

AFFIDAVIT OF REBECCA J. BENSON

I, Rebecca J. Benson, being duly sworn, hereby state as follows:

1. I am Counsel to the law firm of Margolis & Bloom, 667 Boylston Street, Boston, MA 02116. I received a J.D. from Harvard Law School and was admitted to practice in Massachusetts in 1986. I have practiced exclusively in the fields of elder and disability law since 1991.

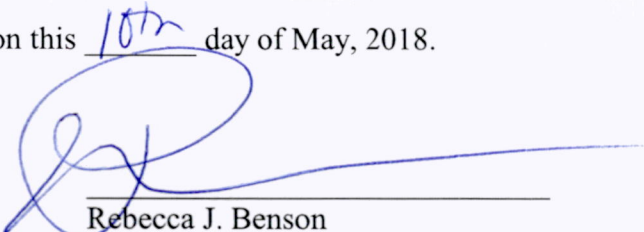
2. A substantial part of my practice includes advising clients about MassHealth eligibility and assisting clients who are applying to the Office of Medicaid ("OM") for MassHealth coverage for long-term care. I have handled hundreds of MassHealth-related cases, including applications, and have represented several clients at administrative hearings before the OM Board of Hearings. I have also collaborated with my colleagues at Margolis & Bloom, as well as other elder law attorneys, on such cases.

3. To the best of my knowledge and recollection, a typical OM denial notice for excess assets states simply that the application is denied and the states the amount of excess countable assets. The denial does not state the basis for treating assets as countable, or even identify specifically which assets are being treated as countable.

4. I typically ask the OM caseworker to explain the reason for a denial in my cases. Despite multiple requests, most caseworkers are unable or unwilling to do so, and several have told me directly that they have been instructed not to provide further information to me. In order to protect my clients' rights, I have had no alternative but to file an appeal of those denials. In preparing for the hearing, it is my practice to request an opportunity to review my client's file before the hearing, pursuant to 130 CMR 610.050(A). The file typically contains the application materials and various OM notices, but no explanation of the basis for the denial. Rather, OM's practice in many cases has been to produce a legal memorandum from the agency's counsel at (or shortly before) the hearing itself. For example, the memorandum produced at my most recent hearing was dated nearly four (4) months before the hearing date and was provided to me less than half an hour before the hearing. OM's ambush maneuvers deprive me of the opportunity effectively to prepare for the hearing (or even make an educated decision at the outset about whether an appeal is appropriate) and of the right to cross-examine the person responsible for formulating OM's denial.

5. All of my clients in these cases are vulnerable and frail. Many of them express fear of being evicted from the nursing home because of the delays caused by OM, and some have reported being threatened with eviction. I have had the challenge of representing several clients in defending such illegal evictions. OM's failure to provide adequate notice not only violates my clients' due process rights but causes them extreme emotional distress and unnecessary expense.

Signed under the penalties of perjury on this 10th day of May, 2018.



Rebecca J. Benson