

AFFIDAVIT OF PAUL D. SILVIA OF APRIL 12, 2018

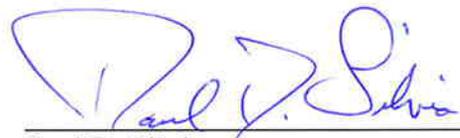
I, Paul D. Silvia, on my oath depose and state as follows:

1. I have been a licensed attorney in the Commonwealth of Massachusetts since December, 19, 1983. Since then I have litigated numerous cases in the District, Superior, Probate, and Appeals Courts. In recent years, I have focused more on elder law issues and have been a member of the National Academy of Elder Law Attorneys (NAELA) which is the leading organization in America for elder law attorneys.
2. I am familiar with problems that Massachusetts elder law attorneys have faced with inconsistent administrative decisions from MassHealth caseworkers and hearings officers with respect to applications for long-term care ("LTC") benefits. I represented a MassHealth applicant in a case where he and his wife had created identical trusts. The wife applied for LTC benefits and the assets in both her trust and her husband's trust were ruled to be non-countable assets by the MassHealth caseworker. Approximately two years later the husband applied for LTC benefits and was denied eligibility because assets in the couple's trusts were deemed to be countable assets. No explanation was supplied by the case worker as to the reason for totally opposite rulings.
3. In preparing for the hearing, I spoke with other elder law attorneys and learned that they, too, had experienced inconsistent rulings from caseworkers and hearings officers on the issue of whether certain trust assets are countable or non-countable. There was a common complaint that it was difficult to advise clients as to whether they would be deemed eligible for MassHealth LTC benefits because identical trusts were being treated as countable in some cases and non-countable in others, without explanation.

4. This case was particularly egregious since the inconsistent ruling occurred when two members of the same family applied for benefits in which one was granted benefits and the other was denied. Both rulings hinged on whether the assets in their trusts were deemed to be countable or non-countable. *Res judicata* and the fundamental principles of fairness and due process require government agencies to consistently enforce established policies and regulations.
5. MassHealth's inconsistent treatment of trust assets in this case caused my client to feel that he had been thrust into a nightmarish game of Russian roulette where random selection determined whether benefits would be granted or not.
6. The case was resolved when my client received a letter a few days before the fair hearing. The letter was from the caseworker. It said that MassHealth had re-examined his case and determined that both were now deemed to be non-countable assets.
7. One of the most troubling things about the case was the fact that the Commonwealth was aware that I had an expert and another attorney ready to testify and assist at the hearing. There are a substantial number of applicants who apply without the benefit of an attorney either because they cannot afford one or because they innocently assume that the State will render consistent and fair decisions. They assume that the system will treat them fairly and in the same way the system treats other applicants. It is troubling to realize that when an agency denies benefits to applicants who are not represented by an attorney, the inconsistent rulings have a disproportionate, negative impact upon elderly disabled applicants who have no attorneys or other advocates to challenge denials which are based upon inconsistent decisions.

8. Because so many people are affected by these decisions it is important to have a ruling from the Court requiring the Office of Medicaid to implement a process to establish consistent procedures for rendering accurate and consistent decisions on behalf of Medicaid LTC applicants.

Signed under the pains and penalties of perjury this 12th day of April, 2018.



Paul D. Silvia