AFFIDAVIT OF COUNSEL

NOW COMES Erin L. Shea, of Dartmouth, MA, 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 35 Arnold Street, New Bedford, MA. I have practiced in the elder law field, including the preparation and filing of MassHealth applications, for the past 3.5 years as an attorney and an additional 11.5 years as a paralegal.

2. Part of my law practice involves assisting elders with MassHealth long term care applications. Over the last fifteen years, I have assisted clients in their efforts to obtain MassHealth eligibility in hundreds of cases. I have attended numerous administrative fair hearings, as well as having assisted in the representation of clients in 30A appeals of administrative decisions in the Superior Courts.

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, 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. Further, if he/she receives a notice of denial for failure to provide requested verifications, the notice will simply state that the application was denied and will reference a failure to provide requested verifications. There is no information included about what specific verifications(s) MassHealth purports that it has not received. Also, in the context of a denial notice involving an irrevocable trust, the notice will simply state that the application was denied, will reference in general terms a regulation which MassHealth deems applicable to the countability of the trust, then will state 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 information included as to how they reached that conclusion, or what specific provisions of the trust they determine to allow the grantor access to principal under the "any circumstances" test.

4. As a result of this lack of any clear statement of the specific reasons for the action, I usually have to file an appeal and attempt on my own to determine the specific reasons for the MassHealth denial. Despite submitting multiple requests for such clarity, in my experience 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.

5. At the hearing it is common practice and procedure for the MassHealth representative to deliver a legal memorandum, usually written by the Legal Department of MassHealth, to the appellant who sees it for the first time. The memo is usually delivered to the worker prior to the

date of the hearing but the worker is instructed not to put the memorandum in the appellant's file. There have been many instances where case workers have informed me that they have been instructed by the MassHealth legal department not to provide our office with its legal memorandum prior to hearing. As a result, the applicant has absolutely no ability to prepare and present his/her challenge to the denial of the application before the hearing officer.

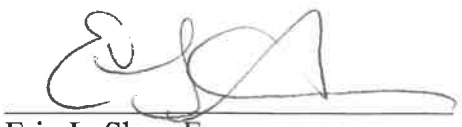
6. Although the hearing officer will often leave the record open for the appellant to file a responsive brief, this pattern and practice leads to additional delays and gives MassHealth an unfair advantage during the presentation before the hearing officer at the time scheduled for the fair hearing.

7. This pattern and practice is particularly problematic when dealing with more complicated matters such as trusts. Often the appellant is 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.

13. In my experience, I have represented appellants whose applications were denied for matters and issues which had been previously allowed without need for appeal, denied on a legal theory that had been discredited in prior hearing decisions, and in all of such cases the memorandum failed to disclose the existence of such contrary authorities.

14. More specifically, in February of 2016, MassHealth approved an application for benefits involving two irrevocable trusts which had been drafted in 2007 by the law office of Correira & Associates. That application was approved without any need for an appeal regarding the trust. Five months later, on July 7, 2016, a trust drafted by the same law office with substantially similar language and provisions was denied by MassHealth. My client appealed that decision, and in December 2016, Hearing Office Patricia Mullen approved the appeal. MassHealth gave no explanation as to why a trust of substantial similarity was approved without need for hearing in February, but then denied in July. Applicants have a federal due process right to have a government administrative agency follow its own regulations, its own previous decisions, as well as judicial precedent reviewing that Agency's decisions. MassHealth's denial of benefits in this circumstance unduly forced the Applicant through the delay, expense and anxiety of the appeal process.

SIGNED under the pains and penalties of perjury on this 14th day of May, 2018.



Erin L. Shea, Esq.