

AFFIDAVIT OF COUNSEL

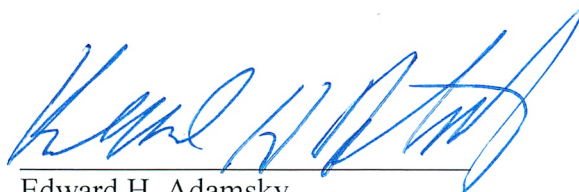
NOW COMES **Edward H. Adamsky**, and hereby deposes and states that:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts, with a principal place of business at 269 Middlesex Road, Suite 1, Tyngsboro. I have been practicing for over 25 years and concentrate my practice in the discipline called Elder Law.
2. Part of my law practice involves assisting elders with MassHealth long term care advice, applications, and appeals. I have attended numerous administrative fair hearings during the my years of practicing in Elder Law.
3. When an applicant files a MassHealth long term care application there is a substantial waiting period to receive the notice of approval or denial. If the applicant receives a notice of denial for excess countable assets, the notice only indicates that the application was denied, and references, in general terms, whatever regulation MassHealth deemed applicable.
4. The notice indicates the amount of the applicant's assets which exceed the allowance of \$2,000.00 without any specificity as to what assets were included in the number nor how the determination to count those assets was made. The notice does include information regarding the right to appeal the decision and how to do so. But there is typically no information on how the applicant violated the referenced regulation. Thus the MassHealth denial notice does not provide a clear statement of the specific reasons for the denial of benefits.
5. Because there is no clear statement of the specific reasons for the denial, the applicant cannot know how to correct the problem and the only course of action is to file an appeal and attempt, through that process, to determine the specific reasons for the MassHealth denial.
6. It has been my experience that it is not possible to get additional information or understanding of the facts of the matter prior to appearing at an administrative appeal hearing. Thus there is no way to adequately prepare for that hearing.
7. At the hearing it is common practice for the MassHealth representative to deliver a legal memorandum, written by the Legal Department of MassHealth, to the Hearing Officer and the Attorney for the Applicant. This is the first time that I, as the Attorney for the Applicant, get to see the memo and know the facts and reasoning behind the decision to deny benefits, which again makes it impossible to prepare arguments or provide facts to properly handle the situation at the appeal hearing.
8. The MassHealth Legal Memorandum is usually delivered to the case worker prior to the date of the hearing but it appears that the workers are instructed not to put the memorandum in the appellant's file and not to make it available to the appellant or appellant's counsel prior to the start of the appeal hearing.
9. Although the hearing officer will usually leave the record open for the appellant to file a responsive brief, this 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.

10. This is particularly bad for individuals who proceed without counsel as they are not likely to know that they can request that the hearing Officer leave the record open to have the opportunity to respond to the memorandum after reviewing its contents.
11. When dealing with more complicated matters such as trusts, this means that there is no understanding of what provisions in the trust may be considered problematic or in violation of some provision of the MassHealth regulations, and so there is no way to prepare an argument or correct the situation prior to going to the hearing and learning of the reasons for the denial by MassHealth.
12. These cases almost always involve clients in extremely vulnerable positions. Often I am representing the elderly spouse of a person in a nursing home and she is worried about money and the health of her spouse. Having to attend an appeal hearing without even knowing the extent of the problem or how to fix it is quite stressful and can even be a health hazard.
13. 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 those cases the memorandum failed to disclose the existence of such contrary authorities. I have even been presented with memorandums of law that contain distortions of the law including omissions of provisions of the law that make the arguments misleading.
14. I have heard from my colleagues in Elder Law that they have had similar experiences. I have also heard from other lawyers that 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 9th day of May, 2018.



Edward H. Adamsky