AFFIDAVIT OF COUNSEL

NOW COMES Timothy P. Nealon, of Nealon & Nealon, Attorneys at Law, 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 87 Elm Street, Hopkinton, MA. I have been practicing as an Elder Law Attorney since January 2006.

2. A great deal of my law practice involves assisting elders with MassHealth long term care applications. Since 2006 I have processed and advised clients on hundreds of MassHealth applications. I have attended numerous administrative fair hearings during the past 12 years of practicing in elder law.

3. Once a MassHealth long term care application is filed, typically the applicant waits to receive his/her notice of approval or denial. If he/she receives a notice of denial for excess countable assets, the notice will simply state that the application was denied, will reference in general terms a regulation which MassHealth deems applicable and then will state the amount of the applicant's assets which exceed the standard allowance of $2,000.00, and information regarding the right to appeal the decision. There is no other information disclosing how that number was calculated, how the applicant violated the referenced regulation or how MassHealth came to its determination; in other words, the MassHealth denial notice does not provide a clear statement of the specific reasons for the denial of benefits.

4. As a result of this lack of any clear statement of the specific reasons for the action, I usually have to file an appeal and attempt on my own to determine the specific reasons for the MassHealth denial.

5. Despite submitting multiple requests for such clarity, in my experience I have rarely if ever received additional information giving my client a clear statement of the reasons for the denial before the fair hearing, and this lack of information adversely impacts my ability to prepare for the hearing.

6. 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 and how the amount of disqualifying excess assets was calculated.

7 At the hearing it is common practice and procedure for the MassHealth representative to deliver a legal memorandum, usually written by the Legal Department of MassHealth, to the appellant who sees it for the first time. The memo is usually delivered to the worker prior to the date of the hearing but the worker is instructed not to put the memorandum in the appellant's file or not to make it available to the appellant or appellant's counsel prior to the start of the appeal hearing. As a result, the applicant has absolutely no ability to prepare and present his/her challenge to the denial of the application before the hearing officer. In fact, at a fair hearing I

attended in 2017 the MassHealth Representative refused to provide a copy of the legal memo to the appellant and Hearing Officer until the hearing officially went on record. When questioned why the memo could not be distributed while we were waiting to begin the MassHealth representative stated that the legal department does not allow the memo to be released until the hearing goes on record and the recording begins.

8. 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.

9. This situation is even more egregious for individuals who proceed without counsel as they are unlikely to know enough regarding MassHealth procedures to request that the hearing Officer leave the record open in order to have the opportunity to respond to the memorandum on the record after reviewing its contents.

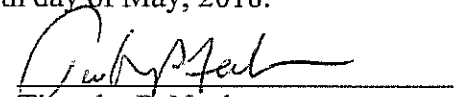
10. This pattern and practice is particularly problematic when dealing with more complicated matters such as trusts. Often the appellant is forced to go to the hearing with absolutely no understanding of what trust provision MassHealth has deemed to violate Medicaid law or regulations and rendered the trust assets to be deemed countable.

11. My clients are often in extremely vulnerable positions. They are concerned about not being able to stay in the nursing home. They are concerned about the delays, as their time is often limited. This pattern and practice of failing to give a clear statement of the specific reasons for the denial in the notice, of engaging in information withholding, of forcing a hearing to proceed for which the appellant cannot adequately prepare, not only violates their due process rights but also adds additional stress at a time when appellants are vulnerable.

12. In my experience, I have represented appellants whose applications were denied on a legal theory that had been discredited in prior hearing decisions or even court decisions, and in all of such cases the memorandum failed to disclose the existence of such contrary authorities.

13. Many other lawyers have told me that they had similar experiences as I have described above. I have also heard from other lawyers that their subpoena requests to the hearing officer are routinely denied; that MassHealth applicants' case files routinely do not contain the reasons for the denial, especially on cases involving trusts and other complicated countable assets; that MassHealth workers often cite attorney-client privilege as their reason for not providing the reasons for the denial before the scheduled fair hearing; and that MassHealth denials are automatically computer-generated if the MassHealth worker does not timely complete work on the case file.

SIGNED under the pains and penalties of perjury on this 4th day of May, 2018.



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