

AFFIDAVIT OF THOMAS R. MULLEN

This affidavit describes three MassHealth denials. Each denial was for a Trust which was not subject to the onerous Trust rules, but rather were exceptions to the rule,

A. Testamentary Trust; B. A Trust for the benefit of a disabled child; and C. A Pooled Trust. The Law on these Trusts has been in effect since 1993.

I, Thomas R. Mullen, on oath do depose and say as follows:

1. I am an attorney at law duly licensed by the Commonwealth of Massachusetts having obtained my license in 1977.
2. I have been assisting seniors with MassHealth applications since 1988.
3. This affidavit will describe three recent MassHealth Denials which failed to adequately describe the reason for the Denial. These three Denials involved Trusts previously approved for MassHealth.

CASE STUDY A - TESTAMENTARY TRUST

4. William and Aspasia Goltsis live in Marlborough (names used with permission). William suffered for over forty years with Depression; had major heart issues; and developed Dementia in 2011.

Aspasia is paralyzed on her right leg from the polio epidemic of the 1930's. She suffers from bladder cancer and developed "instant onset" Dementia in 2006.

5. "E" their daughter was living in Greece since 2004. She was working in a refugee camp on the island of Crete from 2009-2012. In 2012, learning of her parents' failing health, she moved back home where she still remains as a full-time unpaid care giver. She has had no income since 2009.

"J", their son, is a full-time sports cameraman for the three major Boston sports teams as well as a number of colleges. Due to the fact that many games are at night, he resided in the North End of Boston.

In the spring of 2014, he vacated his apartment in the North End and also moved back home as a full-time unpaid care giver. As a result, due to the long commute his income has decreased substantially.

6. On October 2016, William executed a Will, leaving his assets to his wife in a Testamentary Supplemental Needs Trust (a Trust contained within the four corners of a Will).

These Trusts are not subject to the stringent Trust laws affecting Medicaid eligibility. 42 USC 1396p(2)(A) - 130 CMR 520.023 (first paragraph); 130 CMR 520.008(H).

7. William Goltsis deceased in January 2017.

8. Accordingly, at his passing, all former marital assets passed through his estate into the Supplement Needs Trust for the benefit of his wife Aspasia.

9. My office filed a MassHealth application on behalf of Aspasia seeking Home Based Community MassHealth benefits as the children were (and still are) determined their mother will never be forced into a nursing home.

10. On or about November 10, 2017, I received three Denials (each Denial for unknown reasons carried its own separate denial notice number), but all three were for the same reason *"you have more countable income and assets than MassHealth benefits allowed."* 130 CMR 520.002; 520.028; 520.003; 520.004.

11. Of the four cited regulations, one deals with income as an issue; (which is true) the other three have nothing to do with the fact pattern.

12. I telephoned the person assigned to the application and was told "the Trust was no good according to Legal" ("Legal" means MassHealth Legal department). I chose not to reach out to the MassHealth legal department since in over 30 years I have never been successful dealing with the Legal staff on the telephone, email or in person.

13. As a result of the three Denials, my office filed an Administrative Appeal which was scheduled for a Hearing on January 25, 2018.

14. During that four month period, from November 2017 to January 2018, I received multiple emotional telephone calls from the two children.

15. On the day before the Hearing, that is January 24, 2018, the worker telephoned me and said simply, "The Trust has been approved."

16. I have availed myself of this statute for 25 years and this identical Testamentary Trust has been approved by MassHealth many times.

Case Study B - Trust for A Disabled Child

17. Mrs. A - Not her real name - was about to enter a nursing home (her name is not being used as her daughter has mental health issues).

18. Most transfers of money to children result in the transferor being denied state Medicaid (MassHealth) benefits for five years. However, Congress expressly provided for an exception if mom transfers her assets into a Supplemental Needs Trust for a disabled child under the age of 65. 1396P(c)(2)(B)(4) iv; 130 CMR 520.019(D)(4).

19. Over the last 25 years I have availed myself of this law and have used the same exact Trust successfully over and over again.

20. On September 6, 2016, Mrs. A established such a Trust and her assets were transferred to the Trust for the benefit of her disabled daughter who qualified under the statute.

21. In November 2016, Mrs. A filed for long term care MassHealth.

22. Ten months later, in September 2017, she was denied MassHealth for the following reason.

*“You recently gave away or sold assets to become eligible for MassHealth long term care services.”
130 CMR 520.018; 520.019.*

23. These two regulations are six pages long. (It should be noted that within those six pages is the regulation describing the exception).

24. At all times relevant, there was no issue regarding the child's age or disability and the Trust itself had been in the possession of MassHealth from day one.

25. After a number of telephone calls to the assigned worker, I was faxed the within two documents (Exhibits A and B) and told I should comply with the language contained therein and that I should amend my Trust to comply with the language in these documents.

26. These documents are neither law nor regulation, and to the best of my knowledge are not public information.

27. I have never seen or even heard of these documents in my 30+ years in this field.

28. Nevertheless, I administratively amended the Trust (Exhibit C) in an attempt to comply with this written request.

29. That didn't work; I was told to do it again.

30. I did (see two page "Second Amendment", Exhibit D). In that Second Amendment, I also stated at the conclusion:

“however, the Trustee desires to fully comply with all requests of MassHealth and all applicable state and federal law and regulations relating to the transfer of assets to a disabled child under age 65, said beneficiary being that person”.

31. That didn't work either.

32. Frustrated, I advised the Trustee to hire a certain elderlaw attorney who has been successful in challenging MassHealth denials at the administrative level, the trial court level and at the Massachusetts Court of Appeals.

33. On January 25, 2018, 14 months after filing for MassHealth benefits, the new attorney amended my Trust by deleting it entirely and amending it with "her" version of the Trust; the case was approved.

34. To reiterate—"my" Trust has been previously approved in other MassHealth cases numerous times over the last 25 years.

Case Study 3 - Pooled Trust

35. In 1993, Congress carved out another exception for transfers of assets. The MassHealth applicant can place their assets into a Trust maintained by a legitimate nonprofit agency which then pools the assets for investment purposes (hence they are called Pooled-Trusts). The money in this Trust provides for extra items to be purchased for the senior when they are on MassHealth. When the beneficiary, the senior, passes away, MassHealth recoups every nickel they paid out from the Pooled Trust, 42 USC 1396P(d)(4)(C); also 130 CMR 520.019(D)(5).

36. I have been unable to reach the "S" family, therefore, I am not using their name. In the spring of 2015 Mrs. S entered a nursing home; transferred her assets to the Arc of Bristol County, a Pooled Trust, and was approved for MassHealth.

37. She also owned a home which MassHealth required to be sold and on which they placed a lien pending sale.

38. MassHealth requires a copy of the Certificate of Disclosure (formerly HUD) to be forwarded to them for approval in order to prevent fraud when a house is sold. Upon approval of the HUD and payment of the MassHealth lien, the lien is released.

39. The House sold, and MassHealth received all monies owed – \$75,619.51. The balance of the proceeds was deposited into the Pooled Trust.

40. MassHealth was aware of this deposit into the Pooled Trust or they would have "shut off" MassHealth benefits since Mrs. S would be over-asset.

41. Ten months later, out of the blue, Mrs. S received a denial of benefits.

You have more countable assets than MassHealth benefits allowed. 130 CMR 520.003; 520.004.

42. Since neither of these regulations have to do with Trusts, my first thought was the

Pooled Trust was in some sort of financial difficulty.

43. By this time, this was my third Trust denial for bizarre reasons. Therefore, I again advised the client's son to contact the previously described attorney.

44. I later learned she was able to have the Denial rescinded.

45. It should be noted that in each of these case studies the Trusts had been filed with MassHealth in a timely manner.

46. These three case studies establish that MassHealth Denials are purposely sufficiently vague in order that the true reason for the Denial not be disclosed.

47. Further, the lack of consistency means that simply because a document was approved by MassHealth in the past doesn't mean that same document will be approved by MassHealth at a later date.

48. Lastly, for about ten years now, MassHealth Legal has stopped forwarding their briefs to opposing counsel in advance of the Administrative Appeal Hearings. These Briefs are deposited into our clients' files at MassHealth well in advance of the Hearing. While we have access to those files, we do not have access to the briefs in those files. The briefs are not provided to us until they are presented at the Hearing. This procedure reeks most foul.

Sworn under the pains and penalties of perjury this 15 day of May, 2018.



Thomas R. Mullen

applicant has received Medicaid in more than one state, then the remaining amount will be distributed proportionately. The Commonwealth is the first payee and has priority over payment of other debts and administrative expenses except that the following types of administrative expenses may be paid from the trust prior to reimbursement of medical assistance to the Commonwealth:

Taxes due from the trust to the State(s) or Federal Government because of the death of the beneficiary;

Reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust.

OR ALTERNATIVELY:

The Trust must provide that distributions will be made to the child in an actuarially sound manner based on the disabled child's life expectancy. The provision must describe how actuarial payments will be made in a timely and consistent manner from its non-liquid and liquid holdings". (See CMS Transmittal No. 64 referenced above.)

- 3) The Trustee will supply the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Office of Medicaid, General Counsel's Office or Estate Recovery Unit or any successor entity, unit or subdivision (EOHHS) with an accounting of any disbursements when requested by EOHHS in order to verify the reasonableness of any disbursements. EOHHS may request an accounting at any time during the Trust beneficiary's lifetime and after death up until EOHHS' repayment claim has been satisfied.
- 4) The Trust must state that it employs an "adequate consideration" standard regarding any financial transactions involving third parties other than the Trust beneficiary.
- 5) The Trust may not include a provision allowing the Medicaid recipient of MassHealth applicant or member to disclaim his or her beneficial interest.
- 6) The Trust may not include a provision allowing any party the power to appoint, either during life or by Will, the power to appoint trust property prior to reimbursement to state Medicaid agency.

The following language must be incorporated into the Trust:

- B
- 1) The Trustee shall provide notice to the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Office of Medicaid, General Counsel's Office, or any successor, entity, unit or subdivision within two weeks of any amendment or alteration of the Trust or any early termination of the Trust. A copy of the original Trust document, applicant's name, applicant's social security number and a copy of the amendment must be sent along with the notice.

 - 2) Upon the death of the applicant, or proposed early termination of the Trust, the Trustee must promptly notify the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Office of Medicaid, Estate Recovery Unit or any successor unit or entity of the death and provide an accounting of the Trust assets prior to termination or any distribution after the death of the beneficiary. The Commonwealth will receive all amounts remaining in the Trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s). If the

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[REDACTED] TRUST ADMINISTRATIVE AMENDMENT
SOLE BENEFIT

Now comes [REDACTED] Trustee of the [REDACTED] Trust (a Supplemental Needs Trust) under a declaration of Trust dated September 6, 2016; pursuant to Article 2 and amends said Trust in order to comply with 130 CMR 520.019(D)(4) by eliminating the first sentence in the second paragraph of said Article 2, which reads: "the Trustee shall pay to or apply to the use of [REDACTED] . . .", and in its stead insert the following sentence: "The Trustee shall pay to or apply to for the sole benefit of" [REDACTED].

The balance of said Trust is ratified in its entirety.

[REDACTED]

[REDACTED]
Witness

[REDACTED]
Witness

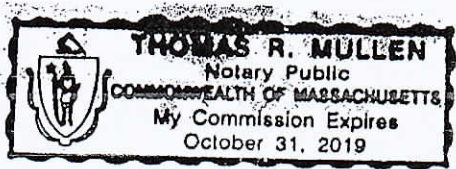
COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

On this 8 day of June, 2017, before me, the undersigned notary public, personally appeared [REDACTED] who proved to me through satisfactory evidence of identification, which was PERSONALLY KNOWN TO ME, to be the person whose name is signed on the preceding or attached documents, and acknowledged to me that she signed it voluntarily for its stated purpose, under the pains and penalties of perjury.

[REDACTED]

Notary Public:
My commission expires: 1
File no.:



██████████ TRUST SECOND ADMINISTRATIVE AMENDMENT

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The Trustee, having been advised by MassHealth that the following language must be stated in the ██████████ Trust of September 16, 2016 does hereby amend Article 2 of said Trust by adding the following two paragraphs immediately at the end of said Article 3.

- A. The Trustee shall provide notice to the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Officer of Medicaid, General Counsel's Office, or any successor, entity, unit or subdivision within two weeks of any amendment or alteration of the Trust or any early termination of the Trust. A copy of the original Trust document, applicant's name, applicant's social security number and a copy of the amendment must be sent along with the notice.

- B. Upon the death of the applicant, or proposed early termination of the Trust, the Trustee must promptly notify the Commonwealth of Massachusetts, Executive Office of Health and Human Services, Office of Medicaid, Estate Recovery Unit or any successor unit or entity of the death and provide an accounting of the Trust assets prior to termination or any distribution after the death of the beneficiary. The Commonwealth will receive all amounts remaining in the Trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s). If the applicant has received Medicaid in more than one state, then the remaining amount will be distributed proportionately. The Commonwealth is the first payee and has priority over payment of other debts and administrative expenses except that the following types of administrative expenses may be paid from the trust prior to reimbursement of medical assistance to the Commonwealth:

Taxes due from the trust to the State(s) or Federal Government because of the death of the beneficiary;

Reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filling of documents, or other required actions associated with termination and wrapping up of the trust.

The Trustee further notes the within Trust is not a Trust pursuant 42 USC 1396p(d)(4)(A), a so-called d4A Trust which requires a pay-back provision; but is rather a Trust from a MassHealth applicant who is in a nursing home and whose beneficiary is totally disabled, which said Trust has been specifically codified at 42 USC 1396p and at 130 CMR 520.019(D)(3) and which does not require pay-back.

D
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However, the Trustee desires to fully comply with all requests of MassHealth and all applicable State and Federal law and regulations relating to the transfer of assets to a disabled child under age 65, said beneficiary being that person.

The balance of said Trust is ratified in its entirety.

[REDACTED]

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

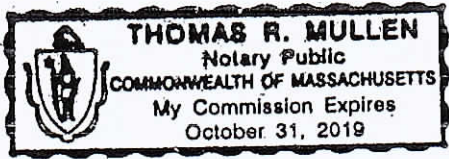
On this 20th day of June, 2017, before me, the undersigned notary public, personally appeared [REDACTED] who proved to me through satisfactory evidence of identification, which was PERSONALLY KNOWN TO ME, to be the person whose name is signed on the preceding or attached documents, and acknowledged to me that she signed it voluntarily for its stated purpose, under the pains and penalties of perjury.

[Handwritten Signature]

Notary Public:

My commission expires:

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File no.:



Closing Disclosure

10/

Closing Information

Date Issued 02/01/2017
 Closing Date 02/01/2017
 Disbursement Date 02/01/2017
 Settlement Agent Creed & Formica
 File # C16-555
 Property [REDACTED] Road

Transaction Information

Borrower [REDACTED]
 Seller [REDACTED]

Sale Price \$212,800.00

Summary of Transactions

SELLER'S TRANSACTION

Due to Seller at Closing		\$213,583.28
01	Sale Price of Property	\$212,800.00
02		
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09	City/town taxes 02/01/2017 to 03/31/2017	\$465.20
10		
11		
12	Condo Fee Adjustment for Feb 02/02/2017 to 02/28/2017	\$298.08
13		
14		
15		
16		
Due from Seller at Closing		\$77,109.04
01	Closing Costs Paid at Closing (J)	\$1,355.28
02		
03		
04		
05	Final Water Reading	\$91.25
06	Overnight Mass Health Payment	\$18.00
07	Overnight Process	\$25.00
08	Pay Mass Health Lien	\$75,619.51
09		
10		
11		
12		
13		
Adjustments for Items Unpaid by Seller		
14		
15		
16		
17		
18		
19		
CALCULATION		
Total Due to Seller at Closing		\$213,583.28
Total Due from Seller at Closing		\$77,109.04
Cash From B To Seller		\$136,474.24

BD

Contact Information

Real Estate Broker (B)

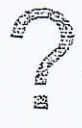
Name	
Address	
MA License ID	
Contact	
Contact MA License ID	
Email	
Phone	

Real Estate Broker (S)

Name	
Address	
MA License ID	
Contact	
Contact MA License ID	
Email	
Phone	

Settlement Agent

Name	Creed & Formica
Address	420 Main Street Walpole MA 02081
MA License ID	
Contact	
Contact MA License ID	
Email	
Phone	



Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing