


<p align="center"><b>CLERK'S NOTICE</b></p>	<p>DOCKET NUMBER</p> <p><b>1485CV02278</b></p>	<p><b>Trial Court of Massachusetts</b></p> <p><b>The Superior Court</b></p> 	
<p>CASE NAME:</p> <p>Nadeau, Lionel C vs. Thorn, Kristen</p>		<p>Dennis P. McManus, Clerk of Courts</p>	
<p>TO:</p> <p>Patrick Tinsley, Esq.</p> <p>Fletcher Tilton</p> <p>370 Main Street</p> <p>12th Floor</p> <p>Worcester, MA 01608</p>		<p>COURT NAME &amp; ADDRESS</p> <p>Worcester County Superior Court</p> <p>225 Main Street</p> <p>Worcester, MA 01608</p>	
<p>You are hereby notified that on 12/29/2015 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for judgment on the pleadings MRCP 12(c) after review, (#6.0): DENIED</p> <p>See accompanying Memorandum of Decision.</p>			
<p>DATE ISSUED</p> <p>12/30/2015</p>	<p>ASSOCIATE JUSTICE/ ASSISTANT CLERK</p> <p><b>Hon. Shannon Frison</b></p>		<p>SESSION PHONE#</p> <p><b>(508)831-2358</b></p>

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
NO. 14-CV-02278C

LIONEL NADEAU,  
Plaintiff,

vs.

KRISTIN THORN, Director of the Office of Medicaid, Executive Office of Health and  
Human Services, Defendant.

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR  
JUDGMENT ON THE PLEADINGS

This case arises out of the Office of Medicaid's denial of Lionel Nadeau's application for long-term Medicaid benefits. The Office of Medicaid, also known as MassHealth for the Massachusetts Medicaid program it administers, see G. L. c. 118E, § 9A, falls under the authority of the Secretary of the Executive Office of Health and Human Services. See G. L. c. 6A, §§ 16, 16B. Mr. Nadeau brings this action for judicial review of MassHealth's decision under G. L. c. 30A, § 14. Mr. Nadeau now moves for judgment on the pleadings to vacate MassHealth's decision. A hearing has been held on that motion.

For the following reasons, Mr. Nadeau's Motion for Judgment on the Pleadings is DENIED.

BACKGROUND

Judicial review of an agency decision is confined to the administrative record. G. L. c. 30A, § 14(4),(5). The record before MassHealth contained the following facts. On

March 27, 2001, Mr. and Mrs. Nadeau created the "Lionel C. Nadeau and Jacqueline T. Nadeau Irrevocable Trust" (the "Trust"). Relevant provisions of the Trust are discussed below. That same day, the Nadeaus deeded to the Trust their interest in the real estate located at 1075 School Street in Webster. The assessed value of the property is \$173,700. The Nadeaus continued to live at the property until, on April 1, 2014, health reasons required that Mr. Nadeau be admitted to the Webster Manor Healthcare Center.

On February 24, 2014, Mr. Nadeau applied for long-term care Medicaid benefits effective March 13, 2014. On June 27, 2014, MassHealth denied Mr. Nadeau's application after concluding that his assets exceeded Medicaid's \$2,000 eligibility limit. MassHealth determined that he was financially ineligible for benefits because his assets included the Trust's principal, valued at \$173,700. Mr. Nadeau appealed the decision to the Office of Medicaid Board of Hearings (the "Board").

Following a hearing, in a decision dated November 28, 2014, the Board affirmed MassHealth's decision and denied Mr. Nadeau's appeal. The Board counted the Trust's principal as an asset because:

By its plain and clear language subsection (d) of [130 Code Mass. Regs. 520.023(C)(1)] treats an applicant's former home deeded into an irrevocable trust differently from all other asset[s] that could fund a trust. Subsection (d) does not require, as subsections (a), (b), and (c) require, a finding that the Trustee has discretion under any set of circumstances under the trust to pay or distribute the principal to the donor/applicant. As MassHealth correctly asserts, the regulation makes no distinction between the "availability" of either income or principal stating only that the home or former home has to be "available" pursuant to the terms of the trust. Here, the applicant may use the property during his lifetime either to occupy as his residence or to rent and derive income payable to [him] as an income beneficiary of the Trust; therefore, his former home, sitting in an irrevocable Trust, is available to him and countable for MassHealth Long-Term Care eligibility purposes.



Mr. Nadeau sought judicial review of the Board's decision under G. L. c. 30A, § 14. On July 31, 2015, Mr. Nadeau filed his instant motion for judgment on the pleadings arguing that his use and occupancy of his home does not make the Trust principal "available" to him.

## DISCUSSION

### I. Standard of Review

A motion for judgment on the pleadings is governed by G. L. c. 30A §14 and Superior Court Standing Order 1-96. This Court may affirm, remand, set aside, or modify the agency decision if it determines that the rights of any party may have been prejudiced because the agency decision is unconstitutional, in excess of the agency's authority, based upon an error of law or unlawful procedure, unsupported by substantial evidence, or arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law. G. L. c. 30A, §14 (7). This court must also "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, §14(7). The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity. *Merisme v. Bd. of Appeals of Motor Vehicle Liab. Policies & Bonds*, 27 Mass.App.Ct. 470, 474 (1989).

This court "must apply all rational presumptions in favor of the validity of the administrative action and not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate." *Thomas v. Commissioner of the Div. of Med. Assistance*, 425 Mass. 738, 746 (1997), citation omitted. Moreover, this "court will not substitute its own judgment concerning the

penalty the [agency] imposes.” *Kobrin v. Bd. of Registration in Med.*, 444 Mass. 837, 842 (2005), citation omitted. Consequently, as the party appealing MassHealth’s decision, Mr. Nadeau bears the heavy burden of demonstrating the decision’s invalidity. *See Ten Local Citizen Group v. New Eng. Wind, LLC*, 457 Mass. 222, 228 (2010), internal quotation and citation omitted.

This Court gives substantial deference to an agency’s interpretation of those statutes with which it is charged with enforcing. “Especially is this so when the case involves interpretation of a complex statutory and regulatory framework such as Medicaid.” *Shelales v. Dir. of the Office of Medicaid*, 75 Mass. App. Ct. 636, 640 (2009), citation omitted. Deference is particularly appropriate when the statute in question explicitly grants broad-rule making authority to the agency, contains an ambiguity or gap, or broadly sets out a legislative policy that must be interpreted by the agency.” *Souza v. Registrar of Motor Vehicles*, 462 Mass. 227, 229 (2012) (citations omitted).

## II. Analysis

The Massachusetts Medicaid program, MassHealth, “is a joint State and Federal program designed to pay the cost of medical care for those who are otherwise unable to afford it.” *Normand v. Dir. of the Office of Medicaid*, 77 Mass. App. Ct. 634, 636 (2010), citations omitted. See also 130 Code Mass. Regs. 515.002(A).<sup>1</sup> “Because MassHealth is a joint Federal and State program, the Massachusetts statutes and regulations governing the program must be consistent with the requirements of Federal [Medicaid] law.” *Normand*, 77 Mass. App. Ct. at 637 n.8. Consequently, as required by Federal law, MassHealth applicants must meet certain financial eligibility requirements

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<sup>1</sup> “The MassHealth agency is responsible for the administration and delivery of health-care services to low- and moderate-income individuals and couples.” 130 Code Mass. Regs. 515.002(A).



to qualify for benefits. *Tarin v. Commissioner of Div. of Med. Assistance*, 424 Mass. 743, 747 (1997).

MassHealth provides nursing home benefits in the form of long-term care coverage for individuals who have \$2,000 or less in “countable assets.” 130 Code Mass. Regs. § 519.006(A)(2); 130 Code Mass. Regs. §520.003(A)(1).<sup>2</sup> “Countable assets are all assets that must be included in a determination of [Medicaid] eligibility.” 130 Code Mass. Regs. §520.007. Here, if the Trust is considered a countable asset, then Mr. Nadeau would be financially ineligible for MassHealth benefits because the assessed value of his home exceeds \$2,000. This Court concludes that the Office of Medicaid Board of Hearings correctly determined that Mr. Nadeau’s Trust was a countable asset because Mr. Nadeau’s home remained available for his use after he deeded it to the Trust.

#### A. Availability of Property

Property held in an irrevocable trust is a countable asset where it is “available according to the terms of the trust[.]” 130 Code Mass. Regs. 520.023 (C)(1)(d).<sup>3</sup> If a Medicaid applicant can use and occupy her home as a life tenant, then her home is “available.” See *Doherty v. Dir. of the Office of Medicaid*, 74 Mass. App. Ct. 439, 441 (2009) (home was available because applicant retained the right to reside there during her lifetime).

Deferring to MassHealth's reasonable construction of its regulations, the Court concludes that Mr. Nadeau’s home is “[t]he home or former home of a nursing-facility

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<sup>2</sup> State regulations require that “the total value of countable assets owned by or available to individuals applying for or receiving MassHealth [benefits] . . . may not exceed . . . \$2,000.” 130 Code Mass. Regs. 519.006(A)(2).

<sup>3</sup> The circular definition for the word “available” contained in the introductory statement to 130 Code Mass. Regs. §520.023 provides as follows: “Generally, resources held in a trust are considered available if under any circumstances described in the terms of the trust, any of the resources can be made available to the individual.” 130 Code Mass. Regs. §520.023.

resident . . . held in an irrevocable trust that is available according to the terms of the trust,” and is therefore a “countable asset” under 130 Code Mass. Regs. 520.023

(C)(1)(d). Mr. Nadeau’s home is “available” because the Trust’s express terms preserve his right to live there: Subsection 2.3 of Article 2 of the Trust, Entitled “Payment of Income and Principal,” provides that” the Nadeaus “shall also have the right to use and occupy any residence that may from time to time be held in trust hereunder.”

#### B. Any Circumstances Test

Mr. Nadeau argues that his home cannot be considered “available” or countable unless there are some circumstances under the Trust that give him the ability to receive some form of payment, such as the proceeds of the sale of the property. Mr. Nadeau observes that the entire subsection in the regulation at 130 Code Mass. Regs. 520.023 (C)(1) is entitled “Portion Payable.” His argument proceeds under the “any circumstances” test described in 42 U.S.C. §1396p(d)(3)(B)(i);<sup>4</sup> 130 Code Mass. Regs. 520.023(C)(1)(a).<sup>5</sup> The Supreme Judicial Court has described the test as follows:

[I]f there is *any* state of affairs, at *any* time during the operation of the trust, that would permit the trustee to distribute trust assets to the grantor, those assets will count in calculating the grantor’s Medicaid eligibility.

*Lebow v. Commissioner of the Div. of Med. Assistance*, 433 Mass. 171, 177-178 (2001),

emphasis in original. Even assuming, *arguendo*, that Mr. Nadeau’s property must be both

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<sup>4</sup> If there are any circumstances under which payment from an irrevocable trust “could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual[.]” 42 U.S.C. §1396p(d)(3)(B)(i).

<sup>5</sup> Under 130 Code Mass. Regs. 520.023(C)(1)(a), “[a]ny portion of the principal or income from the principal (such as interest) of an irrevocable trust that could be paid under any circumstances to or for the benefit of the individual is a countable asset.” See *Lebow v. Commissioner of the Div. of Med. Assistance*, 433 Mass. 171, 177-178 (2001) (discussing regulation).



available to him and payable to him for it to be countable, the Court, deferring to federal Medicaid policy guidelines, concludes the trust principal is payable to Mr. Nadeau.<sup>6</sup>

The Health Care Financing Administration (HCFA) is the agency charged with the interpretation and enforcement of the Medicare and Medicaid statutes. The HCFA issues policy guidelines called transmittals to states participating in the Medicaid program. See generally *Massachusetts Hosp. Ass'n v. Department of Pub. Welfare*, 419 Mass. 644, 646 (1995) (describing interplay between MassHealth and HCFA).

Transmittal 64 defines “payment” broadly as: “any disbursement from the corpus of the trust or from income generated by the trust which benefits the party receiving it. A payment may include actual cash, as well as noncash or property disbursements, such as the right to use and occupy real property.” Medicaid Manual HCFA Transmittal 64, Section 3259.1(A)(8). Massachusetts courts have applied Transmittal 64 when interpreting Medicaid statutes and regulations. See, e.g., *Atlanticare Med. Ctr. v. Comm’r of the Div. of Med. Assistance*, 439 Mass. 1, 9 (2003); *Andrews v. Div. of Med. Assistance*, 68 Mass. App. Ct. 228, 231 (2007). Transmittal 64 “is entitled to deference by the courts as long as it is consistent with the plain language and purposes of the statute and if [it is]

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<sup>6</sup> This court notes the Board correctly concluded additional income was countable under Article 6.1 of the Trust, entitled “Payments for our estate.” Article 6.1 provides that “Our trustee may in its sole discretion pay to our estate or to the tax authorities any taxes payable by reason of my death chargeable against the residue of my estate and any other debts of our estate or expenses of its administration and legacies under by will that, if paid by our executor would reduce the residue of my estate. This paragraph shall not be construed to require any such payments by our trustee.” Where, as here, the trustee has “a peppercorn of discretion, then whatever is the most the beneficiary might under any state of affairs receive in the full exercise of that discretion is the amount that is counted as available for Medicaid eligibility.” See *Cohen v. Commissioner of the Div. of Med. Assistance*, 423 Mass. 399, 413 (1996).

This court concludes that, because there are circumstances under which the trustee may exercise his discretion to pay these taxes, they are countable for purposes of Medicaid eligibility. See *Lebow*, 433 Mass. at 177-178; 130 Code Mass. Regs. 520.023(C)(1)(a). However, MassHealth has failed to demonstrate that the potential income accessible under this provision exceeds the \$2,000 Medicaid eligibility threshold. As noted by the Board, MassHealth did not introduce evidence “articula[ing] just how much of the principal could be paid to the donor[.]”

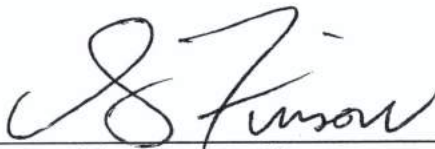


consistent with prior administrative views.” *Gillmore v. Ill. Dep’t of Human Servs.*, 354 Ill. App. 3d 497, 501 (2004), citation and quotation omitted.

In this case, Subsection 2.3 of Article 2 of the Trust preserved Mr. Nadeau's right to use and occupy his home, which is a form of payment under Transmittal 64's broad definition. Consequently, Mr. Nadeau's property is a countable asset even if the applicable regulations require it to be both available and payable to him.


ORDER

For the foregoing reasons, the plaintiff’s Motion for Judgment on the Pleadings is DENIED.

A handwritten signature in black ink, appearing to read "S. Frison", is written over a horizontal line.

Honorable Shannon Frison  
Justice of the Superior Court

December 29, 2015

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TO: Lisa M Neeley, Esq. Fletcher Tilton PC 370 Main Street 11th Floor Worcester, MA 01608		COURT NAME & ADDRESS Worcester County Superior Court 225 Main Street Worcester, MA 01608	
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