

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

I, Michelle D. Beneski, state as follows:

1. My name is Michelle D. Beneski. I am an attorney admitted to the practice of law in Massachusetts. My Board of Bar Overseers number is 659409. 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 2003. In addition to my JD from Pepperdine University School of law, I have an LLM in Taxation from the University of Florida, Levin College of Law, Graduate Tax Program. 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 ten

years and in that capacity have come to know many elder law and special needs practitioners. I practice with 3 other attorneys, all licensed to practice law in Massachusetts. My partner Daniel M. Surprenant is also a Certified Elder Law Attorney. All four attorney's practice is focused exclusively on elder law, special needs law and estate planning. In our practice we assist clients to file MassHealth applications almost every single week and have done so consistently for the past ten years.

3. To the best of my recollection, knowledge, and belief from over 14 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 14 years of practice in elder law, there was only one 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), that my client or 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 EOHH's legal department containing said reasons. This is true whether or not we requested such reasons be provided to us prior to the Fair Hearing. In the one instance that I was provided a copy of the EOHH's legal department memorandum in advance of the Fair Hearing, it was given to me inadvertently by a caseworker who had been delegated the case after the initial case worker retired. At the Fair Hearing counsel for the

EOHH’s legal department chastised the caseworker for giving me the memorandum in advance and the case worker implied that he was tricked into giving me the memorandum which was not true. I requested a copy of the memorandum from the caseworker and it was given to me less than one week in advance of the Fair Hearing. In all other instances any request for the legal basis for the denial were denied.

- 5. To the best of my knowledge and belief, based upon 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 12th day of February, 2018.



Michelle D. Beneski

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF BRISTOL)

On this day, February 12, 2018, before me, the undersigned notary public, personally appeared Michelle D. Beneski, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed to the preceding instrument, and acknowledged to me that she signed it voluntarily for its stated purposes.

Witness my signature and official seal.

[Seal]


Silvia C. Sales , Notary Public
My commission expires: October 15, 2021