

## AFFIDAVIT OF COUNSEL

NOW COMES Michael T. Baker of Baker Law Group, P.C. 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 72 Sharp Street, Suite A5, Hingham, Massachusetts 02043.
2. I have been in practice since 2005 and, as an attorney specializing in trusts and estates, a significant portion of our practice involves assisting elders with MassHealth long term care applications, both for in-home services as well as for services rendered in nursing facilities. I have advised and prepared numerous MassHealth applications for clients, approximately sixteen (16) in 2017. In addition, my firm typically assists clients with annually renewing coverage once on benefits. Due to the number of applications we either prepare and/or assist with to continue client eligibility, I have participated in numerous administrative fair hearings.
3. As part of my practice, I actually have clients or their legal representatives sign a hearing request form at the time the applicant or legal representative engages the firm. This is because once a MassHealth long term care application is filed, typically the applicant waits to receive his/her notice of approval or denial. More often than not, a denial is received, making an appeal necessary. Until recently, an applicant's attorney could not even request a hearing with MassHealth on behalf of his or her client. The request had to be made and signed by the client or client's legal representative.
4. On several occasions, I have received requests for information stating 30 days to respond, in which the mail is postmarked many days after the notice date. On other occasions, the denial

notice is dated the same date as that on which MassHealth receives the requested information, based upon our own mail tracking information. This suggests to me that some denials are purely automatic.

5. As it relates to the content of the denial notice, the notice will simply state that the application was denied, with explanations limited to a clause such as: (1) failure to provide information requested, (2) applicants assets exceed the applicable limit, or (3) ineligible because of a transfer of assets. There is no other information disclosing how the unfavorable determination was made. The denial does not include any key information, such as the value of the alleged transfer upon which the basis was made to delay a requested start date, how the applicant violated the referenced regulation, or how the caseworker made the determination of ineligibility.

6. Despite requesting such information on how the determination was made that the client is ineligible, in my experience, I rarely if ever receive additional information giving my client a clear statement of the reason(s) for the denial before the fair hearing, and this lack of information adversely impacts my ability to prepare for the hearing.

7. While occasionally the information is provided upon request, or the caseworker requests additional documentation to resolve the issues one to two (1-2) days before the hearing, the common pattern and practice of MassHealth is to decline or refuse to disclose additional information, which forces appellants to go to an appeal hearing to learn for the first time why the application was denied, therefore have to instantaneously formulate arguments at the hearing to refute the position of MassHealth.

8. At a hearing held in March of this year for a client, although the client eventually was approved for benefits, the caseworker imposed a penalty that caused the coverage start date to be

delayed. The client's total assets had, for a significant period of time, lingered around \$7,000. Her daughter with whom she lived for many years was a co-owner on her bank account. Her daughter uniquely also used the account as her own, including directly depositing her own Social Security benefit and other income into the account. Due to applicant's advanced age of 97 and dementia diagnosis, her daughter paid expenses of her mother, her own, the household, as well as her disabled brother (also the applicant's son) from the account. Unknown until the hearing, the caseworker selected several different payments to unrelated third parties and deemed them impermissible transfers. I note that most disqualifications imposed by MassHealth are due to transfers to trusts or family members; not contractors or taxing bureaus, as was the case here. Upon learning what payments (and therefore the actual value of the supposed disqualifying transfer) the caseworker determined to delay the coverage date, I informed her and the hearing officer that some of the payments were for contractors to repair her disabled son's apartment that an insurance policy did not fully cover. The caseworker replied that she did not know that the applicant had a disabled child, which caused some of the items that the caseworker deemed impermissible to be permissible. The caseworker proceeded to arbitrarily offer to split the difference and reduce the penalty to fifty percent during the hearing, without being able to detail what was still being considered as a disqualifying transfer. I did not agree to her offer and am still waiting for a decision from the hearing officer. In the meantime, the nursing home has not been paid in full since February 2017. The 97 year old applicant was in fair health when she was otherwise financially eligible for benefits, and the amount that the applicant had in excess of the \$2,000 was not even sufficient to cover her final expenses or legal bills. Additionally, if the applicant dies while this process is incomplete, an estate will need to be established with the probate court, further burdening the family and the nursing facility.

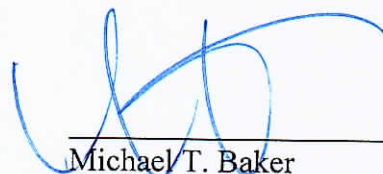
9. Although the hearing officer will often leave the record open for the appellant to file a responsive brief, this pattern and practice leads to additional delays and gives MassHealth an unfair advantage during the presentation before the hearing officer at the time scheduled for the

fair hearing. As in the case above, I was left to anticipate all of the different regulations that the caseworker may have used to determine that the applicant made a disqualifying transfer and whether or not my client will survive the process.

10. I suspect that this situation is even more difficult to navigate for applicants not represented by counsel.

11. The lack of due process example that I provided here is not unique. This repeated pattern and practice is particularly problematic and burdensome based on the characteristics of the typical applicant that I have represented. These applicants typically are physically and/or mentally disabled, often resulting in a family member serving as their legal representative in the capacity of power of attorney and/or health care proxy. During the application process, they are burdened with overseeing the care the applicant is receiving, moving the applicant to a facility after a hospital stay, selling a home that has served as the applicant's primary residence for decades, and trying to piece together their finances, which are often comprised of numerous financial accounts at multiple financial institutions.

SIGNED under the pains and penalties of perjury on this 3 day of May, 2018.



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Michael T. Baker  
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