

AFFIDAVIT OF COUNSEL

Now comes STEPHANIE KONARSKI, of East Bridgewater, Plymouth County, Massachusetts, under oath and under the pains and penalties of perjury and states as follows:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts, with a principal place of business at 36 North Bedford Street, East Bridgewater, Plymouth County, Massachusetts.
2. The facts stated herein are based upon my own personal knowledge.
3. I have been licensed to practice since December 2003. My practice focuses exclusively on estate planning, elder law, probate and disability law. Part of my practice involves helping clients obtain community and long-term care Masshealth coverage.
4. I have worked on numerous long-term care Masshealth applications and have attended many administrative fair hearings for denial of benefits during the past fourteen years of practice.
5. I have been a witness to universal due process violations throughout the long-term care application and fair hearing appeal process. For example, if a client receives a notice of denial of benefits, the Masshealth denial notice typically fails to provide a clear statement of the specific reasons for denial. If a client is denied for excess countable assets, the Notice merely states that the applicant was denied, references a regulation which Masshealth deems applicable and then states the amount of the applicant's assets which exceed the standard allowance of \$2,000. Similarly, if a client is denied for a transfer of assets for less than fair market value within the five-year lookback period, the Notice will state the total Masshealth deemed to be disqualifying with no specific breakdown of which transactions they are referencing. The Notice does not disclose how the total is calculated, how the applicant violated the referenced regulation or how Masshealth came to its determination.
6. When dealing with more complicated matters such as Trusts, the Notice will fail to provide the specific trust provisions Masshealth has deemed to violate the regulations and rendered the trust assets to be deemed countable.
7. When such Notice is received, I will reach out to the caseworker for clarification. In many cases, the caseworker does not respond in a timely manner or will state that he or she will not review the case until a hearing date is issued. In some instances, the caseworker will refuse to provide clarification until the hearing. As a result, I am left to try to figure out the specific reason for the denial prior to the

fair hearing. This lack of specificity adversely impacts my ability to adequately prepare for the “fair” hearing. I am left to attend the hearing with no clear understanding of what the issue is. This adds unnecessary expense and emotional stress to my client.

8. At the hearing it is common practice for the MassHealth representative to deliver a legal memorandum, prepared by the Legal Department of Masshealth, to the appellant. This memo is usually delivered to the caseworker prior to the date of the hearing but the caseworker 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, my client has absolutely no ability to prepare and present his or her challenge to the denial of the application before the hearing officer.
9. Although the hearing officer will often leave the record open for a few weeks in order to file a responsive brief or obtain documents/verifications in support of our position, I am left scrambling to try to file the brief and obtain the documents, if at all possible, in that the short window. This pervasive practice puts my client at a clear disadvantage while giving MassHealth an unfair advantage during the presentation before the hearing officer at the time scheduled for the fair hearing.
10. Had I been given the specific reasons for denial prior to the hearing, I could have prepared in the months waiting for the hearing to be scheduled rather than after the hearing. In some cases, the issue could have been resolved without the necessity of the fair hearing.
11. This practice is even more egregious for individuals who proceeds without the advice of counsel. These individuals are unlikely to know enough to request the Hearing Officer leave the record open in order to have the opportunity to respond after the hearing has concluded.
12. This pattern and practice of failing to give a clear statement of the specific reasons for the denial in the Notice, of engaging in information withholding, of forcing a hearing to proceed for which my clients and other applicants cannot adequately prepare violates their due process rights.
13. This systemic pattern and practice also adds additional and unnecessary expense and stress at a time when my clients and their family are the most vulnerable.
14. I am far from alone in my experiences with Masshealth. Many other lawyers have told me that they had similar experiences as I have described above. I have also heard from other lawyers that their subpoena requests to the hearing officer 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, this Eighth day May, 2018.


Stephanie Konarski