

## SECOND AFFIDAVIT OF COUNSEL

NOW COMES Jane E. Sullivan, Esq., having offices at 624 Brayton Avenue, Fall River, Massachusetts, and hereby depose and state that:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts, with a principal place of business at 624 Brayton Avenue, Fall River, Massachusetts. I have personal knowledge of the matters set forth herein.
2. My law practice has been exclusively devoted to estate planning, elder and special needs law since 1996. This includes assisting individuals and their families with MassHealth long term care applications. Over the past 22 years, I have processed and advised clients on over 500 MassHealth applications, including representation at numerous administration fair hearings.
3. My most recent experience at a fair hearing, which took place today, May 23, 2018, was an extremely troubling one. The information provided herein will supplement more specifically the case that I referred to in a prior Affidavit of Counsel dated May 10, 2018, specifically in paragraph 14 thereof.
4. In June, 2017, I assisted a Community Spouse with the filing of a MassHealth application on behalf of her Institutionalized Spouse. At the time of the filing of the application, the couple had a joint bank account with a balance of \$45,000.00.
5. In July, 2017, requested verifications were filed in response to an Information Request, which included a bank statement reflecting the withdrawal of these funds from the joint account and the deposit of same to the individual account of the Community Spouse.
6. In October, 2017, the application was approved with benefits retroactive to May, 2017.
7. In March, 2018, the Community Spouse received a notice, that her husband's MassHealth benefits were being terminated, as of March 14, 2018 due to "excess assets" in an amount that bore no relation to any of the accounts of the couple. There was no caseworker named in the notice, therefore there was no one to contact to resolve this matter prior to hearing.
8. At the hearing today, held at the Taunton MassHealth Enrollment Center, the first statement made by the assigned caseworker, who was not the same caseworker who processed the application, was: "I do not handle long term care applications. I just work in Ongoing." She then testified that benefits were terminated by the "Asset Verification System", citing the June 2017 bank statement reflecting a balance of \$45,000. She did not even have a copy of the statement to admit into evidence, so the Hearing Officer had to request that she provide one.

9. I was then able to provide a copy of the July 2017 statement which verified the withdrawal and transfer of the funds to the Community Spouse. This statement had been provided to the original caseworker who approved the application. The caseworker at the hearing could provide no explanation as to why this egregious error was made, and appeared unconcerned that the result was that the nursing home has not been paid in two months and the elderly Community Spouse has not slept in two months due to worry that the nursing home would discharge her husband for lack of payment and due to the additional legal fees she had to incur to have this sorry situation rectified.
10. Sadly, this experience is the norm rather than the exception.

Signed under the pains and penalties of perjury on this 23<sup>rd</sup> day of May, 2018.

  
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Jane E. Sullivan, Esq.  
BBO # 546255  
624 Brayton Avenue  
Fall River, MA 02821  
Tel: 508-679-0535  
Fax: 508-789-0566  
jsullivan@janesullivanlaw.com