

Law Offices of Brian E. Barreira

Estate Planning and Elder Law www.SouthShoreElderLaw.com www.ElderLaw.info

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December 1, 2014

Attorney Paul Moore
Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, Massachusetts 02171

(via fax to 617-847-1204)

RE: Appeal No. 1407381, [REDACTED] v. Office of Medicaid;
and Appeal No. 1409671, [REDACTED] v. Office of Medicaid

Dear Attorney Moore:

During the fair hearing on November 18, 2014 on Appeal No. 1407381, it was determined that the Director of the Office of Medicaid had not complied with a legally valid subpoena, and the Appellant, [REDACTED] was granted a two-week period to get an order from the Superior Court under M.G.L. c. 30A directing compliance. Unfortunately, [REDACTED] died before anything could be filed, so I hereby request a lengthy, indefinite continuance to have her estate probated unless you will agree to a different solution.

It was my understanding that the [REDACTED] and [REDACTED] cases would be consolidated when I agreed to have the [REDACTED] appeal moved to you; therefore, where both appeals are simply about whether the trusts are countable assets, I ask that you take such action. In addition, with your being the hearing officer in both appeals, there is no reason that you cannot issue the subpoena from the consolidated cases. You already agreed on November 18 that the appellant had the right to the subpoena, and that the Office of Medicaid has the duty of

administrative consistency. It seems that placing the expenses of Probate Court and Superior Court actions is placing an undue burden on the appellant to accomplish something that can be easily accomplished by you as an independent hearing officer, especially where 42 U.S.C. §1396a(a)(19) requires that each state Medicaid program be administered in the “in a manner consistent with simplicity of administration and the best interests of the recipients.” Therefore, I request that you issue the subpoena that you have already agreed is the appellant’s right on an issue that you have already agreed is valid; the language of the subpoena that had been issued by the appellant is attached as pages 3 and 4 herein. I recognize that it has to be extremely difficult to issue a subpoena to someone who is directly above you in the Massachusetts administrative hierarchy, but it is your duty to do so, as M.G.L. c. 30A, s 12 states: “(3) Any party to an adjudicatory proceeding shall be entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding. The party may have such subpoenas issued by a notary public or justice of the peace, or he may make written application to the agency, which shall forthwith issue the subpoenas requested.” (emphasis added) There does not appear to be any language in M.G.L. c. 30A making the appellant’s rights discretionary.

Thank you for your consideration of these requests.

Sincerely,

Brian E. Barreira

cc: Kim McAvinchey, MassHealth Representative (via fax to 978-863-9320)

*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)*

December 8, 2014

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

Re: Appeal No. 1407381 [REDACTED]

Dear Attorney Barreira:

I am in receipt of your fax correspondence of December 1, 2014 concerning the above-referenced appeal.

First, I am sorry to hear that the appellant has passed away. I agree that the appeal should be continued until such time as an estate representative has been appointed. Please forward directly to my attention any letters of appointment from the probate court as soon as they are available.

Second, with regard to your renewed request for me to issue a subpoena to Kristin Thorn or her designee in this matter, your request is denied, for the reasons set forth in my prior correspondence to you of November 17, 2014.

Thank you for your attention to this matter.

Sincerely,



Paul C. Moore
Hearing Officer
Board of Hearings

cc: Kim McAvinchey, Tewksbury MEC

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)

February 2, 2015

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

Re: Appeal No. 1407381 [REDACTED]
Appeal No. 1409671 [REDACTED]

Dear Attorney Barreira:

I am writing to follow up with you on the status of the above-referenced appeals.

With regard to appeal no. 1407381, has any petition yet been filed with the probate court for the appointment of an estate representative? I would also like to clarify that I held the record open in appeal no. 1407381 until December 2, 2014 specifically for you to obtain a ruling from the Suffolk Superior Court (or another Superior Court of the Commonwealth) enforcing the administrative subpoena you issued to (now former) Medicaid Director Kristin Thorn or her designee on November 17, 2014. I have received no such Court ruling from you. Therefore, I am closing the record in appeal no. 1407381 for this purpose. However, the record of appeal no. 1407381 remains open for the limited purpose of securing the appointment of an estate representative for Ms. [REDACTED] estate.

I had planned to issue one decision pertaining to both relevant trusts in these appeals. However, I will plan to issue a decision in appeal no. 1409671 **only**

Brian E. Barreira, Esq.
February 2, 2015
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(the record of that appeal closed in November, 2014), unless you have objections to my doing so, which should be set forth in writing to me, and copied to MassHealth.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Paul C. Moore". The signature is written in a cursive style with a large, prominent "P" and "M".

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Kim McAvinchey, Tewksbury MEC