

PUBLIC FINANCING OF
COMMUNITY SERVICES FOR
ELDERLY MASSACHUSETTS
RESIDENTS
The MassHealth Program



Emily S. Starr
The Law Office of
Ciota, Starr & Vander Linden LLP

625 Main Street
Fitchburg, MA 01420
(978) 345-6791
Fax (978) 345-6935

7 State Street
Worcester, MA 01609
(508) 754-8882
Fax (508) 754-3639

info@csvlaw.com

© Emily S. Starr, all rights reserved
April 14, 2009

Long term care in a Massachusetts nursing home or chronic care facility costs the private paying patient no less than \$95,000 annually and often costs a great deal more. The primary sources of financing other than private payments is MassHealth (Medicaid) though Medicare, the Veteran's Administration, and long term care insurance can also defray some of the cost.

Services required by persons suffering from a long term chronic illness or condition are also provided in the community. Persons requiring significant help to stay at home may often spend as much for those services as would be spent on a nursing home care. Subsidies are available, however, to assist persons to pay for the cost of services at home both from the Executive Office of Elder Affairs and from the MassHealth (Medicaid) program. Services of this nature funded by MassHealth include Community Choices and Adult Foster Care (through ASAPs¹), Personal Care Attendants (PCA), and Program of All Inclusive Care for the Elderly (PACE).

MassHealth is a joint federal/state program which finances medical care for low-income aged, blind, or disabled persons. The basic architecture of the long term care MassHealth program and the 65 and over community MassHealth program is a creation of the federal government. The basic architecture of the community MassHealth program for people under 65 years of age is a state creation, having received a waiver from the federal government effective 7/1/97.

The administration of the MassHealth program in the Commonwealth is the responsibility of the Office of Medicaid, formerly called and still generally referred to as the Division of Medical Assistance (DMA). DMA has four enrollment centers located in Revere, Tewksbury, Springfield and Taunton.

MassHealth pays for a variety of services including doctor visits, hospital care, home health care, adult day health, adult foster care, prescription drugs (for persons not covered by Medicare), personal care attendants, community choices and care in nursing facilities or chronic care hospitals. In some cases MassHealth even pays a person's Medicare premium. In response to the ever-increasing size of the Medicaid budget, the federal and state governments consistently impose not only more stringent financial eligibility requirements but also burdensome preconditions on eligibility for particular services.

This paper addresses the rules governing MassHealth for persons living in the community who are elderly.

¹Aging Service Access Point.

I. **MASSHEALTH ELIGIBILITY RULES FOR ELDERLY² PERSONS LIVING IN THE COMMUNITY.**

There are two eligibility tests, an asset test and an income test, that an elderly person living in the community must satisfy in order to qualify for MassHealth benefits.

A. **Income Eligibility Rules.**

In order for a person to qualify for MassHealth Standard, his or her income may not exceed 100 percent of the federal poverty level. 130 C.M.R. § 519.005(A)(1). The DMA uses the federal poverty standards that the Department of Health and Human Services calculates and publishes annually, around April 1, in the Federal Register. 100 percent of poverty is currently \$867 for a single individual and \$1167 for two persons.

There are three avenues to achieving MassHealth eligibility if a person's income exceeds 100 percent of the poverty level.

1. *Home and Community Based Waiver (HCBW)*. The HCBW allows an applicant who

- is certified by MassHealth as needing nursing facility services
- is 60 years of age or older
- would be institutionalized unless he or she receives a services from an ASAP

to qualify for MassHealth with income up to 300% of the federal SSI benefit level.³

2. *Program of All Inclusive Care to the Elderly (PACE)*. The MassHealth rules that govern eligibility for PACE allow an applicant who

- is certified by MassHealth as in need of nursing facility services

²For the purpose of this paper, a person 65 or older is referred to as *elderly*.

³See <http://www.ssa.gov/OACT/COLA/SSlamts.html>.

- is 55 years of age or older
- lives in a designated service area

to qualify for MassHealth with income up to 300% of the federal SSI benefit level.

3. *Meet the Deductible.* If the income of an individual who is 65 or older exceeds the allowable income limit, he or she may establish eligibility by meeting a deductible as described below and at 130 C.M.R. § 520.028(B). This deductible must be met every six months. To compute the deductible, the DMA uses a special income standard of \$542 for an individual and \$670 for a couple (in both cases including a \$20 unearned income disregard). 130 C.M.R. § 520.030, 520.013(A).

The deductible is the amount that a person's income before taxes and deductions exceeds the DMA's deductible income standard for a six-month period. This deductible is met when medical bills that are not covered by other health insurance equal or exceed the deductible amount. However, bills that are used to meet the deductible will not be paid by MassHealth. 130 C.M.R. § 520.032. The DMA calculates the applicant's excess income above the allowable limit over a six-month period, every six months.

For example, Mr. Allen, a 67-year-old unmarried Massachusetts resident, has a monthly income of \$1,000, which is above the limit of \$867 (100 percent of the federal poverty level). His deductible is calculated as follows:

\$1,000.00	monthly income before taxes and deductions
-522.00	income standard for an individual
<u>-20.00</u>	unearned-income allowance
458.00	excess income
<u>X 6</u>	six-month period
\$2,748.00	deductible amount

B. Asset Eligibility Rules

1. COUNTABLE AND NON-COUNTABLE ASSETS

A person can qualify for MassHealth if he has \$2,000 or less of countable assets. If the applicant is married, \$3,000 of assets are disregarded. The following assets are NOT countable:

- life insurance (with a cash value) if the total face value of all policies (of each spouse) is \$1,500.00 or less;
- a separately identifiable amount expressly set aside for burial and funeral expenses of \$1,500.00 or less plus accumulated interest;
- prepaid irrevocable burial contract or irrevocable trust account for burial and funeral;
- burial plot;
- inaccessible assets such as term life insurance, certain jointly held assets, assets held by the Court, and certain very carefully drafted trusts;
- a car of any value if it is for the use of the eligible individual or couple or a member of the household of the eligible individual or couple;
- business or non-business property essential to self support (DMA will often treat income-producing property as non-countable using this category);
- a pension fund to which the individual's current employer is contributing; and
- the home if:
 - (1) it is inhabited by the MassHealth recipient; spouse; blind, under 21, or disabled child; but

- (2) if inhabited only by the person seeking MassHealth to pay for long term care services, the equity must be \$750,000 or less.

2. *JOINTLY HELD ASSETS*

Bank accounts (including, among others, certificates of deposit, bank money market accounts, and credit union accounts) which are held jointly by the applicant and another person are presumed to belong exclusively to the joint owner who is applying for MassHealth. This presumption may be overcome by proving that money in the account was contributed by the joint owner who is NOT a spouse and who is NOT applying for MassHealth. Other types of assets held jointly - such as real estate, stocks, bonds, mutual funds, etc. - are deemed to be owned equally by all joint owners. Thus the non-applicant joint owner's share of such an asset (with some advocacy) should not count.

3. *THE IMPACT OF A TRUST ON MASSHEALTH ELIGIBILITY*

(1) *Trusts Funded with Assets of the Applicant or Spouse*

A self settled trust, unless it satisfies the criteria of a(d)(4)(A) or (d)(4)(C) trust⁴, is a countable asset if there are any circumstances under which the Trustee can distribute the assets to the MassHealth applicant. If the Trustee can distributed income, only the income generated by the trust would be counted.

(2) *Trusts Funded with Assets of Another*

If the MassHealth applicant is the beneficiary of a trust which was not created by him or his spouse (unless funded through the spouse's will) or funded with his assets, then the trust is only considered an asset of the

⁴ 42 U.S.C. §1396p(d)(4)(A) (referred to as a "(d)(4)(A) trust") and 42 U.S.C. §1396p(d)(4)(C) (referred to as a "(d)(4)(C) Trust" or "pooled trust").

applicant if it is revocable by the applicant or spouse, if the applicant or spouse has a right to receive mandatory distributions of principal, or if the applicant or spouse has actually received distributions (but only to the extent of those distributions).

4. TRANSFER OF ASSET DISQUALIFICATION

In general, the eligibility rules of the MassHealth program for *community* benefits do not penalize an individual who has given away assets prior to applying for MassHealth.⁵

C. Married MassHealth Applicants

Generally the assets of both spouses are counted when determining MassHealth eligibility for one or both members of a couple. However, if both members of a couple are residing together in the community and the unhealthy spouse meets the eligibility criteria for the HCBW or PACE, the assets of the healthy spouse are not counted in determining the MassHealth eligibility of the unhealthy

⁵If a transfer of asset penalty is imposed, as it is supposed to be if a person is seeking MassHealth to pay for long term care services, it is important to know the exceptions to the transfer of asset disqualification. They are:

- for a home, transfers to:
 - a spouse;
 - the applicant's child who is blind, disabled or under 21;
 - a sibling who has an equity interest in the home and who resided in the home for at least a year before the individual's admission to a nursing home; or
 - a child who resided in the applicant's home for at least two years before the individual's admission to a nursing home who provided care which permitted the applicant to reside at home.
- for anything other than a home, transfers:
 - to the individual's spouse or to another for the sole benefit of the individual's spouse;
 - from the individual's spouse to another for the sole benefit of the individual's spouse; or
 - to the applicant's blind or disabled child.
- for transfers of any assets to a trust, transfers to the following types of trusts are not disqualifying:
 - a trust established solely for the benefit of the individual's disabled child;
 - a trust established solely for the benefit of a disabled individual under 65 years of age;
 - certain pooled trusts established by non-profit corporations.

spouse. This "spousal waiver" allows the financial eligibility of the unhealthy spouse to be evaluated separately rather than as a member of a couple.

The advantage of the home and community based services waiver is that none of the assets which belong to the healthy spouse are counted. Where the unhealthy spouse does not own many countable assets, he/she can often qualify with little or no asset spenddown. Further, even if the transfer of asset disqualification does apply to home and community-based services, transfers to a spouse are exempt from penalty. Thus, it is not difficult for an otherwise eligible unhealthy married individual to meet the MassHealth asset test by transferring assets to his or her spouse.

II. **ESTATE RECOVERY**

After the death of the MassHealth recipient, the DMA has the right to seek reimbursement for any MassHealth benefits paid on behalf of the individual when he/she was age 55 or over. That right can be asserted only against a probate estate and only if the DMA files a timely claim against that estate.

DMA cannot impose a lien on the property of a MassHealth recipient unless he/she is a nursing home resident.

III. PRACTICE AND PROCEDURE

There are four offices in the Commonwealth that process MassHealth applications for elderly individuals. They are located at:

<i>Suite 4000</i>	<i>PO Box 790</i>	<i>333 Bridge St</i>	<i>367 East St</i>
<i>300 Ocean Ave</i>	<i>21A Spring St</i>	<i>Springfield, MA</i>	<i>Tewksbury, MA</i>
<i>Revere MA</i>	<i>Taunton, MA</i>	<i>01103</i>	<i>01876</i>
<i>02151</i>	<i>02780</i>		

Each office is generally responsible for processing MassHealth applications for persons residing in its particular geographic area.

Estate recovery is handled through a central office located at:

Estate Recovery-TPL Unit
 PO Box 15205
 Worcester, MA 01615-9906

The date that a signed, dated and "complete" MassHealth application is received by the MassHealth office is deemed to be the date of application. Eligibility may be allowed retroactive to the first day of the third month before the month of initial application if the applicant would have been eligible for MassHealth during that time.

If an applicant or recipient wishes to appeal a decision of the Office of Medicaid, a request for a hearing must be filed. The Board of Hearings must receive the request within 30 days of the date the applicant received the notice he is appealing. It is presumed that the applicant received the notice on the third day after mailing.