

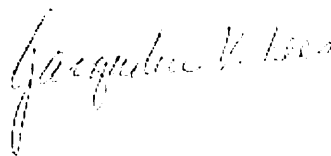
AFFIDAVIT OF COUNSEL

NOW COMES Jacqueline Voss Lees, of Salem, Massachusetts, and hereby deposes and states that:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts and Connecticut since 1990, with a principal place of business in Salem, Massachusetts. I hold a Master's Degree in estate and elder law planning.
2. Part of my law practice involves assisting elders with MassHealth long term care planning and applications. About 40% of my practice involves advising on long term care planning and to a lesser degree MassHealth applications. I have attended a handful of administrative fair hearings during the past 11 years of practicing in elder law.
3. In February, 2018, I received a denial relative to a MassHealth application that was filed in August 2017. The redacted denial, attached hereto, stated that my client's application was denied because she had too many assets.
4. It did not identify which assets or how MassHealth arrived at the values of those assets.
5. As a result, I contacted the case worker who identified the assets to me.
6. I had a fair hearing in April, 2018 relative to the same case. About a week in advance of the fair hearing, I requested the case worker send me any and all documents she intended to submit to the hearing officer in advance of the hearing.

7. Although she agreed, she told me it would not be anything “new” about the case. She also said her “memo” would not be prepared until the night before the hearing and it was nothing I could not “handle” at the hearing.
8. Sure enough, I received nothing before the hearing and a new issue came up at the hearing.
9. The new issue forced me to request that the record be left open so I could formulate a response. The hearing officer agreed but this course of action results in delays, more expense, and unnecessary anxiety on behalf of the client.
10. It is a basic tenant of litigation that trial by ambush is not permitted.
11. In this same case, I submitted a copy of a 2010 Fair Hearing Decision authored by a hearing officer from the very same MEC that I thought was instructive and controlling.
12. The case worker’s response was that the decision was too old to be valuable and no longer good law.
13. Practicing in the MassHealth arena is like practicing law in the wild, wild West.
14. Practitioners gets ambushed and cannot rely upon the precedential value of the agency’s own decisions.

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



Jacqueline Voss Lees

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367 EAST ST
TEWKSBURY MA 01876-1957

Commonwealth of Massachusetts
Executive Office of Health
and Human Services
Office of Medicaid
www.mass.gov/masshealth

Tel: (800) 408-1253
TTY: (888) 665-9997
Fax: (978) 863-9231

Reference : [REDACTED]



Attn: [REDACTED] Re: Notice sent to [REDACTED]

Date: 02/09/2018 Notice: [REDACTED] SSN: XXX-XX-[REDACTED]

Dear [REDACTED]

Important! This health-care benefits notice tells you the decisions we have made about certain programs that you may be eligible for. Please read the whole notice to find out about your health-care benefits.

MassHealth Long-Term-Care Services in a Nursing Facility

MassHealth has reviewed your application for MassHealth long-term-care services which you filed on 02/09/2018. **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

What Happens Next?

You must spend \$103,560.78 of your assets. You can spend the excess assets on your needs, but you cannot give them away.

You must show MassHealth within the next 30 days that you have lowered your assets to \$2,000.00.

continued...

The bills we can count include doctor and hospital visits, health insurance premiums, nursing home care, medicines, and medical equipment. We cannot count any part of bills that are covered by other health insurance.

The calculation page at the end of this notice shows how we counted your assets. After you have lowered your assets and become eligible for MassHealth, you may have to give your nursing facility part of your income every month to help pay for your care.

MassHealth Community-based Services

MassHealth has decided that the following members of your family are not eligible for MassHealth for the following reasons.

Name	SSN/DOB	Medicaid ID	
[REDACTED]			
Reason and Manual Citation			
You have more countable assets than MassHealth benefits allow. 130 CMR 520.003 520.004			
You have more countable assets than MassHealth Standard or Limited benefits allow. If you reduce your assets to \$2,000 within the 30-day time frame, you may be eligible for MassHealth benefits based on the date of your application. But if you do not reduce your assets to \$2,000 within the 30-day time frame, MassHealth will use as the date of your application the date you submit all of the required verifications that show you have reduced your assets to \$2,000. The calculation page at the end of this notice shows how we counted your assets. 130 CMR 520.003 520.004			
Call the phone number at the top of this notice if you have any questions about this notice. If you don't have a copy of the Member Booklet, please call to request one. It has important information about MassHealth coverage and rules.			
For information about appealing our decisions, see the Request for a Fair Hearing page of this notice.			
<u>Health Safety Net</u>			
The Commonwealth of Massachusetts has decided that the Health Safety Net may be able to pay for services that the individual(s) listed below get at a Massachusetts hospital or community health center. If you have other health insurance, that health insurance must be used first before the Health Safety Net will pay for any services you receive at a hospital or community health center. You may be charged copays and deductibles.			
Name	Coverage	Family	Benefit
SSN	Type	Deductible	Effective Date
Medicaid ID	[REDACTED]		

Please get in touch with your hospital or community health center to find out what services you can get without having to pay bills.

You must tell MassHealth about certain changes that could affect your coverage. These include any changes in income, family size, employment, student status, disability status, health insurance, address, and immigration status. This will let us determine the most complete coverage you can get. Address changes are needed so you will get notices about your benefits. Once a change occurs, please report the change to MassHealth within 10 days or as soon as possible.

If you have questions about this Health Safety Net decision, please call the number at the top of this notice. If you do not agree with this Health Safety Net decision, you may contact the Health Safety Net, Attn: HSN Grievances, 100 Hancock Street, 6th Floor, Quincy, MA 02171, or you can call them at 1-877-910-2100.

How We Counted Your Assets

MA Countable Assets

Life Insurance:	0.00	
PNA Account:	0.00	
Auto Value:	0.00	
Bank Account:	1,078.64	
Real Estate Value:	0.00	
Other:	104,482.14	
Total Asset Amount:	105,560.78	105,560.78
MA Asset Limit for Household(1):		2,000.00
Excess Asset Amount:		103,560.78

HOW TO ASK FOR A FAIR HEARING

Your Right to Appeal: If you disagree with the action by MassHealth, you have the right to appeal and ask for a fair hearing before an impartial hearing officer. The Board of Hearings must get your fair hearing request form no later than **30 calendar days** from the date you got MassHealth's official written notice telling you of the action to be taken.

If you want to ask for a fair hearing because MassHealth did not take action on your application or on your request for service, MassHealth did not send you a written notice of the action to be taken, or a MassHealth employee's behavior toward you was coercive or improper, the Board of Hearings must get your fair hearing request form no later than 120 calendar days from the date of your application or your request for service, MassHealth's action, or the MassHealth employee's improper behavior.

How to Appeal: To ask for a fair hearing, fill out the fair hearing request form (be sure to fill out **Section II-Reason for Appeal**) and send a copy with a copy of the MassHealth official written notice to: **Appeal Processing Center, P.O. Box 4405, Taunton, MA 02780-0419** or fax them to **1-857-323-8300**. Please keep a copy of the fair hearing request form for your information.

If You Are Now Getting MassHealth: If the Board of Hearings gets your fair hearing request form before the date the action is taken or, if later, within 10 calendar days of the mailing date of MassHealth's written notice to you, you will keep getting MassHealth until a decision is made on your appeal. If you get MassHealth during your appeal, and then lose your appeal, you may have to pay MassHealth back for the cost of MassHealth benefits that you got during this time period. If you do not want to keep getting MassHealth during your appeal, please check **Box A in Section III** on the fair hearing request form. If you do not get MassHealth during your appeal, and then you win your appeal, MassHealth will restore your MassHealth benefits.

Date of Fair Hearing: At least 10 calendar days before the fair hearing, the Board of Hearings will send you a notice telling you the date, time, and place of the hearing. This will give you time to get ready for the hearing. If you want to have a fair hearing scheduled as soon as possible, check **Box B in Section III** on the fair hearing request form for an expedited hearing. If you have good cause for not being able to come to the hearing, or if you need a telephone hearing, you must call the Board of Hearings at **617-847-1200** or **1-800-655-0338** before the hearing date. If you do not reschedule or appear on time at the hearing without documented good cause, your appeal will be dismissed.

Your Right to Be Helped at the Hearing: At the hearing, you may represent yourself or be represented by a lawyer or other representative at your own expense. You may contact a local legal service or community agency to get advice or representation at no cost. To get information about legal service or community agencies, call the MassHealth Customer Service Center at **1-800-841-2900** (TTY: **1-800-497-4648** for people who are deaf, hard of hearing, or speech disabled).

If You Need an Interpreter or an Assistive Device: If you do not understand English and/or are hearing or sight impaired, the Board of Hearings will provide an interpreter and/or assistive device for you at the hearing. Please check either **Box C or D, or both, in Section III** on the fair hearing request form if you need an interpreter or assistive device, or call the Board of Hearings at **617-847-1200** or **1-800-655-0338** at least **five business days** before the hearing.

Your Right to Review Your Case File: You and/or your representative can review your MassHealth case file before the hearing. To do this, call a MassHealth Enrollment Center at **1-888-665-9993** (TTY: **1-888-665-9997** for people who are

deaf, hard of hearing, or speech disabled) before the fair hearing. Your MassHealth case file is not kept at the Board of Hearings.

Your Right to Ask to Subpoena Witnesses, and Your Right to Question: You or your representative may write to the Board of Hearings to ask that witnesses or documents be subpoenaed to the hearing. You or your representative may present evidence and cross-examine witnesses at the hearing. The hearing officer will make a decision based on all evidence presented at the fair hearing.

NONDISCRIMINATION NOTICE FOR APPLICANTS AND MEMBERS: Under federal and state law, MassHealth does not discriminate on the basis of race, color, sex, sexual orientation, national origin, religion, creed, age, health status, or handicap.

Name: [redacted] SSN: XXX-XX [redacted] Reference: [redacted]
Notice [redacted] Notice Date: 02/09/2018

*** Mail or Fax this form ***

FAIR HEARING REQUEST FORM

Fill out all sections that apply. Print clearly.

SECTION I: Applicant/Member Information

Name of Applicant or Member: [redacted]
Address: [redacted]
Telephone: [redacted]
MassHealth I.D. Security Number: [redacted]
Cardholder's Name on MassHealth card (if different): [redacted]

SECTION II: Reason for Appeal

I, [redacted] want a fair hearing because:
my [redacted] got over the limit. The assets identified in the denial dated 2/9/18 are inaccessible and therefore non-countable. My application requested a start date of June 1, 2017 not 2/9/18 as stated in the 2/9/18 denial

Signature: [redacted] Date: 3/2/18

SECTION III: Appeal Information

(Check the boxes that apply to you.)

- A. I do not want to keep getting MassHealth during the appeal process.
- B. I want an expedited hearing.
- C. I need an interpreter (what language?: [redacted]) to be provided by the Board of Hearings.
- D. I need an assistive device to be provided by the Board of Hearings. (Describe what type of assistive device you need. For example: American Sign Language): [redacted]

SECTION IV: Appeal Representative, if any

My appeal representative is: [redacted]
Title: [redacted]
Address: [redacted]
Telephone No: [redacted]