

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2154717
Decision Date:	9/24/2021	Hearing Date:	07/28/2021
Hearing Officer:	Scott Bernard		

Appearance for Appellant:




Appearance for MassHealth:

Elizabeth Landry (Taunton MEC) *via* telephone



*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	Issue:	LTC Transfer Penalty
Decision Date:	9/24/2021	Hearing Date:	07/28/2021
MassHealth's Rep.:	Elizabeth Landry	Appellant's Rep.:	
Hearing Location:	Taunton 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 8, 2021, MassHealth denied the appellant's application for MassHealth Long Term Care (LTC) benefits because MassHealth determined that the appellant had given away or transferred resources for less than fair market value. (See 130 CMR 520.519; 520.519 and Exhibit 1). MassHealth determined a period of ineligibility from February 28, 2021 through July 15, 2021. (Id.). The appellant filed this appeal in a timely manner on June 22, 2021. (See 130 CMR 610.015(B) and Ex. 2). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for LTC benefits because it determined that the appellant had given away or transferred resources for less than fair market value. MassHealth also determined a period of ineligibility from February 28, 2021 through July 15, 2021.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.518 and 520.519, in determining that the appellant transferred resources for less than fair market value and whether a period of ineligibility should be imposed.

Summary of Evidence

The MassHealth representative testified to the following. The appellant has a household of one and is over the age of 65. (Ex. 4). The appellant was admitted to the nursing facility around the end of the Summer of 2020. The appellant applied for LTC benefits on March 4, 2021 and was seeking a coverage start date of February 28, 2021. (Ex. 3, p. 7).

MassHealth denied the appellant's application because of a transfer of assets. MassHealth determined that period of ineligibility should be applied because of this transfer. The MassHealth representative stated that beginning in 2017, the appellant co-owned a life interest in a certain property in Massachusetts. In February 2020, the appellant's name was removed from the co-ownership of this property. The property was then sold. Based on the equity value of the home (\$146,290.40) multiplied by the life estate multiplier (.36998) the appellant should have received \$54,124.55 from the sale. (Ex. 3, p. 42). The appellant did not receive any of the proceeds of the sale. To determine the penalty period for the transfer of the property, the MassHealth representative divided \$54,124.55 by the daily public rate of \$391 and determined that there was a 138-day penalty period. The coverage start date therefore became July 16, 2021. As of the date of the hearing, the penalty period had ended.

The appellant's representative stated that she has submitted a hardship waiver request to MassHealth and forwarded a copy to the Board of Hearings. (Ex. 3). The appellant's representative stated that it was not her client's intention to transfer property to become eligible for MassHealth. The appellant's representative explained that the property in question was the appellant's daughter's house. The appellant's daughter had owned this house since 1997. (Ex. 3, p. 13). The appellant had moved in with her daughter in October 2016. In 2017, after the appellant's daughter lost her job, the appellant's name was added to the deed. (Ex. 3, pp. 14-33). This allowed the appellant's daughter to remortgage the property. (Ex. 3, pp. 14-33). Once the appellant's daughter was back on her feet she removed the appellant's name from the deed on February 27, 2020. (Ex. 3, p. 34). The appellant moved into the nursing facility and appellant's daughter decided to downsize. (Ex. 3, pp. 7, 8-9). The appellant's daughter sold the house in December 2020. (Ex. 3, pp. 35-36, 41-46). The appellant's daughter then used the proceeds to discharge the mortgage. (Ex. 3, pp. 37-38). The appellant's representative stated that the appellant held an ownership interest in the house purely to help her daughter. When the appellant was taken off the deed, she did not do so to become MassHealth eligible.

The appellant's representative stated that due to ineligibility and no payer source for this resident, Webster Manor will be issuing a 30-day discharge to the appellants representative once discharge is possible after the COVID pandemic. There is currently no less costly noninstitutional alternative to meet the resident's current needs and level of care. The appellant is unable to return home as she does not have a home to return to. The appellant now requires 24/7 care, which her daughter cannot provide. The daughter's condo is not safe for the appellant. The appellant currently only has \$3,814.85 in her bank account, and her only income is \$1351.20 a month which is not enough to pay privately or pay for outside care. (Ex. 3, p. 57). The appellant has developed dementia and cannot perform activities of daily living for herself. The appellant's representative argued, therefore, that the appellant should receive a waiver of the penalty period, citing 130 CMR 520.019(L)(1)(a), (b), (c), and (d).

The packet submitted in support of the hardship waiver also contained a letter date April 6, 2020 from Dr. John Cavallo, which states “I have been treating [the appellant] for years. [The appellant]’s daughter...has been patient caregiver since October 2016. [The appellant] Would have required nursing home placement two or more years ago if not for the care provided at home by [her] daughter...”

Findings of Fact

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

1. The appellant has a household of one and is over the age of 65. (Ex. 4).
2. Prior to entering the nursing facility, the appellant had been living with her daughter since October 2016. (Testimony of the appellant's representative).
3. The appellant’s daughter had owned this property since 1997. (Ex. 3, p. 13).
4. In 2017 the appellant’s name was added to the deed for her daughter’s house to assist her daughter with obtaining refinancing of the mortgage. (Ex. 3, pp. 14-33).
5. On February 27, 2020 the appellant’s daughter removed the appellant’s name from the deed. (Ex. 3, p. 34).
6. The appellant was admitted to the nursing facility around the end of the Summer of 2020. (Testimony of the MassHealth representative; Testimony of the appellant's representative; Ex. 3, p. 9).
7. The appellant’s daughter sold the property in December 2020. (Ex. 3, pp. 35-36, 41-46).
8. The appellant did not receive any of the proceeds of this sale. (Testimony of the MassHealth representative).
9. Based on the equity value of the home (\$146,290.40) multiplied by the life estate multiplier (.36998) the appellant should have received \$54,124.55 from the sale. (Testimony of the MassHealth representative; Ex. 3, p. 42).
10. The appellant applied for LTC benefits on March 4, 2021 and was seeking a coverage start date of February 28, 2021. (Testimony of the MassHealth representative; Ex. 1; Ex. 3, p. 7).
11. MassHealth denied the appellant’s application for LTC benefits because she gave away or transferred resources for less than fair market value. (Ex. 1).
12. MassHealth determined that there was a period of ineligibility from February 28, 2021 to July 15, 2021. (Ex. 1).
13. To determine the penalty period for the transfer of the property, MassHealth divided \$54,124.55 by the daily public rate of \$391 and determined that there was a 138-day penalty

period. (Testimony of the MassHealth representative).

14. An April 6, 2020 letter from the appellant's doctor states that the appellant's daughter has been her caregiver since October 2016 and the appellant would have required nursing home placement two or more year prior if not for the care she received from her daughter. (Ex. 3, p. 47).
15. As of the date of the hearing, the penalty period had ended. (Testimony of the MassHealth representative).

Analysis and Conclusions of Law

In order to be eligible for MassHealth nursing-facility services the total value of assets owned by an institutionalized single individual or by a member of an institutionalized couple must not exceed \$2,000. (130 CMR 520.003(A)(1); 130 CMR 520.016(A)). MassHealth denies payment for nursing-facility services to an otherwise eligible nursing-facility resident who transfers countable resources for less than fair-market value during or after the period referred to as the look-back period. (130 CMR 520.018(B)). The look-back period is 60 months and begins on the first date the individual is both a nursing-facility resident and has applied for or is receiving MassHealth Standard. (130 CMR 520.019(B)(2)).

130 CMR 520.019 also states the following, in pertinent part:

(C) Disqualifying Transfer of Resources. The MassHealth agency considers any transfer during the appropriate look-back period by the nursing-facility resident...of a resource, or interest in a resource, owned by or available to the nursing-facility resident...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)¹. The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which the nursing-facility resident...is or would be entitled if such action had not been taken. Action taken to avoid receiving a resource may include...agreeing to the diversion of a resource ... A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

(D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law.

- (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3).
- (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse.

¹ This reference to paragraph (J) appears to be an error since paragraph (K) is concerned with exemptions.

(3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child.

(4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was younger than 65 years old at the time the trust was created or funded.

(5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident.

(6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:

(a) the spouse;

(b) the nursing-facility resident's child who is younger than 21 years old, or who is blind or permanently and totally disabled;

(c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or

(d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

(7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

...

(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...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.

...

(K) Exempting Transfers from the Period of Ineligibility.

(1) During the Eligibility Process... [Not applicable]

(2) After Issuance of the Notice of the Period of Ineligibility. After the issuance of the notice of the period of ineligibility, the nursing-facility resident may avoid imposition of the period of ineligibility in the following instances.

(a) Revising a Trust...[Not applicable]

(b) Curing a Transfer. If the full value or a portion of the full value of the transferred resources is returned to the nursing-facility resident, the MassHealth agency will rescind or adjust the period of ineligibility and will apply the countable-assets rules at 130 CMR 520.007 and the countable-income rules at 130 CMR 520.009 to the returned resources in the determination of eligibility...(Emphasis added).

A preponderance of the evidence shows that since 2017 the appellant's daughter and the appellant were listed as co-owners of the house they lived. The appellant was added to assist her daughter in obtaining refinancing. Further, according to appellant's medical provider, the appellant's daughter was the appellant's caregiver during this time. The appellant continued to cohabitate with her daughter in that house until the late summer of 2020 at which time she entered the nursing facility. The appellant's doctor states that the appellant would have required nursing home placement two or more years sooner if not for the care provided by her daughter. Based on this evidence, the transfer of the house back to the daughter's sole ownership in February 2020 was a permissible transfer and there should be no penalty for that reason.

For the above stated reasons, the appeal is APPROVED.

Order for MassHealth

Rescind the June 8, 2021 eligibility notice and issue a new eligibility notice without the transfer penalty.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc: Justine Ferreira, Taunton MassHealth Enrollment Center