adhere to precedent in its adjudications in order to insure insofar as possible that those similarly situated will be treated in the same manner in administrative adjudications. See Boston Gas Co. v. Department of Public Utilities, 367 Mass. 92, 104, 324 N.E.2d 372, 379 (1975). ... Where the obviously inconsistent application of agency standards to similar situations is lacking in any rational basis in the adjudicatory proceeding's final

decision, the agency's final decision is arbitrary and capricious. ... M.G.L.A. c. 30A, s. 11(8) expressly provides that every final decision in an adjudicatory proceeding by a state administrative agency subject to the provisions of the Massachusetts Administrative Procedure Act must be accompanied by a statement of reasons. This statutorily imposed requirement of reasoned decision-making obliges state administrative agencies in Massachusetts to explain the reasons for their inconsistencies and departures from stare decisis in adjudicatory proceedings.”

35. In The Law of Lawyering, § 29.11, at 29-16 (3rd ed. 2000), authors Geoffrey C. Hazard, Jr. & W. William Hodes wrote: “If a lawyer deliberately omits adverse authority, there is risk that neither opposing counsel nor the court will discover the governing law and an erroneous decision (that could have been avoided) will result. ... Rule 3.3(a)(3) refers to “legal authority,” which should be understood to include not only case law precedents, but also statutes, ordinances, regulations, and administrative rulings. Indeed, the duty to reveal the latter kinds of authority is of greater practical significance, precisely because they are less likely to be discovered by the tribunal itself.” (emphasis added)

COUNT III: VIOLATION OF PLAINTIFF’S CIVIL RIGHTS

36. This claim incorporates paragraphs 1-24 above.
37. By the actions described above, the Defendant, acting under color of State law, has also deprived the Plaintiff of rights secured to the Plaintiff by the U. S. Constitution and federal law, in violation of 42 U.S.C. § 1983.
38. The Plaintiff has been damaged in an amount to be determined at trial as a result of the Defendant’s depriving the Plaintiff of the Plaintiff’s statutory and regulatory rights under governing federal law and 42 U.S.C. § 1983.

COUNT IV: THE DEFENDANT EOHHS'S REGULATIONS AT 130 CMR 610.052
VIOLATE THE PROVISIONS OF M.G.L. c. 30A, § 12

39. This claim incorporates paragraphs 1-24 above.
40. In 130 CMR 610.052, a subpoena is issued by the BOH only if the BOH opts to exercise its discretion to do so.
41. The Defendant EOHHS has invalidly promulgated regulations which violate the provisions of M.G.L. c. 30A § 12 by making the issuance of subpoenas subject to the discretion of the Director of the BOH or its hearing officers.

COUNT V: REQUEST FOR CERTIORARI REVIEW

42. This claim incorporates paragraphs 1-24 above.
43. The BOH's decision to deny the request for the issuance of a subpoena must be reversed as it is based upon error of law, is arbitrary and capricious, is an abuse of discretion, and is otherwise not in accordance with law. Furthermore, the decision is not reviewable by motion or appeal except at such time as the appeal has been heard and adjudicated.
44. Pursuant to M.G.L. c. 249 § 4, this Honorable Court has discretionary power to issue relief in the nature of certiorari to correct errors committed by the Defendant, including but not limited to ordering the issuance of the subpoena which was denied and invalidating the regulation as applied.

COUNT VI: REQUEST FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION PREVENTING FAIR HEARING FROM PROCEEDING

45. This claim incorporates paragraphs 1-24 above.
46. The decision by the BOH to deny the issuance of the requested subpoena is not reviewable by motion or appeal except at such time as the appeal has been heard and adjudicated.

The Plaintiff is at risk of irrevocable harm by being forced to pursue an appeal without essential evidence or testimony, having been deprived of meaningful counsel, and, furthermore, is likely to prevail on the merits of this action.

47. The Plaintiff therefore requests a temporary restraining order and preliminary injunction preventing the fair hearing from being conducted until the violation of the Plaintiff's rights described herein have been redressed.

COUNT VII: CLASS ACTION

48. This claim incorporates paragraphs 1-24 above.
49. There are other MassHealth appellants who are similarly situated in that they have received the same illegal treatment as described in this complaint (as elucidated in the Affidavit of Professor Mark W. Worthington in Exhibit F), and the Plaintiff adequately represents such other class members.

COUNT VIII: REQUEST FOR LEGAL FEES AND COSTS UNDER 42 U.S.C. § 1983

50. This claim incorporates paragraphs 1-24 above.
51. The Plaintiff is an intended beneficiary of federal law, in that the fair hearing system implemented by the EOHHS and BOH, including its notice and subpoena processes, must accord due process to all applicants, including the Plaintiff, and 42 U.S.C. § 1396a(a)(19) includes further rights-creating language by requiring that each state Medicaid program be administered "in a manner consistent with simplicity of administration and the best interests of the recipients." Further, 42 U.S.C. § 1396a(a)(8) provides that the application process be handled "with reasonable promptness," and any delay in providing the reasons for the denial is inconsistent with that requirement of federal Medicaid law.

51. The EOHHS has failed to fulfill the agency's legal duties, where under 42 CFR 435.901, “[t]he Medicaid agency's standards and methods for determining eligibility must be consistent with the objectives of the program and with the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all other relevant provisions of Federal and State laws.”

WHEREFORE, the Plaintiff requests that this Honorable Court:

- (1) Issue a preliminary injunction –
 - a. directing the Defendant BOH to issue any subpoena requested by the Plaintiff pursuant to M.G.L. c. 30A § 12;
 - b. ordering the Defendant EOHHS to issue a clear and full statement of all of the specific reasons for the denial to the Plaintiff at least ten (10) days in advance of any new scheduled fair hearing;
 - c. ordering that the actual fair hearing be scheduled, and not a good cause hearing to determine whether the appeal should have been dismissed;
 - d. ordering that, when scheduled consistent with the other orders requested herein, the Defendant BOH hold the fair hearing in its Quincy or Taunton office;
 - e. ordering the Defendant EOHHS, if its reasons for the denial are inconsistent with any of its previous fair hearing decisions, to provide those written decisions to the Plaintiff along with an explanation of any of its changes in position; and
 - f. temporarily reversing the Defendant EOHHS’s denial of MassHealth benefits to the Plaintiff and ordering her to begin receiving benefits, pending the outcome of a fair

hearing consistent with the other orders herein, including any appeals of the BOH decision rendered after a fair hearing that is held consistent with these Orders;

- (2) Permanently enjoin the Defendant BOH from –
 - a. failing or refusing to honor a request for a subpoena to be issued by counsel for the Plaintiff pursuant to M.G.L. c. 30A § 12;
 - b. denying a request for issuance of a subpoena by the hearing officer pursuant to 130 CMR 610.052;
 - c. denying a request to enforce a subpoena served by the Plaintiff;
 - d. scheduling a fair hearing of this matter in the Defendant’s Springfield office.
- (3) Enter a declaratory judgment stating that –
 - a. the Defendant EOHHS’s regulation at 130 CMR 610.052 is unlawful, insofar as it fails to comply with the mandatory language of M.G.L. c. 30A § 12;
 - b. the Defendant BOH’s action in refusing to issue a subpoena at the Plaintiff’s request was unlawful under M.G.L. c. 30A § 12;
 - c. the Defendant BOH’s action in refusing to issue a subpoena had the effect of denying Plaintiff a fair hearing, by failing to provide procedural safeguards required by due process of law as required by federal regulations and the 14th Amendment to the U.S. Constitution;
 - d. the Plaintiff was denied her right to a fair hearing as a result of both Defendants’ actions and inactions, and was prevented from exercising the right to have counsel pursue reasonable discovery;

- e. the Defendant EOHHS's duty of administrative consistency requires it both to disclose previous fair hearing decisions that are inconsistent with its denial of MassHealth benefits and to explain its change in position.
- (4) Award the Plaintiff compensatory and punitive damages against the Defendants EOHHS and BOH in an amount to be determined at trial.
- (5) Award the Plaintiff her costs and reasonable attorney's fees of this action pursuant to 42 U.S.C. § 1988.
- (6) Order such further relief as is deemed just and meet.

Verified by:

*Jean Maas by
Douglas Maas / keb*

JEAN MAAS (Plaintiff), by Douglas Maas (her agent under her durable power of attorney dated February 25, 2016)

and

Respectfully submitted,
JEAN MAAS, Plaintiff,
By her attorney,

Brian E. Barreira

Brian E. Barreira, Esq.
118 Long Pond Road, Suite 206
Plymouth, MA 02360
Telephone: (508) 747-8282
Facsimile: (508) 746-5746
office@southshoreelderlaw.com
BBO #544433

Date: February 6, 2018

EXHIBIT A

**POWER OF ATTORNEY
NEW YORK STATUTORY SHORT FORM**

(a) CAUTION TO THE PRINCIPAL: Your Power of Attorney is an important document. As the "principal," you give the person whom you choose (your "agent") authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority.

When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. "Important Information for the Agent" at the end of this document describes your agent's responsibilities.

Your agent can act on your behalf only after signing the Power of Attorney before a notary public.

You can request information from your agent at any time. If you are revoking a prior Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to any third parties who may have acted upon it, including the financial institutions where your accounts are located.

You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly.

Your agent cannot make health care decisions for you. You may execute a "Health Care Proxy" to do this.

The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, www.senate.state.ny.us or www.assembly.state.ny.us.

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

(b) DESIGNATION OF AGENT(S):

I, JEAN C. MAAS
(name of principal)

144 Hunter Drive, Valatie, New York 12184
(address of principal)

hereby appoint:

DOUGLAS R. MAAS
(name of agent)

8 Park Place, Valatie, New York 12184
(address of agent)

(name of second agent)

(address of second agent)

as my agent(s).

If you designate more than one agent above, they must act together unless you initial the statement below.

My agents may act SEPARATELY.

(c) **DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)**

If any agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

(name of successor agent)

(address of successor agent)

(name of second successor agent),

(address of second successor agent)

Successor agents designated above must act together unless you initial the statement below.

My successor agents may act SEPARATELY.

You may provide for specific succession rules in this section. Insert specific succession provisions here:

(d) **This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under "Modifications".**

(e) **This POWER OF ATTORNEY DOES NOT REVOKE any Powers of Attorney previously executed by me unless I have stated otherwise below, under "Modifications".**

If you do NOT intend to revoke your prior Powers of Attorney, and if you have granted the same authority in this Power of Attorney as you granted to another agent in a prior Power of Attorney, each agent can act separately unless you indicate under "Modifications" that the agents with the same authority are to act together.

(f) **GRANT OF AUTHORITY:**

To grant your agent some or all of the authority below, either

(1) Initial the bracket at each authority you grant, or

(2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A through 5-1502N of the New York General Obligations Law:

(A) real estate transactions;

(B) chattel and goods transactions;

(C) bond, share, and commodity transactions;

(D) banking transactions;

(E) business operating transactions;

(F) insurance transactions;

(G) estate transactions;

(H) claims and litigation;

(I) personal and family maintenance: If you grant your agent this authority, it will allow the agent to make gifts that you customarily have made to individuals, including the agent, and charitable organizations. The total amount of all such gifts in any one calendar year cannot exceed five hundred dollars;

- (J) benefits from governmental programs or civil or military service;
- (K) health care billing and payment matters; records, reports, and statements;
- (L) retirement benefit transactions;
- (M) tax matters;
- (N) all other matters;
- (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;

Jaw (P) EACH of the matters identified by the following letters: A-O.

You need not initial the other lines if you initial line (P).

(g) MODIFICATIONS: (OPTIONAL)

In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent. However, you cannot use this Modifications section to grant your agent authority to make gifts or changes to interests in your property. If you wish to grant your agent such authority, you MUST complete the Statutory Gifts Rider.

(h) CERTAIN GIFT TRANSACTIONS: STATUTORY GIFTS RIDER (OPTIONAL)

In order to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), you must initial the statement below and execute a Statutory Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make gifts. The preparation of the Statutory Gifts Rider should be supervised by a lawyer.

(SGR) I grant my agent authority to make gifts in accordance with the terms and conditions of the Statutory Gifts Rider that supplements this Statutory Power of Attorney.

(i) DESIGNATION OF MONITOR(S): (OPTIONAL)

If you wish to appoint monitor(s), initial and fill in the section below.

I wish to designate _____, whose address(es) is (are) _____ as monitor(s). Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the power of attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

(j) COMPENSATION OF AGENT(S): (OPTIONAL)

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, initial the statement below. If you wish to define "reasonable compensation", you may do so above, under "Modifications".

My agent(s) shall be entitled to reasonable compensation for services rendered.

(k) ACCEPTANCE BY THIRD PARTIES:

I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the

EXHIBIT B

SPRINGFIELD OFFICE
88 INDUSTRY AVE, SUITE D
SPRINGFIELD MA 01104-3259

Commonwealth of Massachusetts
Executive Office of Health
and Human Services
Office of Medicaid
www.mass.gov/masshealth

Tel: (800) 841-2900
TTY: (888) 665-9997
Fax: (413) 785-4107

Medicaid ID : 100221015256



526/D *000133*
JEAN MAAS
40 SUNSET AVE
LENOX MA 01240

Date: 10/12/2017

Notice: 58266460

SSN: XXX-XX-9601

Dear JEAN MAAS

Important! This health-care benefits notice tells you the decisions we have made about certain programs that you may be eligible for. Please read the whole notice to find out about your health-care benefits.

MassHealth Long-Term-Care Services in a Nursing Facility

MassHealth has reviewed your application for MassHealth long-term-care services which you filed on 09/06/2017. You are not eligible for MassHealth long-term-care services for the following reasons:

Reason and Manual Citation

You have more countable assets than MassHealth benefits allow. 130 CMR 520.003 520.004

What Happens Next?

You must spend \$249,796.96 of your assets. You can spend the excess assets on your needs, but you cannot give them away.

You must show MassHealth within the next 30 days that you have lowered your assets to \$2,000.00.

The bills we can count include doctor and hospital visits, health insurance premiums, nursing home care, medicines, and medical equipment. We cannot count any part of bills that are covered by other health insurance.

continued...

The calculation page at the end of this notice shows how we counted your assets. After you have lowered your assets and become eligible for MassHealth, you may have to give your nursing facility part of your income every month to help pay for your care.

MassHealth Community-based Services

MassHealth has decided that the following members of your family are not eligible for MassHealth for the following reasons.

Name	SSN/DOB	Medicaid ID
MAAS, JEAN	XXX-XX-9601	100221015256
Reason and Manual Citation		
You have more countable income and assets than MassHealth benefits allow. 130 CMR 520.002 520.028 520.003 520.004		

You have more countable income than MassHealth Standard or Limited benefits allow. You have a deductible of \$10,002. The deductible period is 09/01/2017 to 03/01/2018. If you meet your deductible, you may be able to get your benefits by sending us bills for medical services you got before or during the deductible period. The bills may be for you or your family members, and must add up to or be more than the deductible amount. The calculation page at the end of this notice shows how we counted your income. 130 CMR 520.002 520.028

You have more countable assets than MassHealth Standard or Limited benefits allow. If you reduce your assets to \$2,000 within the 30-day time frame, you may be eligible for MassHealth benefits based on the date of your application. But if you do not reduce your assets to \$2,000 within the 30-day time frame, MassHealth will use as the date of your application the date you submit all of the required verifications that show you have reduced your assets to \$2,000. The calculation page at the end of this notice shows how we counted your assets. 130 CMR 520.003 520.004

Call the phone number at the top of this notice if you have any questions about this notice. If you don't have a copy of the Member Booklet, please call to request one. It has important information about MassHealth coverage and rules.

For information about appealing our decisions, see the Request for a Fair Hearing page of this notice.

Health Safety Net

The Commonwealth of Massachusetts has decided that the Health Safety Net may be able to pay for services that the individual(s) listed below get at a Massachusetts hospital or community health center. If you have other health insurance, that health insurance must be used first before the Health Safety Net will pay for any services you receive at a hospital or community health center. You may be charged copays and deductibles.

continued...

Name	Coverage	Family	Benefit
SSN	Type	Deductible	Effective Date
MAAS, JEAN	Health Safety	\$1,488.00	09/01/2017
XXX-XX-9601	Net		
100221015256			

If there is a family deductible listed above, you are responsible for paying it. This amount is based on your family's income (101 CMR 613.00 and the sections that follow). For more information about your deductible, contact the hospital or CHC where you get services.

Please get in touch with your hospital or community health center to find out what services you can get without having to pay bills.

You must tell MassHealth about certain changes that could affect your coverage. These include any changes in income, family size, employment, student status, disability status, health insurance, address, and immigration status. This will let us determine the most complete coverage you can get. Address changes are needed so you will get notices about your benefits. Once a change occurs, please report the change to MassHealth within 10 days or as soon as possible.

If you have questions about this Health Safety Net decision, please call the number at the top of this notice. If you do not agree with this Health Safety Net decision, you may contact the Health Safety Net, Attn: HSN Grievances, 100 Hancock Street, 6th Floor, Quincy, MA 02171, or you can call them at 1-877-910-2100.

continued...

How We Counted Your Assets

MA Countable Assets		
Life Insurance:		0.00
PNA Account:		100.00
Auto Value:		0.00
Bank Account:		125.00
Real Estate Value:		0.00
Other:	251,571.96	
Total Asset Amount:	251,796.96	251,796.96
MA Asset Limit for Household(1):		2,000.00

Excess Asset Amount:		249,796.96

How We Counted Your Income

Unearned Income:		
Unearned Income		2,320.46
UIN Disregard	20.00	-20.00

Total UIN Amount:		2,300.00
		2,300.00
Earned Income:		
Earned Income Amount:		0.00
Unearned Income Disregard:	0.00	0.00
Earned Income Disregard:	0.00	0.00

Countable Earned Income Amount:		0.00
Half Countable Earned Inc Amount:	0.00	+0.00

Total Earned Income Amount:		0.00
		0.00
Total Countable Income Amount:		2,300.00
MA Income Standard For Household Size(1)		-522.00

Monthly Gross Deductible Amount:		1,778.00
Health Insurance Premium Amount:		0.00
Medicare Self Pay Amount:		-111.00

Monthly Net Deductible Amount:		1,667.00
Total Deductible Amount:		10,002.00

Monthly Deductibles

Deductible Month (1) and Amount: 09/17	1,667.00
Deductible Month (2) and Amount: 10/17	1,667.00
Deductible Month (3) and Amount: 11/17	1,667.00
Deductible Month (4) and Amount: 12/17	1,667.00
Deductible Month (5) and Amount: 01/18	1,667.00
Deductible Month (6) and Amount: 02/18	1,667.00

EXHIBIT C



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171
1-617-847-1200 or 1-800-655-0338
Fax 1-617-847-1204

Brian E. Barreira, Esq.
118 Long Pond Road, #206
Plymouth, MA 02360

Jean Maas
40 Sunset Ave.
Lenox, MA 021240

Date: December 28, 2017
Appeal No: 1717990
Jean Maas v. Office of
Medicaid
RE: Jean Maas

The Board of Hearings has reviewed your request to vacate the dismissal of the above captioned appeal and has determined that a good cause hearing is necessary.

The good cause hearing will be held on 01/25/18 at 11:00 AM at the Taunton MassHealth Enrollment Center Room 1, 21 Spring Street, Ste. 4, Taunton, MA 02780. This hearing will be conducted pursuant to Massachusetts General Laws, Chapters 30A and 118E and Title 130 of the Code of Massachusetts Regulations, Chapter 610. If the Hearing Officer decides your dismissal should be vacated, he/she may hear your appeal regarding denial of MassHealth due to assets, without further delay or set it for hearing on another date.

Please notify your attorney or appeal representative of the scheduled hearing. If you or your appeal representative fail to appear at the hearing, your appeal will be dismissed. Should your hearing become unnecessary, you must call us at the above number as soon as possible so we may use your scheduled time slot for another appellant.

For good cause, the Board of Hearings may, at the request of a party, reschedule the hearing provided that the request is received before the date of hearing. To reschedule call 1-617-847-1200 or 1-800-655-0338. Allowance of a request to reschedule is within the discretion of the Board of Hearings.

The enclosed sheet describes your rights and responsibilities and the hearing procedures.

cc:

Appellant Attorney: Brian E. Barreira, Esq., 118 Long Pond Road, #206, Plymouth, MA 02360, 508/747-8282

Appellant Representative: Douglas R. Mass, POA, 8 Park Place, Valatie, NY 12184, 518/365-0464

EXHIBIT D

Law Offices of Brian E. Barreira

Estate Planning and Elder Law

www.SouthShoreElderLaw.com

www.ElderLaw.info

MAIN OFFICE:

118 Long Pond Road, Suite 206
Plymouth, MA 02360
Tel. 508-747-8282
Fax 508-746-5746 (currently inoperative)

January 11, 2018

Board of Hearings
Office of Medicaid
100 Hancock Street, 6th Floor
Quincy, MA 02171

(via fax to 617-847-1204)

RE: Jean Maas, MassHealth ID: 100221015256; appeal 1717990, scheduled for January 25, 2018

Dear Sir or Madam:

I represent Jean Maas, by and through Douglas R. Maas, the attorney-in-fact under the durable power of attorney of Jean Maas. Please forward this letter to the Hearing Officer assigned to this case.

The Office of Medicaid continues to make a mockery of due process, so the applicant has not been provided with the reasons for the denial, and is apparently expected to show up at the hearing to learn why the denial was issued. I request that the Hearing Officer assigned to this case issue an order or subpoena to Marylou Sudders, Secretary of the Executive Office of Health and Human Services, or her designee, to provide the applicant with all of the reasons for the denial no less than ten (10) days before the date of the appeal, as required under federal law, so that the appellant can prepare for the hearing, and in addition, I request that the order or subpoena also provide that if there are any fair hearing decisions contrary to the agency's position in this case, that they be provided to the appellant along with an explanation of any of the agency's changes in position, where such fair hearing decision was the agency's final decision in such case and the agency has a duty of administrative consistency.

Please note that under M.G.L. c. 30A, s. 12(3), issuance of the appellant's requested subpoena is mandatory.

Our fax machine is currently broken, and will likely be replaced late next Monday. If you have any questions or concerns in the meantime, I can be reached via email at office@southshoreelderlaw.com.

Sincerely,



Brian E. Barreira

cc: Jesse Caplan, General Counsel, EOHHS (via fax to 617-573-1893)

EXHIBIT E

Marcum, Helene (EHS)

From: Schelong, Katy (EHS)
Sent: Thursday, May 28, 2009 7:19 AM
To: Marcum, Helene (EHS)
Subject: RE: Re: ~~Collette~~ Harrington

Hi Helene,

Leaving you a voice mail to this effect as well:

1. I issued the legal opinion today (Dated May 28, 2009) and exhibits and put 3 copies (one for you, one for the hearing officer and one for applicant) in the mail to you today so throw away the documents dated March 12, 2009.
2. Applicant's attorneys are not entitled to any legal opinion until the hearing date because up until then the agency has the option whether or not to introduce it into evidence.
3. Lisa Smith can come on in and look at the case file today or tomorrow but you should alert her that it does not contain a legal opinion.
4. If she wants to get her copy say an hour before the hearing on June 2nd I don't have a problem with that.

Katy

CONFIDENTIALITY NOTICE: This message is being sent by or on behalf of a lawyer and/or the Commonwealth of Massachusetts. It is solely and exclusively intended for the individual, trust, corporation and/or entity to which it is addressed. This communication may contain information that is legally privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any attachment to it. If you have received this message in error, please immediately notify the sender by e-mail and delete all copies of this message and/or any attachments received herewith.

—Original Message—
From: Marcum, Helene (EHS)
Sent: Wednesday, May 27, 2009 3:09 PM
To: Schelong, Katy (EHS)
Subject: Re: ~~Collette~~ Harrington

I've received a request from Lisa Smith the person handling this case to come into office either tomorrow or Friday to look at this case. You sent me a decision dated 3-12-09 can I give her a copy of this before the Hearing 6-2-09 at 3pm. Thanks Helene Marcum

5/28/2009

A103

EXHIBIT F

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK
SUPERIOR COURT
DOCKET NO. 1884CV00129

Jean Maas, Plaintiff

V.

Marylou Sudders Secretary of Exec Office of
Health and Humans Services, and

Kim Larkin Dir of the Board of Hearings of the
Office of Medicaid,
Defendants

AFFIDAVIT OF MARK W.
WORTHINGTON

I, Mark W. Worthington, state as follows:

1. My name is Mark W. Worthington. I am an attorney admitted to the practice of law in Massachusetts. My Board of Bar Overseers number is 560172. I have personal knowledge of the matters set forth herein.

2. My practice has been exclusively devoted to elder law, special needs law, and estate planning since 1994. In addition to my JD from Northeastern University School of Law, I have an LLM in tax from Boston University School of Law. I am certified as an Elder Law Attorney by the National Elder Law Foundation, the only elder law certification accredited by the American Bar Association. I have been actively involved in the Massachusetts Chapter of the National Academy of Elder Law Attorneys for over 20 years, serving as its president in 2007, and in that capacity have come to know many elder law and special needs practitioners. I am now a full time Professor at Western New England University School of Law and Director of its Graduate Program in Elder Law and Estate Planning, which since 2005 has awarded the LL.M.

degree. Among other courses, I teach the Graduate Program's full semester course on Medicaid law.

3. To the best of my recollection, knowledge, and belief from over 20 years of practice in elder law, in every instance where my client received a denial of MassHealth benefits (other than perfunctory required appeals for an Increased Community Spouse Resource Allowance), the notice of denial was vague and did not give specific reasons for the denial. The most common reason given was "excess resources" but no indication of what the particular resource was nor why that particular resource was deemed countable that was even close to sufficient to craft a response.

4. To the best of my recollection, knowledge, and belief from over 20 years of practice in elder law, in every instance where my client appealed the denial of MassHealth benefits to the MassHealth Board of Hearings (other than perfunctory required appeals for an Increased Community Spouse Resource Allowance), neither my client nor I were made aware of the reasons for MassHealth's denial until the Fair Hearing itself, at which time we were first presented with a memorandum from the EOHHS's legal department containing said reasons. This is true whether or not we requested that such reasons be provided to us prior to the Fair Hearing.

5. To the best of my knowledge and belief, based on my broad familiarity with the elder law bar in Massachusetts, my experience described at Items 3 and 4 above is the common, if not universal, experience of all elder law attorneys in Massachusetts.

Signed under the pains and penalties of perjury this 18th day of January, 2018.

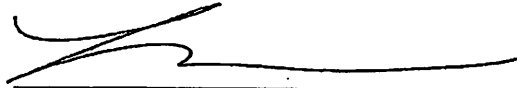


Mark W. Worthington

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 18th day of January, 2018, before me, the undersigned notary public, personally appeared Mark W. Worthington, proved to me through satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed on this Affidavit, and who swore or affirmed to me that the contents of this Affidavit are truthful and accurate to the best of his knowledge and belief.



Notary Public



EXHIBIT G



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171

617-847-1200 • 1-800-655-0338 • Fax 617-847-1204

January 17, 2018

Re: Jean Maas v. Office of Medicaid
Appeal No. 1717990

To the best of my knowledge and belief

1. Neither the appellant nor her appeal representative requested a reschedule of the 1/25/2018 rescheduled hearing¹.
2. The director has not failed to act on a subpoena request for this appeal.
3. The appeal has been assigned to a hearing officer.

So attested,

A handwritten signature in cursive script, appearing to read "Kim M. Larkin", written over a horizontal line.

Kim M. Larkin, RN, Esq.

Director
Office of Medicaid
Board of Hearings

¹ Appellant's counsel is aware the requirements of 130 CMR 610.48 (Procedures for Requesting a Rescheduled Hearing) as this appeal has already been rescheduled based on a previous request to the Board of Hearings.

EXHIBIT H



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings*

*100 Hancock Street, Quincy, Massachusetts 02171
1-617-847-1200 or 1-800-655-0338
Fax 1-617-847-1204*

January 18, 2018

Brian Barreira, Esq.
118 Long Pond Road, Suite 206
Plymouth, MA 02360
Via regular mail and email: office@southshoreelderlaw.com

RE:1717990-Maas

Dear Mr. Barreira:

I have just today been made aware of your request for subpoena dated January 11, 2018 in the above appeal scheduled for January 25, 2018. You have requested that a subpoena be issued for the Secretary of the Executive Office of Health and Human Services or her designee to appear at the hearing to provide you with all of the reasons for the denial of the appellant's MassHealth application. You have also requested to be provided with all fair hearing decisions contrary to the agency's position in this appeal as well as an explanation of any changes in the agency's position.

Your request for subpoena is denied in that is unnecessary and burdensome. First of all, the notice of denial does in fact indicate a reason for the denial of the appellant's MassHealth application, i.e. excess assets. Moreover, as you are already aware, a MassHealth representative will be at the hearing and he/she will be able to more fully elaborate through testimony and exhibits a more specific explanation of the denial reason.

Secondly, a subpoena to the Board of Hearings is not necessary to request prior hearing decisions contrary the agency's decision in this case. A request for prior hearing decisions can be made separately through the Freedom of Information Act to the Board at any time, not just when an appeal is filed. Lastly, a subpoena requesting that the agency explain if there are any changes to its position is similarly unnecessary. Given, that the MassHealth regulations and

court decisions are controlling in these appeals, this is largely an irrelevant request. However, I will allow you to pose this question to the MassHealth representative at the hearing if you so desire.

Stanley Kallianidis
Hearing Officer
Board of Hearings

cc:

Jess Caplan, Esq, General Counsel
EOHHS (via email)

EXHIBIT I



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings*

*100 Hancock Street, Quincy, Massachusetts 02171
1-617-847-1200 or 1-800-655-0338
Fax 1-617-847-1204*

Brian E. Barreira, Esq.
118 Long Pond Road, #206
Plymouth, MA 02360

Jean Maas
40 Sunset Ave.
Lenox, MA 021240

Date: February 1, 2018
Appeal No: 1717990
Jean Maas v. Office of
Medicaid
RE: Jean Maas

The hearing you requested regarding denial of MassHealth due to assets, will be held on 03/05/18 at 02:00 PM at the Taunton MassHealth Enrollment Center Room 1, 21 Spring Street, Ste. 4, Taunton, MA 02780. This hearing will be conducted pursuant to Massachusetts General Laws, Chapters 30A and 118E and Title 130 of the Code of Massachusetts Regulations, Chapter 610.

Please notify your attorney or appeal representative of the scheduled hearing. If you or your appeal representative fail to appear at the hearing, your appeal will be dismissed. Should your hearing become unnecessary, you must call us at the above number as soon as possible so we may use your scheduled time slot for another appellant.

For good cause, the Board of Hearings may, at the request of a party, reschedule the hearing provided that the request is received before the date of hearing. To reschedule call 1-617-847-1200 and 1-800-655-0338. Allowance of a request to reschedule is within the discretion of the Board of Hearings.

The enclosed sheet describes your rights and responsibilities and the hearing procedures.

cc:

Appellant Attorney: Brian E. Barreira, Esq., 118 Long Pond Road, #206, Plymouth, MA 02360, 508/747-8282

Appellant Representative: Douglas R. Mass, POA, 8 Park Place, Valatie, NY 12184, 518/365-0464

Respondent Attorney: Paul O'Neil, Assistant General Counsel, EOHHS, One Asburton Place, 11th Floor, Boston, MA 02108, 617/573-1600