

AFFIDAVIT

I, Alex L. Moschella, Esq. to depose and state as follow:

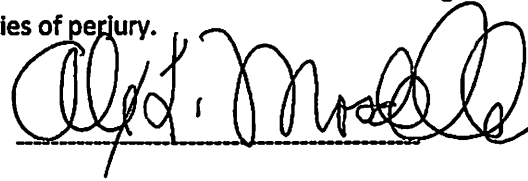
1. I was admitted to the bar of Commonwealth of Massachusetts in October 1974 and currently am Senior Counsel at Colucci, Colucci, Marcus and Flavin, PC with my office at 400 Trade Center, 5th floor, Suite 5900, Woburn, MA 01801. I have concentrate my practice for over 30 years in elder law and have served as an adjunct faculty member at Suffolk University Law School for over twenty years where I have taught elder law. I am also a past president of the Massachusetts Chapter of the National Academy of Elder Law Attorneys and certified by the National Elder Law Foundation as a certified elder law attorney, a designation that is not recognized by the Massachusetts Supreme Judicial Court.
2. I have represented hundreds of clients over my 30 year career as an elder law attorney before the Board of Hearings, Office of Medicaid, Commonwealth of MA.
3. On numerous and repeated occasions and as recently as Friday, January 12, 2018 where I appeared before a hearing office on an appeal of a MassHealth denial of benefits due to the establishment of a probate court approved special needs trust pursuant to 42 U.S.C. s 1396 (d) (4) (A) the Notice of denial form received from MassHealth failed to detail the reason for the denial with any specificity and further both the case worker and the Director of the Board of Hearings failed to provide a copy of the legal memorandum in advance of the hearing that the case worker relied on to deny benefits.
4. The case workers in my experience as well as the Director maintain that this memo that the case workers solely rely upon shall only be made available at the day of the hearing.
5. The case workers, director and hearings officer's maintain this is the policy and practice and that the record will be kept open to allow appellant's counsel to review and comment on the memo, all of which means more costs to appellants, more delays and more needless time spent in trying to determine what the reasons are for the denial as related to the existence of most any trust where such a legal memorandum exists with no notice nor opportunity to rebut of cross examine the case worker properly on why the trust terms do not comply with MassHealth regulations.
6. These denial notices are sufficiently flawed and constitute a lack of due process as is the failure to provide to appellants counsel in advance of the fair hearing adequate time to prepare for a hearing.
7. I have spoken to many elder law attorneys throughout my career that confirm that my experience is not isolated but is a common embedded practice in generating computer based Notice of Denial forms and an accepted policy and practice of the Board of Hearings to deny appellants counsel a copy of the legal memorandum generated by the legal department and

specifically, Katy Schelong, Assistant General Counsel who appears to have adopted this practice in all matters she reviews where any kind of trust exists and that a case worker sends to her office for what is considered standard operating procedures by MassHealth.

8. This practice has existed in all appeals I have handled where any trust exists as part of the eligibility review process and many other elder law attorneys via emails to me, list serves and educational conferences have commented at length that lack of notice as to reasons why benefits denied has caused major problems as well as in ability to determine why terms of trusts questioned are not found out until a hearing date which often ends up as the only opportunity to discover the basis of the denial and whether any legal memorandum exists.

I depose, and attest the above stated information is correct and true to the best of knowledge and beliefs and is signed below under the pains and penalties of perjury.

1-17-18



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