

## AFFIDAVIT

I, Cynthia M. Bourget, Esquire under oath do depose and state the following:

1. I am a practicing Attorney licensed under the laws of the Commonwealth of Massachusetts, having been admitted to the bar in December of 1986. I have practiced approximately eighteen years in the area of Elder Law and have achieved the distinction of Certified Elder Law Attorney. This designation is approved by the America Bar Association and indicates that I have met the qualifications for specializing in the area of Elder Law.


2. Part of my practice includes advising clients regarding long-term health care issues and applying for long term care Medicaid benefits through MassHealth. In the process of representing numerous clients, I have submitted Irrevocable Trusts to MassHealth for review. In each instance, I have advised my clients that it is possible that the scrutiny of their Trust may result in a denial for no specific reason and that I would be unable to advise them until a Fair Hearing as to the specific reasons why their Trust had not been approved by MassHealth.

3. In at least three cases within the last year and a half, I have had exactly that scenario. In the first case, my client declined to appeal the matter and seek a Fair Hearing. Instead, the property was removed from the Irrevocable Trust and returned to the applicant's spouse. If I had been able to advise my clients in advance of the Hearing with regard to what the grounds were, I would have been able to provide them with pertinent and important advice that may have allowed them to maintain the integrity of their original Medicaid planning.

4. In the other cases, the disabled Elder properly funded a Pooled Trust, however, MassHealth denied eligibility and counted the resources of the Pooled Trust without explanation. I recently visited the Taunton MassHealth Enrollment office to determine what the basis was for the denial since no information was provided in the Notice. The MassHealth worker was unable to share anything about the reasons and advised that I pursue a Fair Hearing to determine what the grounds were for denial. As a result my advocacy for my Clients is blind.

5. The failure of MassHealth to provide any information with regard to the grounds for a denial impedes the right of my clients to effective due process at the Fair Hearing level. I am unable to even evaluate the likelihood of success of an appeal or to advise them of their basic rights in this matter. This affidavit has been prepared to urge the Court to address the ongoing violations of the due process rights of the citizens of Massachusetts. In any other administrative hearing, a detailed statement of the reasons for the denial would be made available to the applicant.

Signed this 21<sup>st</sup> day of May, 2018 under the pains and penalties of perjury.

  
Cynthia M. Bourget Esquire  
BB0#548406  
194 Old Main Road  
North Falmouth, MA 02556