

I, Patrick G. Curley, on oath do depose and state as follows:

1. I am an Attorney licensed in the Commonwealth of Massachusetts with a law office at 1 Common Street, Wakefield, MA. My bar number is 657124.
2. I have earned the designation of Certified Elder Law Attorney from the National Elder Law Foundation. The focus of my law practice is exclusively Estate Planning and Elder Law. In the last 15 years, I have helped dozens of clients apply for MassHealth long-term-care benefits.
3. I am working on a case now in which my client received a MassHealth denial notice that failed to explain the basis for the denial. The notice states:

“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”

4. The notice lists “MA Countable Assets” and includes a line for “Other”, in which MassHealth has listed a dollar figure that puts my clients above the countable asset limit. But the notice failed to identify what asset or assets specifically are valued on the “Other” line, and the notice failed to explain the basis for treating such asset(s) as countable for MassHealth purposes.
5. I telephoned the MassHealth caseworker to request that he identify the assets he found countable and the basis on which he determined such assets were countable.
6. The MassHealth caseworker told me that my client owned an interest in a trust, which owned a parcel of real estate. He told me that he had sent the trust document to the MassHealth legal department, which had in turn issued a written memorandum to him directing him to deny the case and treat the tax assessed value of the real estate as a countable asset to my client.
7. I requested that the MassHealth caseworker send me a copy of the MassHealth legal department’s memorandum but he rejected my request. He told me that MassHealth would not provide me with a copy of the memorandum until my client and I appear at a Fair Hearing appeal.
8. I expressed frustration to him that my client and I could not adequately prepare for an appeal hearing if MassHealth would not provide us with the

basis for the MassHealth denial notice until during the actual appeal hearing. I told him that without the memorandum well in advance of the appeal hearing, I would be unable to adequately conduct discovery, prepare a hearing brief rebutting the reasoning in the MassHealth legal department's secret memorandum, or prepare witnesses for the appeal hearing. The caseworker was unsympathetic.

9. My client's right to due process is prejudiced because the MassHealth denial notice (a) fails to specifically identify the purported countable assets, and (b) fails to list any basis in fact or law for treating such assets as countable for MassHealth purposes.
10. Moreover, client's right to due process is prejudiced because MassHealth refuses to provide in advance to my client and I a copy of the MassHealth legal department's memorandum, which the MassHealth caseworker told me is the sole basis for him denying my client's application for benefits.
11. I am not providing a copy of the MassHealth Denial Notice with this Affidavit because it is a live case and I fear that even if I redact the client name and identifying information, the dollar figures listed for assets could be enough for MassHealth to run through its supercomputer and identify my client and take punitive action against him.
12. This is just one example of more than a dozen similar MassHealth denial notice decisions that my clients have received over the years. Denial notices routinely are devoid of any facts or law to substantiate or explain the denial decisions reached by MassHealth, and the MassHealth caseworkers never agree to provide copies of the MassHealth legal department's memoranda in advance of Fair Hearings.
13. While Fair Hearing officers sometimes at our request agree to keep the record open for a short period so that we can respond to MassHealth's arguments and legal department memoranda (all of which MassHealth springs upon us only at the Fair Hearing and never before), that is no substitute for being afforded the ability to adequately and fully prepare for the Fair Hearing itself. By way of example, a record open period does not give us a right to present further oral argument, or conduct additional direct and cross examination.
14. It is impossible to adequately and zealously pursue Fair Hearing appeals while MassHealth refuses to provide any explanation for its denial notices, and refuses to provide copies of MassHealth legal department memoranda well in advance of Fair Hearings.

Signed under the pains and penalties of perjury this 7th day of May, 2018.

A handwritten signature in black ink on a light blue grid background. The signature is written in a cursive style and reads "Patrick G. Curley".

Patrick G. Curley, Esq.