

## **MassHealth Ordered to Provide Explanation for a Denial of Long Term Care Benefits Based Upon Trust Assets**

On June 22, 2018, a Suffolk County Superior Court (Wilkins, J.) issued a declaratory judgment finding MassHealth (the Office of Medicaid of the Executive Office of Health and Human Services) in violation of Federal Medicaid regulations each time it issued a “standard” eligibility denial notice for excess countable assets, in the case where the excess countable assets were held in a trust. The denial notices at issue are those that arise in applications for Medicaid coverage for long-term care (nursing home coverage).

The standard practice of MassHealth has been to issue a denial notice that simply stated that the applicant’s countable assets exceeded the maximum permitted in order to qualify for MassHealth coverage. However, MassHealth never provided a reason or explanation of what and for why the assets were deemed “countable,” especially when title to the assets in question were owned by an irrevocable trust. Under applicable law assets held in an irrevocable trust are generally non-countable.

The Court’s judgment provides that, in order to comply with Federal regulations (42 C.F.R. Sec. 431.210(b)), MassHealth must “provide a clear statement of the specific reasons supporting the intended action.” At issue as well was the practice of MassHealth in withholding the basis for the denial until the date of the Fair Hearing, requiring the Applicant to expend unnecessary time and funds in presenting a defense based upon the applicant’s best guess at why the applicant’s application was denied.

The judgment applies to MassHealth denials based only on excess “trust assets,” and should not be extended to denials based upon other countable assets. Thus, the decision is especially pertinent to those applicants who have undertaken estate planning and long-term-care planning including irrevocable income only trusts and other types of irrevocable trusts.

The Court did not stipulate the exact approach that MassHealth must take to comply with its order. According to MassHealth the revision of their denial notices to comply with the court’s order are being undertaken.

The judgment was entered in the consolidated cases of Maas v. Sudders (No. 18-129-D) and Hirvi v. Sudders (No. 18-845-D).

July 24, 2018