

*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Board of Hearings  
Office of Medicaid  
100 Hancock Street  
Quincy, MA 02171  
1-800-655-0338  
617-847-1204 (fax)*

VIA FACSIMILE and FIRST CLASS MAIL

November 17, 2014

Brian E. Barreira, Esq.  
Law Offices of Brian E. Barreira  
118 Long Pond Road, Suite 206  
Plymouth, MA 02360

Re: Request for Issuance of Subpoena  
Appeal No. 1407381

Dear Attorney Barreira:

I am in receipt of your fax correspondence of November 13, 2014 requesting that I issue a subpoena for the testimony of Medicaid Director Kristin Thorn or her designee, as well as for redacted copies of various trust documents pertaining to other appeals heard by the Board of Hearings (BOH), in the above-referenced appeal currently pending with the BOH.

In the subpoena narrative, it is noted that “[this] subpoena encompasses requested testimony related to the Office of Medicaid’s policies and positions taken in the fair hearing decisions in the Appeals numbered 1405851, 1402145, 1401798 and 1215864, including its policies relative to its decision whether to order a rehearing and whether its position in connection with those four decisions constitute the final position of the Office of Medicaid as it is applied to all trusts which are similar in nature.”

Pursuant to M.G.L. c. 30A, § 12 (3), any party to an adjudicatory proceeding may have a notary public or justice of the peace issue a subpoena on his or her behalf. You have already done that in this matter; the subpoena you enclosed was issued by a notary public on November 13, 2014.

However, you assert that “this subpoena would likely receive much more respect if it were issued by [me].”

Under the Fair Hearing Rules, the decision to issue a subpoena is squarely within the hearing officer’s discretion. 130 CMR 610.065. In deciding whether to issue the subpoena you have requested, I must decide whether the testimony of the individuals sought, and the documentary evidence sought, relates with reasonable directness to any matter in question; whether the subpoena for the attendance of a witness or the production of evidence is unreasonable or

Brian E. Barreira, Esq.  
November 17, 2014  
Page Two

oppressive; and whether the subpoena has been issued a reasonable period in advance of the time when the evidence is requested. M.G.L. c. 30A, § 12(4) and 130 CMR 610.052.

As an initial matter, the subpoena you issued contains an incorrect date for the hearing in the above-referenced appeal. The hearing is scheduled at the BOH on Tuesday, November 18, 2014 at 10:30 am, not Tuesday, November 11, 2014 at 10:30 am.

The subpoena appears aimed at eliciting the policies and procedures of the Office of Medicaid regarding its evaluations of trusts, and whether the assets contained in a given trust are countable to an appellant. The subpoena refers to trusts that have already been ruled on by the Board of Hearings that are "similar in nature" to the trusts at issue in this appeal. Finally, the subpoena seeks testimony regarding the Office of Medicaid's decisions about when to order a rehearing in a given case.

Although there is currently no motion to vacate the subpoena before me under 130 CMR 610.052(C), I do not agree that testimony about the policies and procedures of the Office of Medicaid, particularly concerning the decision whether or not to order a rehearing, relates with reasonable directness to any matter in question in this specific appeal. Also, whether the Office of Medicaid has counted other trusts in other appeals is beyond the scope of this appeal. Moreover, the instant subpoena has not been issued a reasonable time in advance of the time when the evidence is requested.

The issue in the instant appeal is limited to an interpretation and legal analysis of whether these particular trusts comport with federal and state Medicaid laws and regulations.

Even in the absence of a subpoena issued by this hearing officer, the appellant will have a full opportunity at hearing to present her claims orally or in writing, and to cross-examine the MassHealth eligibility representative who has already been designated to testify on the MassHealth agency's behalf.

For these reasons, your request to me to issue a subpoena for particular witnesses and documents in the referenced matter is denied.

Sincerely,



Paul C. Moore  
Hearing Officer  
Board of Hearings

cc: Kim McAvinchey, Tewksbury MEC