

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	APROVED IN PART; DENIED IN PART	Appeal Number:	2154697
Decision Date:	9/23/2021	Hearing Date:	08/25/2021
Hearing Officer:	Christopher Taffe	Record Closed:	09/03/2021

Appearances for Appellant:




Appearance for MassHealth:
Jamie Lapa of the Springfield MEC
(appearing by phone)



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	APPROVED IN PART; DENIED IN PART	Issue:	LTC – Disqualifying Transfer of Assets
Decision Date:	9/23/2021	Hearing Date:	08/25/2021
MassHealth’s Rep.:	J. Lapa	Appellant’s Reps.:	
Hearing Location:	Springfield MassHealth Enrollment Center		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated June 10, 2021, MassHealth approved Appellant for MassHealth Standard Long-Term Care (LTC) benefits with a start date of March 19, 2021. See Exhibit 1. The notice also stated that Appellant was ineligible for the time period of December 14, 2020 to March 18, 2021 due to a disqualifying transfer of assets. See id.; 130 CMR 520.019. Appellant, through her power of attorney, filed a timely request for hearing with the Board of Hearings on June 22, 2021. See Exhibit 1; 130 CMR 610.015(B). Challenging a MassHealth eligibility determination concerning the scope of assistance is grounds for appeal to the Board of Hearings. See 130 CMR 610.032.

At the conclusion of the hearing held on August 25, 2021, the record was left open for one business day per the request of the Appellant’s representatives, and then the record open period was further extended per request of the representatives to August 30, 2021. See Exhibit 5; 130 CMR 610.081. The Appellant subsequently submitted a final response, but not until September 3, 2021. See id. This September 3, 2021 response was administratively accepted into the record, which was closed on that date. See id.

Action Taken by MassHealth

MassHealth approved LTC benefits as of March 19, 2021, but not for the requested time period covering December 14, 2020 to March 18, 2021.

Issue

The appeal issue is whether MassHealth was correct in assessing a penalty period for three transactions and, if so, does the available evidence justify an exemption to the penalty for any of the transactions.

Summary of Evidence

At the time of hearing, Appellant was an [REDACTED] widowed female, whose spouse passed away in [REDACTED] after 56 years of marriage. They spent much of their time living in Connecticut. Approximately six months after the death of her husband, on [REDACTED], Appellant was admitted to her current nursing facility in Massachusetts.¹ On January 5, 2021, Appellant applied for LTC benefits, and she is seeking an LTC start date of December 14, 2020.

MassHealth testified that appellant's application raised no issues other than 3 transactions which occurred during the five-year statutory look-back period. The first and most recent of the transaction was a \$5,000 check which occurred on July 14, 2020, which was used to make a payment towards her goddaughter's Ford car purchase. The second and third transactions were, respectively, a \$11,991.74 withdrawal from the bank account belonging to Appellant and her now late husband in March of 2018, and a \$20,000 withdrawal from the same bank account in May 4, 2017. No explanation was received by or offered to MassHealth from the transactions. As a result of these three questionable transfers totaling \$36,991.74, and the current penalty divisor of \$391/day, this resulted in a penalty period of 94 days, so Appellant was not found eligible for benefits from December 14, 2020 to March 18, 2021. She was approved for LTC benefits starting March 19, 2021.

Appellant was represented at hearing by two individuals from a Medicaid Consulting Group who assisted with the application process. The Appeal Reps submitted documentation and put forth a position that the Appellant currently had dementia, and that her late husband had done everything for the couple, including managing the couple's finances. Appellant's husband was younger than Appellant; the obituary and medical notes in Exhibit 5 suggest that the late husband was 3 to 4 years younger than Appellant. The Appellant and her husband had no children. Because of her husband's relatively quick decline of health in spring of 2020, the Appellant executed a Power of Attorney document five days before her husband's passing, in order to allow the goddaughter to act on Appellant's behalf and allow someone to take on some of the husband's role in caring for

¹ Appellant moved to Massachusetts for institutionalization as her goddaughter lives near the Massachusetts/Connecticut border. There is no issue with residency in this appeal.

Appellant. The obituary for the Appellant's late husband is in Exhibit 5 and its first paragraph says that he passed away unexpectedly and was a *"strong and hardworking man that did everything for his wife [Appellant]"*. The obituary mentions no family other than his wife [Appellant] and the goddaughter. Appellant's representatives provided secondhand testimony that, based on discussions with the goddaughter, the late husband of Appellant was the member of the couple who managed all their finances, drove his wife to her medical appointments, planned the couple's vacations, and helped organize their lives. Shortly after her husband's passing, Appellant began to decline and eventually needed hospitalization and admission to a skilled nursing facility.

Appellant herself currently has dementia and is unable to provide information on what occurred in 2017 and 2018 which led to the two earlier transactions; even if she did not have dementia, due to the caretaking nature of her late husband, it was speculated that she would not be able to explain in detail what happened to the 2017 and 2018 transactions because of her husband's role as the main caretaker and primary manager of the finances for the couple.

The more recent \$5,000 transfer in July of 2020 to the goddaughter, less than 3 months after the passing of the husband and in the summer prior to Appellant's nursing facility admission, was described at hearing and in writing as *"payment towards the goddaughter's case as she was actively taking care of [Appellant], taking her to and from appointments and taking on the role her husband once played."* Appellant's representatives were asked at hearing how the specific \$5,000 dollar figure was ultimately chosen. The Appeal Representatives had no specific information to answer this inquiry, and asked for additional time in the form of a Record Open so they could follow-up with the goddaughter. Time was allowed but nothing responsive was ever submitted by the Appeal Reps; the final correspondence received on September 3, 2021 stated in part *"Our office has not been able to reach the goddaughter to obtain the answers needed."* See Exhibit 5.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. On the hearing date, Appellant was an [REDACTED] widowed female, whose spouse passed away in [REDACTED] after 56 years of marriage. (Testimony and Exhibits 3 and 4)
2. On [REDACTED], Appellant was admitted into her nursing facility. (Testimony and Exhibit 3).
3. Appellant applied for LTC benefits in January 2021 and is seeking a LTC benefit start date of December 14, 2020. (Testimony and Exhibit 3)
4. In assessing a disqualifying transfer penalty of 94 days, MassHealth found total transfers of \$36,991.74. These transfers consisted of three transactions
 - a. A \$5,000 check payable to an auto dealership as payment towards a car for Appellant's goddaughter on July 14, 2020;

- b. A \$11,991.74 withdrawal in March of 2018 from the joint bank account of Appellant and her now-late husband; and
 - c. A \$20,000 withdrawal in May of 2017 from the joint bank account of Appellant and her now-late husband.
(Testimony and Exhibit 3)
- 5. There is no evidence as to why Appellant chose \$5,000 or some other amount of money in terms of the payment made in July 2020. (Testimony and Exhibit 5)
 - 6. There is no evidence suggesting the \$5,000 was a transfer made by Appellant with the expectation of getting fair market value or other valuable consideration. (Testimony and Exhibits 3 through 5)
 - 7. No evidence was presented as to how Appellant planned to care for herself and use her remaining funds in the months prior to her nursing facility admission. (Testimony and Exhibit 4)
 - 8. Appellant currently suffers from dementia. (Testimony and Exhibit 4)
 - 9. Appellant and her late husband had no children or descendants. (Testimony and Exhibit 4)
 - 10. Appellant's late husband was three to four years younger than Appellant. (Exhibits 3 and 4)
 - 11. There is no evidence suggesting how the two withdrawals for \$31,991.74 were used by Appellant or her husband in 2017 and 2018. There is also no evidence indicating Appellant and her husband did not use that money for their own needs and expenses and instead transferred that money to another individual. (Testimony and Exhibits 3 and 4)
 - 12. Prior to his passing in April 2020, Appellant's husband took care of the finances for the couple. Specifically, the first paragraph of his obituary describes the Appellant's husband as someone "*that did everything for his wife [Appellant]*" (Testimony and Exhibit 4)

Analysis and Conclusions of Law

130 CMR 520.019 lays out the introduction to eligibility requirements for individuals like Appellant seeking Medicaid or MassHealth LTC benefits to cover one's nursing facility stay. In order to ensure such benefits properly go to these in financial need in accordance with the purpose of the program, there are many rules regarding assets and how applicants may disburse their assets prior to a nursing facility admission.

519.006: Long-Term-Care Residents

(A) Eligibility Requirements. Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements. They must

(1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;

(2) be determined medically eligible for nursing-facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;

(3) contribute to the cost of care as defined at 130 CMR 520.026: Long-Term-Care General Income Deductions;

(4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130 CMR 520.016(B): Treatment of a Married Couple's Assets When One Spouse Is Institutionalized; and

(5) **not have transferred resources for less than fair market value**, as described at 130 CMR 520.018: Transfer of Resources Regardless of Date of Transfer and 520.019: Transfer of Resources Occurring on or after August 11, 1993.

(**Bolded** emphasis added.)

The transfer of asset regulations read from 130 CMR 520.019 in relevant part as follows:

520.019: Transfer of Resources Occurring on or after August 11, 1993

...

(C) Disqualifying Transfer of Resources. The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident or spouse of a resource, or interest in a resource, owned by or available to the nursing-facility resident or the spouse (including the home or former home of the nursing-facility resident or the spouse) for less than fair-market value a disqualifying transfer unless listed as permissible in 130 CMR 520.019(D), **identified in 130 CMR 520.019(F)**, or exempted in 130 CMR 520.019(J).

...

(F) Determination of Intent. In addition to the permissible transfers described in 130 CMR 520.019(D), **the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value if the nursing-facility resident or the spouse demonstrates to the MassHealth agency's satisfaction that**

(1) **the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or**

(2) **the nursing-facility resident or spouse intended to dispose of the resource at either fair-market value or for other valuable consideration.** Valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource.

(**Bolded** emphasis added.)

Based on my review of the record and the above and related MassHealth regulations, I find the most recent transfer, the \$5,000 given for the goddaughter's use in July 2020 to be disqualifying. In this case, the \$5,000 was admittedly transferred to another person (the goddaughter), with the purpose of helping that person to buy a car. There is no evidence of the Appellant's intent to enter into any sort of fair market transaction with her goddaughter regarding this car purchase, nor is there any evidence of some sort of contractual relationship being created by the Appellant and the goddaughter, for which the \$5,000 served as the binding consideration. Specifically, there is no evidence in the record of any contemporaneous agreement between the Appellant and

her goddaughter specifying (1) why \$5,000 was the specific amount agreed upon or chosen by the parties, and (2) what duties or agreement justified the payment. It is unclear and vague how Appellant received or expected to receive something akin to \$5,000 in services for whatever Appellant would do during this time period following the transaction, and whatever duties were mentioned in Exhibit 5 do not have any obvious fair market value showing why \$5,000 is the proper amount. This is also a transaction between a godmother and a goddaughter, so it is further hard to justify it as a “fair market” transaction, which usually involves one party entering into an agreement with another party at arm’s length. Instead the \$5,000 here appears to be some sort of gift or gratitude exchanged between the two individuals.² Furthermore, the \$5,000 was given less than four months before Appellant entered the nursing facility. This timing does not suggest that there was no intent of qualifying for Medicaid benefits. In fact, the proximity of the timing suggests the opposite, that there may have been some attempt to reduce assets that belonged to Appellant, and which the Appellant would rather have given to her goddaughter instead of using it to pay her medical providers. No evidence was presented to dispute such a conclusion; in fact, Exhibit 5 from the Appellant’s suggest that Appellant’s health began to deteriorate shortly after her husband’s passing during the summer of this transfer. For these reasons, this portion of the appeal is DENIED and MassHealth acted properly in assessing a penalty for this \$5,000 transaction.

However, in contrast, the two withdrawal transactions in 2017 and 2018 (totaling \$31,994.74) were not made during the months before Appellant’s nursing facility admission or during a time period when either the Appellant or her spouse were in falling health. Instead they were made during a time when Appellant and her husband were living in the community, and where they would remain for at least two to three years respectively. While it may be understandable for MassHealth to initially question where the money went, it is noted here that this couple had no children or descendants, and there is no evidence to suggest that the withdrawals went to a third party with the intent of passing on some limited and accumulated wealth. It is also reasonable and plausible that the \$31,000 was used by the couple for their normal living expenses, debts, enjoyment, or personal needs from 2017 through 2020. Not every withdrawal of cash is necessarily an impermissible transfer to a third party, and there is nothing to suggest the latter is what happened in this appeal.

Further, while the MassHealth regulations do impose a duty on an applicant and their family to cooperate and provide information in support of an application for benefits, in this specific case, it is difficult to say what more this specific family could have done in order to “satisfy” the agency with an explanation per the regulations. The member of the couple who likely had greater knowledge of the finances and care was the husband, the one who passed away last year after what was described as a relatively sudden illness. Similarly, the widowed Appellant does not currently have the cognitive ability to shed light on what she or her husband were doing 3 to 4 years ago. Without any children in the picture, it is unclear who could speak and show what

² It is suspected that the goddaughter, like most people who help elders, likely agreed to help Appellant out due to some moral duty, personal sense of responsibility, or out of love and affection for her godmother; there is no evidence suggesting that the goddaughter did this only out of any contractual obligation that could invoke 130 CMR 520.019(F)(2).

the couple was doing years ago, and it is also difficult to assume the money was simply transferred from the couple to someone else in a manner that is impermissible under the MassHealth regulations. To thus conclude that the couple had a plan, 3 to 4 years ago, to shed the relatively limited amount of \$31,000 in assets via some transfer to some unknown party or individual in order to set up potential Medicaid eligibility years down the road for one of the couple is not supported by the record. The timing of this transaction, and the lack of evidence suggesting any improper disbursement of the proceeds, does not justify a penalty for the older two transactions. For those reasons, I find the remainder of the appeal as to the \$31,991.74 should be APPROVED under 130 CMR 520.019(F)(1).

Having concluded that there should be only a disqualifying transfer of \$5,000, this should result in a penalty of 12.78 days, which the agency customarily rounds down.³ In this case, the resulting penalty period of 12 days should run from December 14, 2020 to December 25, 2020, with LTC eligibility starting on December 26, 2020.

Accordingly, this appeal is APPROVED IN PART and DENIED IN PART.

Order for MassHealth

Rescind the June 10, 2021 denial notice and shorten the penalty period so that it runs from December 14, 2020 to December 25, 2020. Eligibility for LTC benefits should begin on December 26, 2020. Issue the appropriate notices or notices of implementation within 30 days of the date of this decision to all parties entitled to notice under 130 CMR 516.008. If there is a new PPA for any past period, an approval notice with appeal rights as to the PPA determination must be issued.

³See <https://www.mass.gov/doc/eom-20-17-average-cost-of-nursing-facility-services/download> (last viewed on September 20, 2021) for the explanation of the \$391/day penalty divisor for this type of application.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact the Appeals Coordinator at the Springfield MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Christopher Taffe
Hearing Officer
Board of Hearings

cc:



Dori Mathieu
Appeals Coordinator @ Springfield MEC