

AFFIDAVIT OF COUNSEL

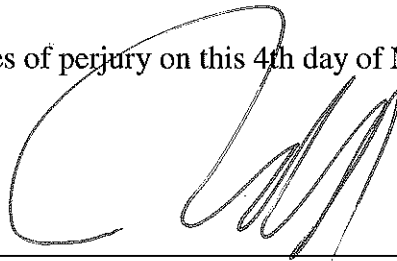
NOW COMES Paul E. Thornhill of Falco & Associates, PC, who hereby deposes and states that:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts. My principal place of business is located at 50 Quincy Avenue, Quincy, Massachusetts, 02169.
2. I have been practicing law in the areas of estate planning and elder law since 2002. I am a member of the National Academy of Elder Law Attorneys (NAELA) and its Massachusetts Chapter (MassNAELA).
3. As an elder law attorney, a significant portion of my practice involves assisting clients to obtain MassHealth benefits to pay for in-home care or skilled nursing care. I have worked with hundreds of clients on applications for MassHealth benefits
4. I have consistently experienced due process violations throughout the long-term care MassHealth application and appeal process.
5. When an application is denied, the denial notice typically lacks sufficient information to comply with basic Due Process requirements. The denial notices merely cite to the regulation(s) that MassHealth deems applicable.
6. In cases where the reason for the Denial is MassHealth's determination that the applicant made disqualifying transfers of assets within the five-year lookback period prior to application, the Notice will only cite to the applicable regulation, and will state the total amount deemed to be transferred for less than fair market value. The notices do not contain any specific breakdown or clarification of which transactions have been deemed disqualifying.
7. The lack of specificity in the denial notices results in added time and effort by all parties, added expense to the applicant and his or her family and, most significantly, unnecessary stress and anxiety to the applicant and family. We usually must make numerous attempts to reach out to the caseworker for clarification prior to a hearing, sometimes with success and sometimes not.
8. When a hearing involves a complicated issue, such as a trust, it is common practice for the MassHealth representative to present a legal memorandum. We are not provided with a copy of the Legal Memorandum until we show up at the hearing, putting us at a disadvantage as we are unable to properly prepare for the hearing without fully understanding the specific reasons for the denial.
9. The hearing officers will usually leave the record open to allow the applicant to provide a responsive brief, but any opportunity to call an expert or other witness to contradict the allegations presented in the Legal Memorandum is lost by this MassHealth tactic.

10. MassHealth engages in a pattern and practice of failing to give a clear statement of the specific reasons for a denial in the notice, of intentionally withholding essential information and the Legal Memorandum until the fair hearing, and of forcing a hearing to proceed for which the appellant cannot adequately prepare without the aforementioned specific information. These tactics violate basic due process rights and add unnecessary stress at a time when applicants are most vulnerable.

11. A more recent problem we have encountered quite frequently is that the MassHealth computer system automatically generates a denial if the caseworker does not timely complete work on the case file. These denials cannot be ignored, even if the caseworker provides a verbal promise that they will deal with the case shortly.

SIGNED under the pains and penalties of perjury on this 4th day of May, 2018.

A handwritten signature in black ink, appearing to read 'P. Thornhill', is written over a horizontal line.

Paul E. Thornhill
BBO #654874