

# Hirvi/DeFazio Settlement Overview

The *Hirvi* and *DeFazio* matters began as 30A cases but specifically under MGL c. 231A sought declaratory relief beyond the scope of the “garden variety” 30A claims. Both cases were consolidated with the *Maas/Hirvi* case which in June 2018 issued declaratory relief mandating that MassHealth had violated federal Medicaid law by the use of form notices which failed to itemize specific grounds for holding trust assets countable notices were deficient if they simply declaring an applicant “over asset.” When *Maas* concluded, *Hirvi* survived and *DeFazio* was later filed. Both complaints included prayers for systemic relief and alleged the elements of a class of individuals as victims of due process violations by MassHealth in the areas of “reasonable promptness,” (failure - sometimes egregious- to comply with time standards for processing appeals), “agency consistency,” (denying applications and appeals in cases involving trust assets on specious grounds that had been discredited by administrative and judicial rulings) and “1983 violations of appellants’ civil rights under federal law, warranting attorney’s fees.”

On September 13, 2021 the parties entered into a settlement agreement with the Secretary of EOHS, covering MassHealth, and the BOH as summarized below:

## 1. **Reasonable Promptness.**

- a. The BOH agreed that it will render its final determination of a request for fair hearing within 90 days of receipt of a request for fair hearing subject to actions of the appellant which cause delay such as delays in the submission of briefs and evidence and requests to leave the record open, illness and other issues beyond the control of the BOH.
- b. MassHealth agreed to create an email address to receive inquiries for appellants who are within 14 days of the 90-day deadline to be monitored by a staff person from MassHealth Legal.
- c. Beginning October 1, 2021 the BOH will publish the number of appeals filed, number of cases closed by decision, and the percentage issued within 90 days on a designated website available to the public.
- d. **MassHealth shall amend its regulations to implement the above standards to request a rehearing pursuant to 130 CMR 610.091(B).**

## 2. **Administrative Consistency (request for rehearing pursuant to 130 CMR 610.091).**

- a. Good cause shall exist for a rehearing if the appellant can “satisfactorily demonstrate” to MassHealth or the BOH that the BOH had previously issued a decision or an appellate court has issued a final binding decision inconsistent with the decision being appealed. The

- Appellant “shall attach” copies of such hearing decisions or appellate court cases and provide argument.
- b. Rehearings shall be confined to the issues identified in the request for rehearing.
  - c. MassHealth shall act upon the request for rehearing within 45 days or it shall be deemed denied unless appellant requests in writing that it not be deemed denied in the event the request is not acted upon within 45 days.
  - d. If the request is deemed denied the appellant may proceed directly to a 30A review.
  - e. **“MassHealth shall amend its regulations in order to implement these requirements.”**
  - f. MassHealth shall make best efforts to make its decisions available on a public searchable database.
  - g. MassHealth shall conduct four one hour Zoom meetings with legal department representatives and stakeholders to provide a listening session concerning the treatment of trusts.
  - h. MassHealth shall create an email address to receive inquiries from applicants who believe their notice does not comply with the Court’s decision in *Maas/Hirvi*.

3. **Attorney’s Fees.**

EOHHS agreed that Plaintiffs were entitled to attorney’s fees pursuant to the request under 42 USC 1983 and 1988.

**NOTICE TO THE PUBLIC**

Within 30 days of the effective date of the agreement MassHealth shall publish “subregulatory guidance on MassHealth’s website” that summarizes the above including the email addresses referenced and the fact that this agreement is enforceable only by the parties **EXCEPT** as to the provisions relating to reasonable promptness.