AFFIDAVIT OF COUNSEL

NOW COMES MATTHEW P. ALBANESE, of Milton, Massachusetts, 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 487 Adams Street, Milton, Massachusetts. I currently serve as President-Elect of the Massachusetts Chapter of the National Academy of Elder Law Attorneys.

2. Part of my law practice involves assisting elders with MassHealth long term care applications. Over the last several years I have processed and advised clients on over 68 MassHealth applications. [Approximately fifty percent (50%) of my practice involves advising on long term care planning and MassHealth applications.] I have attended numerous administrative fair hearings during the past fourteen (14) 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 and is rather cryptic in nature.

4. As a result of the vague reasoning for the action, I usually have to file an appeal and attempt on my own to determine the specific reasons for the MassHealth denial. Not only is this often an additional expense to the Applicant who, by definition, is already of limited financial resources, but also an inefficient and impractical method for resolving administrative law decisions.

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 and properly advise the Applicant. In some cases, the Applicant could readily resolve the outstanding issue/basis for denial prior to hearing.

6. What appears to be a systematic practice of MassHealth is to either decline and/or refuse to disclose additional and/or supplemental 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. Even when pressed for an explanation, MassHealth caseworkers often cite the refrain of [they] were told to deny the Application.

7 At the hearing it is standard 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 some instances, these memoranda are dated several weeks prior to the date of the actual hearing.

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. Moreover, the very same legal principles/theories in which these trusts are used as the basis for denial are often substantiated in favor of the Appellant in previous Board of Hearings decisions. Yet, these decisions are never referenced in MassHealth's legal memorandum.

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 as is their agent. This repeated pattern and practice of failing to provide a concise 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.

SIGNED under the pains and penalties of perjury on this 23rd day of May, 2018.

Matthew P. Albanese