

AFFIDAVIT OF COUNSEL

NOW COMES Steven M. Cohen of Pabian & Russell, LLC, 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 Pabian and Russell, LLC, leading the elder and disability law group. I have served as member of the Board of Directors of the Massachusetts Chapter of the National Academy of Elder Law Attorneys as well as the co-chair of elder law committee of the Boston Bar Association. I am the co-author of the Nursing Home Medicaid Eligibility Chapter in *Estate Planning for the Aging and Incapacitated Client in Massachusetts* published by Massachusetts Continuing Legal Education.
2. Part of my law practice involves assisting elders with MassHealth long term care applications. Over the last twenty years I have processed and advised clients on over a hundred of MassHealth applications. I have attended numerous administrative fair hearings during the past twenty 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. The notice rarely disclose 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.
4. I was presented with this exact problem this March. On October 24, 2017 my office filed a MassHealth application for my client. Two months later my client received an information request. After submitting the requested information, my client received an approval notice in December 2017. On March 14, 2018 MassHealth notified my client his benefits would be terminated immediately as he had "more countable assets than MassHealth benefits allow."
5. As a result of this lack of any clear statement of the specific reasons for the action, I was forced to file an appeal within ten days of receipt of notice so that my client's benefits were not immediately terminated during the appeal process. I then had to try to determine MassHealth's specific reasons for their denial. As no circumstances had changed and my clients' assets were well below the MassHealth limit, I needlessly spent a great deal of time following-up with MassHealth. In addition, there was no longer a case worker assigned to the matter, which made contacting an appropriate person nearly impossible.

6. Despite multiple requests for such clarity, it was not until an appeal date was scheduled that I was able to speak to someone regarding MassHealth's reasons for the denial. Their reason pointed to a single bank account that was well below the MassHealth asset limit. Meanwhile, my client's daughter had received notice that my client's new health insurance was contingent on his MassHealth eligibility and was anxiously awaiting a rationale for the denial.

7. In my twenty-years of experience, this is just one of many similar denials and termination notices. 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 represent my clients.

SIGNED under the pains and penalties of perjury on this 8th day of May, 2018.



STEVEN M. COHEN, Esq.