

## AFFIDAVIT OF COUNSEL

NOW COMES Ronald R. Kearns of Falco & Associates, PC, who hereby deposes and states that:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts since 1991, and a Registered Nurse in good standing since 1985. My principal place of business is located at 50 Quincy Avenue, Quincy, Massachusetts, 02169.
2. I practice exclusively in the areas of estate planning and elder and disability law. I am a member of the National Academy of Elder Law Attorneys (NAELA) and its Massachusetts Chapter (MassNAELA).
3. A significant portion of my practice involves assisting clients to obtain community MassHealth coverage to receive home care benefits and long-term care MassHealth coverage to pay for skilled nursing care. I have worked on thousands of long-term care MassHealth applications throughout my career.
4. I have experienced universal due process violations throughout the long-term care MassHealth application and appeal process.
5. The Notice informing an applicant that his or her application has been denied typically lacks sufficient information to comply with basic Due Process requirements. For example, if the reason for the Denial is MassHealth's determination that the applicant made disqualifying transfers of assets within the five-year lookback period prior to application, the Notice will only cite to the regulation which MassHealth deems applicable, and will state the total amount deemed to be transferred for less than fair market value. The notices do not contain any specific breakdown or clarification of which transactions they are referring to.
6. The MassHealth denial notices universally fail to provide a clear statement of the specific reasons for the denial of benefits. The applicant or his or her family members, or their attorney if they have one, must try to get clarification prior to the administrative fair hearing.
7. When we receive a generic and insufficient denial notice, we must reach out to the caseworker to try to clarify the specific basis for the denial. Sometimes we are able to get clarification from the caseworker. In some cases, however, the caseworker does not respond in a timely manner or will not deal with the case until a hearing date is issued, which can be months later.
8. The lack of specificity in the denial notices results in added time and effort by all parties, added expense to the applicant and his or her family and, most significantly, unnecessary stress and anxiety to the applicant and family.

9. When a hearing involves a complicated issue, such as a trust, it is common practice for the MassHealth representative to present a legal memorandum authored by the Legal Department of MassHealth. The memo is usually delivered to the worker prior to the date of the hearing but, in my experience, we are not provided with a copy of the Legal Memorandum until we show up at the hearing. This tactic prevents us from fully understanding the specific reasons for the denial and from properly preparing for the hearing before the hearing officer.

10. While the hearing officers will usually leave the record open to allow the applicant to provide a responsive brief, the applicant is at a disadvantage from the start. The "record open period" merely allows for a written submission by the applicant, but any opportunity to question the caseworker (about how the decision was made, who made the decision, how a disqualification period was calculated, etc) is lost. Any opportunity to call an expert or other witness to contradict the allegations presented in the Legal Memorandum is also lost by this MassHealth tactic.

11. My clients are often extremely vulnerable, and afraid that they will be evicted from the nursing home. MassHealth engages in a pattern and practice of failing to give a clear statement of the specific reasons for a denial in the notice, of intentionally withholding essential information and the Legal Memorandum until the fair hearing, and of forcing a hearing to proceed for which the appellant cannot adequately prepare without the aforementioned specific information. These tactics violate basic due process rights and add unnecessary stress at a time when applicants are most vulnerable.

12. A more recent problem we have encountered quite frequently is that the MassHealth computer system automatically generates a denial if the caseworker does not timely complete work on the case file. These denials cannot be ignored, even if the caseworker provides a verbal promise that they will deal with the case shortly.

SIGNED under the pains and penalties of perjury on this 3<sup>rd</sup> day of May, 2018.

A handwritten signature in black ink, appearing to read "Ronald R. Kearns", written over a horizontal line.

Ronald R. Kearns, Esq., R.N.  
BBO #559580