



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

617-847-1200 • 1-800-655-0338 • Fax 617-847-1204

September 15, 2014

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

Re: Appeal No. 1407381

Dear Attorney Barreira:

I am in receipt of appellant's legal memorandum and subpoena request received at the Board of Hearings on September 12, 2014, requesting that this hearing officer issue a subpoena commanding the appearance and testimony of Katherine Schelong, Esq. in her capacity as an "expert witness" and Amy Dybas in her capacity as a recipient of the legal memorandum issued by Attorney Schelong on behalf of MassHealth. Pursuant to 130 CMR 610.052(A), a subpoena under this chapter is a document that commands a witness to appear at a given time to give testimony at an administrative proceeding. A subpoena can also require the witness to produce for the administrative proceeding any books, documents, papers, or records in his or her possession or control. The issuance of a subpoena is entirely within the hearing officer's authority and discretion. 130 CMR 610.065.

First, Attorney Schelong has not appeared or testified at hearing as an "expert witness" or as a witness in any capacity; nor is it reasonable to characterize as an "expert opinion" the memorandum of law submitted by Attorney Schelong on behalf of MassHealth. There is no basis for compelling testimony or cross examination of opposing counsel.

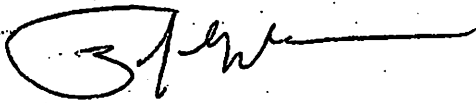
With regard to your request to issue a subpoena to Amy Dybas, Director, Member Services Policy Implementation, for the purpose of compelling her appearance, testimony, and production of policy related documents since 2009 to further "appellant's belief that many trusts are being challenged by the Office of Medicaid based on illegal procedures, some of which amount to unwritten regulations," I find, even in advance of a presumed Petition to Vacate such a subpoena had it issued, that: (a) the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question; and (b) the subpoena is unreasonable or unduly burdensome. 130

CMR 610.052(C)(2). The issue in the case at hand is limited to the interpretation and legal analysis of a Trust based on federal and state regulations. Compelling testimony and evidence for the purpose of challenging MassHealth's treatment of other Trusts is well beyond the scope and jurisdiction of the instant appeal.

Moreover, appellant argues that the appearance of Ms. Dybas as a witness should be compelled because appellant "wants to inquire into all policy positions taken by the Office of Medicaid regarding the duty of the Office of Medicaid to give notice to the applicant at the time of a denial about (1) the terms or provisions of the Trust that cause the assets to be, in the Office of Medicaid's view, countable assets, and (2) the reason(s) that the provision(s) is or are deemed to cause the assets to be countable. The request to subpoena Ms. Dybas for the purpose of securing testimony and documentation showing that MassHealth has failed to meet this obligation is without merit as MassHealth is under no such regulatory duty to provide detailed legal analysis as part of the denial under adequate notice provisions outlined at 130 CMR 610.026.

For the foregoing reasons, the subpoena requests are denied.

Very truly yours,



Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Kim McAvinchey, Tewksbury MEC