

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2155296
Decision Date:	10/14/2021	Hearing Date:	08/17/2021
Hearing Officer:	Patricia Mullen	Record Open to:	09/24/2021 (appellant); 10/08/21 (MassHealth)

Appearance for Appellant:




Appearance for MassHealth:

Cara Miller, Tewksbury MEC



*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:	Disqualifying transfer
Decision Date:	10/14/2021	Hearing Date:	08/17/2021
MassHealth's Rep.:	Cara Miller, Tewksbury MEC	Appellant's Rep.:	
Hearing Location:	Tewksbury 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 18, 2021, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents because MassHealth determined that the appellant transferred assets for less than fair market value resulting in an ineligibility period. (see 130 CMR 520.019 and Exhibit 1). The appellant filed this appeal in a timely manner on July 13, 2021. (see 130 CMR 610.015(B) and Exhibit 2). Through a notice dated August 17, 2021, MassHealth adjusted the ineligibility period to end on November 9, 2022. (Exhibit 7). Denial of assistance is valid grounds for appeal (see 130 CMR 610.032). The record was left open until September 17, 2021 to give the appellant the opportunity to submit evidence of a cure; the record open period was extended to September 24, 2021. (Exhibits 8, 14). The record was left open for two weeks after receipt, to give MassHealth the opportunity to respond. (Exhibit 8).

Action Taken by MassHealth

MassHealth determined a MassHealth ineligibility period from April 3, 2021 to November 9, 2022, later amended to end on December 2, 2021.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets for less than fair market value resulting in a period of ineligibility.

Summary of Evidence

The appellant was represented telephonically by his daughter, who is also his activated health care proxy, and by a representative from the business office of the nursing facility. MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Tewksbury.

The MassHealth representative stated that the appellant submitted an application for MassHealth Standard for long term care residents on May 5, 2021 seeking an April 3, 2021 MassHealth start date. The MassHealth representative stated that the appellant was otherwise eligible for MassHealth on April 3, 2021. The MassHealth representative stated that the appellant transferred ownership of his real estate property to a countable trust on January 6, 2019 for less than \$100.00, retaining a life estate interest for himself. (Exhibit 5, p. 3). On June 3, 2019, the trust sold the property for \$282,000.00. (Exhibit 5, p. 5). The MassHealth representative stated that out of the proceeds of \$282,000.00, \$208,174.76 was given to the appellant's daughter and son-in-law and \$53,185.90 was transferred back into the trust¹. (Exhibit 6, p. 6). The MassHealth representative testified that the appellant has since spent down the countable trust proceeds of \$53,185.90 and does not have excess assets. The MassHealth representative stated that MassHealth originally calculated an ineligibility period based on the difference between the appellant's life estate interest and the amount he actually received. (Exhibit 1). By notice dated June 18, 2021, MassHealth determined an ineligibility period from April 3, 2021 to July 8, 2021. (Exhibit 1). The MassHealth representative stated that MassHealth later realized that the total amount transferred for less than fair market value should have been used to calculate the ineligibility period. The MassHealth representative stated that the difference between the proceeds from the sale (\$282,000) and the amount received by the appellant (\$53,185.90) is \$228,814.00 and is the accurate disqualifying transfer amount. The MassHealth representative stated that the disqualifying transfer amount is divided by the average daily cost of nursing facility care in the Commonwealth, \$391.00, to determine the ineligibility period ($\$228,814 / \$391 = 585.2$ days). MassHealth issued a notice dated August 17, 2021 in which MassHealth calculated an ineligibility period of 586 days from April 3, 2020 to November 9, 2022. (Exhibit 7). MassHealth's August 17, 2021 was incorporated into this appeal. (Exhibit 7).

The representative from the nursing facility stated that the appellant paid \$208,174.76 to his daughter and son-in-law as part of a mortgage agreement entered into by the appellant and his daughter and son-in-law in 2006. (Exhibit 6). The representative from the nursing facility noted that, as set forth in the 2006 agreement, the appellant agreed to pay 6% compounded interest on the money loaned to him and the total amount owed was calculated by the closing attorney to be

¹ Remaining funds went to closing costs. (Exhibit 6, p. 6).

\$208,174.76. (Exhibit 6).

The appellant's representative submitted a document entitled "Agreement for Future Advances and Security" dated August 10, 2006. (Exhibit 6, pp. 7-8). The agreement was made between the appellant and his spouse (since deceased) as borrowers, and his daughter and son-in-law as lenders. (Exhibit 6, p. 7). By this agreement, the appellant's daughter and son-in-law agreed to advance the appellant \$1,000.00 a month, with interest accruing on the amounts advanced at the rate of 6% per annum until repaid. (Exhibit 6, p. 7). The appellant agreed to execute and deliver to the daughter and son-in-law a first mortgage on his real estate property as security for the repayment of the monies advanced by the appellant's daughter and son-in-law. (Exhibit 6, p. 7). The appellant agreed to repay the entire principal balance, plus interest thereon, upon his death or the sale of his real estate property, whichever occurred first. (Exhibit 6, p. 7). Per the agreement, the appellant provided security for the loan by way of a mortgage on his real estate property. (Exhibit 6, pp. 7-11). The mortgage was recorded at the Registry of Deeds on August 28, 2006. (Exhibit 6, p. 9). The agreement stated that the appellant would not be required to make any repayment of the amounts advanced until his death or the sale of the real estate property. (Exhibit 6, p. 8).

The record was left open for one month, until September 17, 2021, to give the appellant the opportunity to submit bank statements with checks from the appellant's daughter and son-in-law to the appellant in the amount of \$1,000.00 a month starting in August, 2006, and to submit the document prepared by the closing attorney showing the calculation of compounded interest and the total amount owed by the appellant at the time of the sale of the property. (Exhibit 8). The record was left open for 2 weeks after receipt of the appellant's documentation, for MassHealth to review the submitted documentation. (Exhibit 14). During the record open period, the MassHealth representative agreed to consider canceled checks and deposit slips in determining the cure for the transfer. (Exhibits 9-12). The representative from the nursing facility noted that the appellant's daughter's bank only retained financial records for seven years, in other words, no earlier than 2014. (Exhibit 9).

On September 1, 2021, the appellant's representatives submitted the compounded interest calculation, check copies from the appellant's daughter's bank account from 2014 to 2017, and deposit slips from 2006 to 2013, to MassHealth. (Exhibit 11). By email dated September 23, 2021, the MassHealth representative noted that some of the submissions were illegible and the record open period was extended to September 24, 2021 to allow the appellant's representatives to re-send the documentation. (Exhibits 12, 14). The appellant's representatives submitted legible copies of the documentation to MassHealth on September 24, 2021. (Exhibits 14, 15, 18).

At the request of the hearing officer, the representative from the nursing facility re-sent the legible copies of checks and deposit slips to the hearing officer on September 30, 2021. (Exhibit 18). The documentation included copies of 33 canceled checks made out to the appellant from his daughter and son-in-law's account, each in the amount of \$1,000.00 with the notation R-M written in the memo lines. (Exhibit 18, pp. 8 - 40). The submitted checks are for the 5 month period from August through December, 2014, the 12 months of 2015, the 12 months of 2016, and the 4 month period from January through April, 2017, for a total of \$33,000.00. (Exhibit 18, pp. 8 - 40). Documentation also included 78 deposit slips, each showing \$1,000.00 deposited into the

appellant's bank account. (Exhibit 18, pp. 41 – 70). The deposit slips are for the 89 month period from August, 2006 through December, 2013. (Exhibit 18, pp. 41 -70). An extra payment of \$1,000.00 was made in November, 2013. (Exhibit 18, p. 69). The submitted checks and deposit slips total \$111,000.00. (Exhibit 18). For the 129 month period from August, 2006 through April, 2017, verification of 18 loan payments is missing. (Exhibit 18).

The document created by the closing attorney to calculate how much the appellant owed his daughter and son-in-law at the time of the closing in June, 2019 includes the calculator used to determine 6% compounded interest on monthly payments of \$1,000.00. (Exhibit 17, p. 8). The document reports that the appellant's daughter and son-in-law paid the appellant a total of \$120,000.00 for the 10 year period from August, 2006 through July, 2016, and paid a total of \$9000.00 for the 9 month period from August, 2016 through April, 2017. (Exhibit 17, p. 8). The loan payments stopped after April, 2017 because 80% of the equity of the home securing the loan had been achieved. (Exhibit 17, p. 8). At 6%, the compounded interest on the 10 years and 9 months of payments totaling \$129,000.00, equaled \$54,519.14, and the appellant owed his daughter and son-in-law a total of \$183,519.14 as of April, 2017. (Exhibit 17, p. 8). The appellant's daughter and son-in-law made an extra payment on November 22, 2013 which, with accrued interest, totaled \$1,972.65. (Exhibit 17, p. 8; exhibit 18, p. 69). For the period May, 2017 to April, 2018, the 6% compounded interest totaled \$11,011.15, and for the period May, 2018 to April, 2019, the 6% compounded interest totaled \$11,671.82. (Exhibit 17, p. 8). The appellant's home, which was security for the loan, was sold in June, 2019. (Exhibit 6, p. 6). The closing attorney calculated that the total amount owed by the appellant at the time of the sale of his home in June, 2019 was \$208,174.76 (\$183,519.14 + \$11,011.15 + \$11,671.82 + \$1,972.65). (Exhibit 17, p. 8).

By email dated September 27, 2021, the MassHealth representative stated that she re-calculated the disqualifying transfer amount and ineligibility period based on the checks and deposit slips submitted. (Exhibit 15). By notice dated September 27, 2021, MassHealth determined that based on a disqualifying transfer, the appellant was not eligible for MassHealth for the period April 3, 2021 to December 2, 2021. (Exhibit 16).

The representative from the nursing facility argued that there should be no ineligibility period because the transfer of \$208,174.76 was to pay back a reverse mortgage granted to the appellant by his daughter and son-in-law and documentation was submitted to show a pattern of monthly payments of \$1,000.00 made by the appellant's daughter and son-in-law to the appellant. (Exhibit 17).

By email dated September 29, 2021, the hearing officer asked the MassHealth representative to explain MassHealth's calculation of the total amount transferred and the total amount cured. (Exhibit 19). The MassHealth representative stated that MassHealth determined a total disqualifying transfer amount of \$208,174.76 and a total cure of \$113,000.00 resulting in a final disqualifying transfer amount of \$95,174.76. (Exhibit 19).

Findings of Fact

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

1. The appellant submitted an application for MassHealth Standard for long term care residents on May 5, 2021 seeking an April 3, 2021 MassHealth start date; the appellant was otherwise eligible for MassHealth on April 3, 2021.
2. The appellant transferred ownership of his real estate property to a countable trust on January 6, 2019 for less than \$100.00, retaining a life estate interest for himself.
3. On June 3, 2019, the trust sold the real estate property for \$282,000.00.
4. Out of the proceeds of \$282,000.00, \$208,174.76 was paid to the appellant's daughter and son-in-law, \$53,185.90 was transferred back into the trust, and remaining funds went to closing costs.
5. The average daily cost of nursing facility care in the Commonwealth is \$391.00.
6. The appellant, his deceased spouse, and his daughter and son-in-law entered into a contract entitled "Agreement for Future Advances and Security" on August 10, 2006.
7. By this agreement, the appellant's daughter and son-in-law agreed to advance the appellant \$1,000.00 a month, with interest accruing on the amounts advanced at the rate of 6% per annum until repaid.
8. The appellant agreed to execute and deliver to the daughter and son-in-law a first mortgage on his real estate property as security for the repayment of the monies advanced by the appellant's daughter and son-in-law.
9. The mortgage securing the loan was recorded at the Registry of Deeds on August 28, 2006.
10. The appellant agreed to repay the entire principal balance, plus interest thereon, upon his death or the sale of his real estate property, whichever occurred first.
11. The contract stated that the appellant would not be required to make any repayment of the amounts advanced until his death or the sale of the real estate property.
12. The appellant's daughter's bank retained financial records for seven years, back to August, 2014.
13. For the period August through December, 2014, 2015, 2016, and January through April, 2017, 33 canceled checks are made out to the appellant from his daughter and son-in-law's account, each in the amount of \$1,000.00 with the notation R-M written in the memo lines, for a total of \$33,000.00.
14. For the 89 month period from August, 2006 through December, 2013, deposit slips show

\$1,000.00 deposited into the appellant's bank account monthly for 78 months; an extra payment of \$1,000.00 was made in November, 2013.

15. The appellant's daughter and son-in-law made a total of 120 payments of \$1,000.00 for the 10 year period from August, 2006 to July, 2016 and an additional 9 payments of \$1,000.00 for the 9 month period from August, 2016 to April, 2017 for a total of \$129,000.00.
16. At 6%, the compounded interest on the 10 years and 9 months of payments totaling \$129,000.00, equaled \$54,519.14 in April, 2017; the appellant owed his daughter and son-in-law a total of \$183,519.14 as of April, 2017.
17. For the period May, 2017 to April, 2018, the 6% compounded interest totaled \$11,011.15, and for the period May, 2018 to April, 2019, the 6% compounded interest totaled \$11,671.82.
18. The appellant's daughter and son-in-law made an extra payment on November 22, 2013 which, with accrued interest, totaled \$1,972.65 as of June, 2019.
19. The appellant's daughter and son-in-law stopped loan payments after April, 2017 because 80% of the equity of the home securing the loan had been achieved.
20. The appellant's home, which was security for the loan, was sold in June, 2019.
21. The total amount owed by the appellant to his daughter and son-in-law at the time of the sale of his home in June, 2019 was \$208,174.76 ($\$183,519.14 + \$11,011.15 + \$11,671.82 + \$1,972.65$).
22. After reviewing the documentation submitted during the record open period, MassHealth determined that the total disqualifying transfer amount of \$208,174.76 was cured in the amount of \$113,000.00, resulting in a final disqualifying transfer amount of \$95,174.76 and a period of ineligibility from April 3, 2021 to December 2, 2021.

Analysis and Conclusions of Law

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). The MassHealth agency may consider as a disqualifying transfer any action taken to avoid receiving a resource to which the nursing-facility resident or spouse is or would be entitled if such action had not been taken. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to

receive a resource is reasonably considered a transfer by the individual, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

130 CMR 520.019(C).

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.

130 CMR 520.019(F).

Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001: Definition of Terms of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly² cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency. 130 CMR 520.019(G)(1).

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility begins on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility begins on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth agency payment of long-term-care services, whichever is later. 130 CMR 520.019(G)(3).

The appellant entered into a loan agreement with his daughter and son-in-law in August, 2006. Per the loan agreement, from August, 2006 to April, 2017, the appellant's daughter and son-in-law loaned the appellant \$1,000.00 a month for a total of \$129,000.00. The loan payments stopped in April, 2017 because 80% of the equity in the real estate property securing the loan had been achieved. The mortgage granted by the appellant to his daughter and son-in-law was recorded in the Registry of Deeds. The plain language of the contract states that the appellant did not have to make any payments on the loan until he sold the real estate property securing the loan (or his death). In June, 2019, the appellant's countable trust sold the real estate property and the appellant paid back the loan to his daughter and son-in-law, with the agreed to accrued interest.

² MassHealth uses the average daily private pay nursing facility cost in calculating the ineligibility period.

There is no dispute that the appellant paid his daughter and son-in-law \$208,174.76 at the time of the real estate closing in June, 2019. There is also no dispute that, at the time of the sale of the real estate property, the appellant owed his daughter and son-in-law repayment of money they loaned to him pursuant to the “Agreement for Future Advances and Security” entered into on August 10, 2006. MassHealth determined that because the appellant only submitted documentation of loan payments in the amount of \$113,000.00³, only that amount would be considered a cure and the remaining payment to the daughter and son-in-law is a disqualifying transfer. Further, MassHealth did not calculate and include the 6% compounded interest owed by the appellant on the loan payments totaling \$113,000.00.

Based on the documentation submitted, including the “Agreement for Future Advances and Security”, the mortgage, the canceled checks with the notation R-M, which presumably stands for reverse mortgage, and the deposit slips, it is clear that the appellant’s daughter and son-in-law were in the practice of lending the appellant \$1,000.00 a month for the period August, 2006 through April, 2017. For the entire 129 month period from August, 2006 through April, 2017, verification of only 18 loan payments is missing. The appellant’s daughter’s bank does not retain records any earlier than 7 years, thus the appellant was only able to submit canceled checks for the period August, 2014 forward. I find this a reasonable explanation of why verification of 7 payments (January – July, 2014) is missing. And although 11 deposit slips for the period August, 2006 through December 31, 2013 are missing, it is rather remarkable that the appellant was able to submit such a large number of deposit slips to support the monthly \$1,000.00 payments. Based on the 33 checks and 78 deposit slips submitted, I determine that the appellant’s daughter and son-in-law consistently paid the appellant \$1,000.00 a month for this entire period.

I determine that the entirety of the evidence submitted supports that the appellant’s daughter and son-in-law loaned the appellant a total of \$129,000.00, pursuant to a loan agreement, for the period August, 2006 to April, 2017. 6% interest was not an unreasonable interest rate for a loan in 2006. The 6% compounded interest set forth in the loan agreement, was correctly calculated at the time of the real estate closing in June, 2019 and the final amount owed by the appellant to his daughter and son-in-law was correctly calculated to be \$208,174.76. Accordingly, the appellant’s payment of \$208,174.76 to his daughter and son-in-law in June, 2019 was for repayment of a loan and he received fair market value for this payment. MassHealth’s action is reversed and the appeal is approved.

Order for MassHealth

Rescind the notices dated June 18, 2021, August 17, 2021, and September 27, 2021 and approve the appellant for MassHealth Standard for long term care residents with a start date of April 3, 2021.

Implementation of this Decision

³ There is a slight discrepancy between the amount calculated by the hearing officer (\$111,000.00) and the amount calculated by the MassHealth representative. (\$113,000.00).

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.

Patricia Mullen
Hearing Officer
Board of Hearings

Cc: Sylvia Tiar, Tewksbury MassHealth Enrollment Center

