

## AFFIDAVIT OF COUNSEL

NOW COMES Andrew Gallant, Esq., of Newton, 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 10 Kearney Road, Suite 305, Needham, Massachusetts. I have been licensed to practice law in Massachusetts since November 2011.
2. While the bulk of our firm's law practice focuses on tax law, we recently assisted one of our tax clients with their MassHealth Application.
3. In my experience, once a MassHealth long term care application is filed, typically the applicant waits to receive their notice of approval or denial. In this case, the applicant received a notice of denial for excess countable assets, and the notice simply stated that the application was denied, with reference in general terms to a regulation which MassHealth deems applicable and then states 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.
4. As a result of the lack of any clear statement of the specific reasons for the action, I have to file an appeal and attempt on my own to determine the specific reasons for the MassHealth denial.
5. Despite submitting multiple requests for such clarity, including a call to the MassHealth general offices to access the applicant's case file, which is the right of every MassHealth applicant, I have not 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.
6. At the hearing we expect the MassHealth representative to deliver a legal memorandum, presumably written by the Legal Department of MassHealth, to the appellant who will be seeing it for the first time. I have been informed by the MassHealth caseworker who handled the application that the MassHealth legal department will not provide the explanation for the denial to me or the applicant until the day of the hearing. As a result, the applicant will have absolutely no ability to prepare and present her challenge to the denial of the application before the hearing officer.
7. This failure of MassHealth to provide specific reasoning for this denial until the hearing will lead to additional delays and gives MassHealth an unfair advantage during the presentation before the hearing officer.

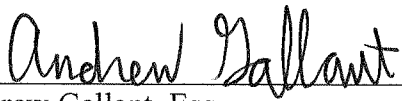
8. This situation is even more egregious for individuals who proceed without counsel as they are unlikely to know enough regarding MassHealth procedures to request that the hearing Officer leave the record open in order to have the opportunity to respond to the memorandum on the record after reviewing its contents.

9. Our fact pattern involves a trust being included in the applicant's countable assets and we are 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.

10. My client is in an extremely vulnerable position. She is concerned about not being able to stay in the nursing home. She is concerned about the delays, as her time may be limited. Failing to give a clear statement of the specific reasons for the denial in the notice, engaging in information withholding, and forcing a hearing to proceed for which the appellant cannot adequately prepare, not only violates her due process rights but also adds additional stress at a time when the applicant is vulnerable.

11. Another attorney has told me that they had similar experiences as I have described above. I have also heard that their subpoena requests to the hearing officers 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 18<sup>th</sup> day of May, 2018.

  
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Andrew Gallant, Esq.

  
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Witness