

# Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2155431
Decision Date:	11/04/2021	Hearing Date:	09/02/2021
Hearing Officer:	Scott Bernard	Record Open to:	09/24/2021

Appearance for Appellant:




Appearance for MassHealth:

Yuos Khieu (Chelsea 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

<b>Appeal Decision:</b>	Approved	<b>Issue:</b>	LTC Transfer Penalty
<b>Decision Date:</b>	11/04/2021	<b>Hearing Date:</b>	09/02/2021
<b>MassHealth's Rep.:</b>	Yuos Khieu	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Chelsea 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 July 6, 2021, MassHealth approved the appellant's application for MassHealth Long Term Care (LTC) benefits with a coverage start date of January 27, 2021 after a period of ineligibility due to a transfer of assets. (See 130 CMR 520.018; 520.019; and Exhibit 1, pp. 2-7). The appellant filed this appeal in a timely manner on July 18, 2021. (See 130 CMR 610.015(B) and Ex. 1, p. 4). Denial of assistance is valid grounds for appeal. (See 130 CMR 610.032).

At the appellant's representative's request, the record was left open until September 13, 2021 for her to submit certain documentation and until September 20, 2021 for the MassHealth representative to respond. (Ex. 8). The appellant's representative submitted the documentation on September 13, 2021. (Ex. 9). The MassHealth representative responded by email on September 24, at which time the record closed. (Ex. 10).

## Action Taken by MassHealth

MassHealth approved the appellant's application for LTC benefits beginning on January 27, 2021 because it determined that the appellant had given away or transferred resources for less than fair market value. MassHealth determined a period of ineligibility from January 1, 2021 through January 26, 2021.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018 and 520.019, 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 stated that the appellant is an individual over the age of 65 with a spouse living in the community. (Ex. 7, pp. 3, 4). The appellant applied for LTC benefits on April 9, 2021 requesting a coverage start date of August 14, 2020. (Ex. 7, pp. 3, 4). The MassHealth representative stated that the earliest date MassHealth could approve that application retroactively was January 1, 2021. The MassHealth representative stated that the appellant had submitted a prior application, which had been denied. This denial was not appealed. MassHealth determined that the appellant had transferred assets for less than fair market value, however. On or around April 9, 2021, the appellant cashed out a life insurance in policy, which was worth \$10,033.81. (Ex. 7, p. 12). The check was then deposited into the community spouse's savings account on April 20, 2021. (Ex. 7, p. 13). On April 22, 2021, \$9,993.97 was withdrawn from the same account. (Ex. 14). The appellant did not provide evidence concerning the disposition of this amount. For that reason, MassHealth determined that there would be a penalty period added to the earliest coverage start date of January 1, 2021. To determine the transfer penalty, MassHealth divided the transfer amount of \$9,993.97 by the average daily rate of \$391 to reach the figure of 25.56. This figure was then rounded down, and a penalty period of 25 days added to the earliest coverage start date. Thus, in the notice dated July 6, 2021, MassHealth approved the appellant for LTC benefits with a coverage start date of January 27, 2021, with a transfer penalty for the period between January 1 and January 26, 2021. (Ex. 1, pp. 2-3; Ex. 7, pp. 3-11).

The appellant's representative, who was the appellant's court appointed guardian, confirmed that an application was submitted on the appellant's behalf and denied. This occurred prior to the date the appellant's representative was involved with the appellant's case. The appellant's representative stated that it was her understanding that the life insurance policy was cashed in, but the appellant could not provide verification of the location of the proceeds. The appellant's representative stated that there was documented financial exploitation of the appellant and the community spouse by their daughter. The daughter held the appellant's power of attorney. The daughter was living in the appellant's home and helping herself to the appellant's checking account. The appellant's representative stated that MassHealth was able to cure other transfers based on the daughter's actions. The appellant's representative stated that Elder Services and the Auburn Police were both involved in this case. This was a substantiated case of elder abuse. The appellant's representative requested that the record stay open to allow her to submit documentation from Elder Services and the Auburn Police Department concerning elder abuse against the appellant's daughter. The appellant's representative was given until September 13, 2021 to do so and MassHealth was given until September 20, 2021 to respond. (Ex. 8).

On September 13, 2021, the appellant's representative submitted a copy of a letter from Elder Services, deposited checks, ATM receipts, and bank statements showing bank activities from January through April 2021. (Ex. 9). The letter from Elder Services was dated May 26, 2021 and stated that Elder Services received a report of concern on both the appellant and his spouse regarding possible financial exploitation by the family; an investigation substantiated the allegation of financial exploitation and the case was opened to Protective Services; and given the amount involved both

cases were referred to the district attorney's office. (Ex. 9, p. 3).

The appellant's representative's cover email pointed out that there were several check deposits followed by immediate or almost immediate withdrawals of those amounts (at least what was available) by the appellant's daughter/power of attorney. (Ex. 9, p. 1). These included a check deposit and withdrawal of \$1,354.00 on March 27, 2021; the check deposit of \$10,033.81 on April 20, 2021 followed by a withdrawal of \$9,993.97 on April 22, 2021 (what was at issue in this appeal); and a check deposit for \$1,354.00 on April 26, 2021 followed by a withdrawal of \$1,340.00 on April 28, 2021. (Ex. 9, pp. 11, 26; 13, 28-30, 31-33). The appellant's representative stated there were withdrawals of \$4,000 on February 3, 2021, \$1,000 on March 3, 2021, and \$2,900 on March 25, 2021. (Ex. 9, pp. 8, 21; 10, 23; 11, 24). The appellant's representative stated that of these, MassHealth only held the appellant accountable for the \$9,993.97 withdrawal on April 22, 2021. (Ex. 9, p. 1).

On September 24, 2021, the MassHealth representative stated that the submitted documentation did not change the outcome of the approval notice. (Ex. 10).

## Findings of Fact

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

1. The appellant is an individual over the age of 65 with a community spouse. (Ex. 7, pp. 3, 4).
2. The appellant has a spouse living in the community. (Testimony of the MassHealth representative).
3. The appellant applied for LTC benefits on April 9, 2021 requesting a coverage start date of August 14, 2020. (Ex. 7, pp. 3, 4).
4. The appellant submitted a prior application, which had been denied and not appealed. (Testimony of the MassHealth representative; Testimony of the appellant's representative).
5. January 1, 2021 was the earliest coverage start date MassHealth could approve based on the application date. (Testimony of the MassHealth representative).
6. On or around April 9, 2021, the appellant cashed out a life insurance in policy, which was worth \$10,033.81. (Ex. 7, p. 12).
7. The check was then deposited into the community spouse's savings account on April 20, 2021. (Ex. 7, p. 13).
8. On April 22, 2021, \$9,993.97 was withdrawn from the same account. (Ex. 14).
9. The appellant did not provide evidence concerning the disposition of this amount. (Testimony of the MassHealth representative).
10. For that reason, MassHealth determined that there would be a penalty period added to the

earliest coverage start date of January 1, 2021.

11. To determine the transfer penalty, MassHealth divided the transfer amount of \$9,993.97 by the average daily rate of \$391 to reach the figure of 25.56.
12. This figure was then rounded down, and a penalty period of 25 days added to the earliest coverage start date.
13. In the notice dated July 6, 2021, MassHealth approved the appellant for LTC benefits with a coverage start date of January 27, 2021, with a transfer penalty for the period between January 1 and January 26, 2021. (Ex. 1, pp. 2-3; Ex. 7, pp. 3-11).
14. Elder Services received a report of concern on both the appellant and his spouse regarding possible financial exploitation by the family; an investigation substantiated the allegation of financial exploitation and the case was opened to Protective Services; and given the amount involved both cases were referred to the district attorney's office. (Ex. 9, p. 3).
15. During early 2021, there were several check deposits followed by immediate or almost immediate withdrawals of those amounts (at least what was available) by the appellant's daughter/power of attorney. (Ex. 9, p. 1).
16. In addition to the penalized transfer these included a check deposit and withdrawal of \$1,354.00 on March 27, 2021; and a check deposit for \$1,354.00 on April 26, 2021 followed by a withdrawal of \$1,340.00 on April 28, 2021. (Ex. 9, pp. 11, 26; 13, 28-30, 31-33).
17. The appellant's representative stated there were withdrawals of \$4,000 on February 3, 2021, \$1,000 on March 3, 2021, and \$2,900 on March 25, 2021. (Ex. 9, pp. 8, 21; 10, 23; 11, 24).
18. MassHealth did not penalize the appellant for these other transfers. (Ex. 9, p. 1; Testimony of the appellant's representative).

## Analysis and Conclusions of Law

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)<sup>1</sup>. 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.
- (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,

---

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

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).

The record shows that the appellant's daughter, who was the holder of his power of attorney, was responsible for withdrawing \$9,993.97 from the appellant and his spouse's bank account. The record further shows that the appellant was unable to put forward evidence that this transfer was permissible, identified, or exempted. MassHealth therefore treated this withdrawal as a disqualifying transfer and determined the appellant was subject to a penalty of 25 days based on the transfer. Yet there is the appellant's representative submitted a letter from Elder services stating that it received a report of concern on both the appellant and his spouse regarding possible financial exploitation by the family; an investigation substantiated the allegation of financial exploitation and the case was opened to Protective Services; and given the amount involved both cases were referred to the district attorney's office. There was also evidence that the appellant's daughter was responsible for other similar large transfers during this period and the appellant was not penalized for these other transfers. It is reasonable conclude that that the appellant was not responsible for instigating these transfers and it

more likely than not that he intended to dispose of his assets to become eligible for MassHealth.

For the above stated reasons, the appeal is APPROVED.

## **Order for MassHealth**

Rescind the approval notice and issue a new approval notice with a coverage start date of January 1, 2021, which is the first day of the third month prior to the month of the application. (See 130 CMR 516.006(A)(2)).

## **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 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:

Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA 02150