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## Case in Point:

### *Mark H. Boudreau<sup>1</sup> vs. Director of the Office of Medicaid*

Understanding the difference between a Medicaid Eligibility Representative  
and an Appeal Representative

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13-P-1337

APPEALS COURT OF MASSACHUSETTS

86 Mass. App. Ct. 1105; 2014 Mass. App. Unpub. LEXIS 878

July 25, 2014, Entered

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JUDGES: Kantrowitz, Agnes & Hines, JJ.

#### MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Mark H. Boudreau, the conservator for August Cristofori, appeals from a Superior Court judgment dismissing a complaint for judicial review brought pursuant to G. L. c. 30A, § 14. The complaint sought review of the decision of the Office of Medicaid (MassHealth) denying benefits to Cristofori. The Superior Court judge ordered dismissal of the complaint on the ground that the party that appealed the decision to the MassHealth board of hearings (board) lacked standing to do so. We affirm.

Background. On August 8, 2012, an application for long-term care benefits was filed with MassHealth on behalf of August Cristofori, a resident of JML Care Center in Falmouth. MassHealth denied Cristofori's application on September 13, 2012, citing his failure "to provide required verifications to determine [his] eligibility for assistance." On September 19, 2012, two fair hearing request forms were sent to the board on Cristofori's behalf.<sup>2</sup> One of the forms was purportedly signed by Cristofori himself; the other was signed by the "Attorney for August E. Cristofori," whose name was not printed on the form. The two signatures, however, appear to be identical. The forms, designating Matthew J. Dupuy as Cristofori's appeal representative, were enclosed with a cover letter written by Dupuy.

<sup>1</sup> 1 As conservator of August E. Cristofori.

<sup>2</sup> 2 MassHealth regulations establish a thirty-day time limit for an appeal from the denial of an application for benefits. [130 Code Mass. Regs. §610.015\(B\)\(1\)](#) (2010).

On September 18, 2012, the Barnstable Probate and Family Court appointed Boudreau as Cristofori's temporary conservator; his appointment was qualified on October 16, 2012.<sup>3</sup> On October 19, 2012, Dupuy sent a letter to the board that stated: "Please be advised that I represent Mark H. Boudreau, Esq., Temporary Conservator . . . who is expected to be appointed permanent Conservator at a hearing on October 23, 2012. **I also represent J.M.L. Care Center.**" On October 25, 2012, MassHealth denied Cristofori's request for a fair hearing.

After Boudreau — now Cristofori's permanent conservator — appealed to the Superior Court under G. L. c. 30A, § 14, MassHealth moved to dismiss, arguing that Dupuy lacked standing to bring an appeal on behalf of Cristofori. The Superior Court judge granted MassHealth's motion. This appeal followed.

Analysis. "We review the allowance of a motion to dismiss de novo." *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676, 940 N.E.2d 413 (2011). "When a statute confers standing in relation to particular subject matter, that statute, rather than more general ideas about standing, governs who may initiate legal action in relation to the subject matter." *Centennial Healthcare Inv. Corp. v. Commissioner. of the Div. of Med. Assistance*, 61 Mass. App. Ct. 320, 326, 810 N.E.2d 1231 (2004), citing *Boston Edison Co. v. Boston Redev. Authy.*, 374 Mass. 37, 46, 371 N.E.2d 728 (1977).

We agree with MassHealth that Dupuy lacked authorization to appeal the denial of Cristofori's application for benefits. Under the governing statute, the only parties who may appeal a decision not to grant Medicaid benefits are the applicant or recipient, or his or her legal representative. [G. L. c. 118E, § 47](#). Since there is no question that Dupuy was neither the applicant or recipient, the sole issue is whether he met the requirements to be a legal representative for Cristofori. The relevant MassHealth regulation sets forth two separate sets of criteria for determining who may serve as an "Appeal Representative." Under the first paragraph of the regulation, one may serve as an: **"Appeal Representative** [if he or she] is sufficiently aware of the appellant's circumstances to assume responsibility for the accuracy of the statements made during the appeal process, and who has provided the . . . Board of Hearings with written authorization from the appellant to act on the appellant's behalf during the appeal process." [130 Code Mass. Regs. § 610.004 \(1\)](#)(2010). The second paragraph provides that one may serve as an appeal representative if he or she "has, under applicable law, authority to act on behalf of an appellant in making decisions related to health care or payment for health care. An appeal representative may include, but is not limited to, a guardian, conservator, executor, administrator, holder of power of attorney, or health-care proxy." [130 Code Mass. Regs 610.004\(2\)](#)(2010).<sup>4</sup>

Dupuy satisfied neither criterion. With respect to the first paragraph, Dupuy never provided written authorization from Cristofori that permitted him to act on Cristofori's behalf during the appeal process. Regarding the second paragraph, Dupuy was not Cristofori's conservator, nor a holder of power of attorney, nor Cristofori's health-care proxy. Although Attorney Boudreau previously had petitioned to be appointed Cristofori's conservator, Dupuy's fair hearing request submissions do not include any

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<sup>3</sup> Boudreau had filed a petition for appointment as Cristofori's conservator on July 19, 2012.

<sup>4</sup> A third paragraph of the regulation provides that one may serve as an "Appeal Representative" if he or she is an eligibility representative and meets the requirements of either of the first two paragraphs. See 130 Code Mass. Regs. § 6104 (3) (2010). Because Dupuy does not satisfy the requirements of the first two paragraphs, he does not qualify as an appeal representative under the third paragraph, either.

authorization from Boudreau to pursue the appeal.<sup>5</sup> Thus, the board properly dismissed Dupuy's request for a hearing. See [130 Code Mass. Regs § 610.035\(A\)\(7\)](#) (2010) ("[The board] will dismiss a request for a hearing when . . . the party requesting the hearing is not an applicant, member, resident, appeal representative, or employer").

The plaintiff correctly asserts that Dupuy had standing, as Cristofori's "Eligibility Representative," to file the initial application for benefits on behalf of Cristofori. However, the regulations distinguish between an "Eligibility Representative" and an "Appeal Representative." An "**Eligibility Representative**" is defined more broadly as one who "is acting responsibly on behalf of an applicant or member for whom written authorization cannot be obtained."<sup>6</sup> [130 Code Mass. Reg. 515.001\(1\)](#) (2010) By contrast, the regulations define "Appeal Representative" in conformity with G. L. c. 118E, § 47, which limits the right of appeal to the applicant or his legal representative. Thus, we reject the plaintiff's argument that the requirements for the two types of representative should be read identically. While incongruous, the regulations prescribing who may apply for benefits and who may appeal a denial of benefits are a product of the agency's discretionary power to which we defer. See *Zachs v. Department of Pub. Utils.*, 406 Mass. 217, 227, 547 N.E.2d 28 (1989) ("[A]dministrative agencies have broad discretion over procedural aspects of matters before them").

Judgment affirmed.

By the Court (Kantrowitz, Agnes & Hines, JJ.),  
Entered: July 25, 2014.

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<sup>5</sup> MassHealth concedes that Boudreau himself, whose petition for conservatorship was pending in August 2012, would have had standing to file an appeal on Cristofori's behalf under the second paragraph of the appeal representative regulation

<sup>6</sup> The discrepancy between the requirements for the two types of representative was noted with some dismay in the Superior Court's ruling, which read: "Common cause and equity favor allowing the plaintiff to proceed but the language of the regulation as to 'appeal representative' is clear, and is not the equivalent of 'eligibility representative'; This strict application of the regulations, while within the prerogative of the defendant, will do little in the long run to promote public confidence in the administration of Medicaid."