

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2155754
Decision Date:	12/03/2021	Hearing Date:	08/17/2021
Hearing Officer:	Samantha Kurkijy		

Appearances for Appellant:




Appearances for MassHealth:

David Gelin—Chelsea MEC



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Eligibility—Transfers
Decision Date:	12/03/2021	Hearing Date:	08/17/2021
MassHealth Rep.:	David Gelin	Appellant Reps.:	
Hearing Location:	Remote	Aid Pending:	No

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 22, 2021, MassHealth denied the appellant's application for MassHealth long-term care benefits due a disqualifying transfer of assets and calculated an ineligibility period from July 22, 2020 to December 15, 2020. (Exhibit 1; Exhibit 7.) The appellant filed an appeal in a timely manner on July 28, 2020. (Exhibit 2.) Denial of assistance is a valid ground for appeal. (130 CMR 610.032.) The hearing officer was on periods of medical leave due to a serious illness, which extends the deadline for rendering a hearing decision pursuant to 130 CMR 610.015(D)(4)(b).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth long-term care benefits due to a disqualifying transfer of assets and calculated an ineligibility period from July 22, 2020 to December 15, 2020.

Issue

Whether MassHealth was correct in denying the appellant's application for MassHealth long-term

care benefits due to a disqualifying transfer of assets, and whether MassHealth correctly calculated an ineligibility period from July 22, 2020 to December 15, 2020.

Summary of Evidence

The MassHealth representative testified that on August 4, 2020, the appellant submitted an application for MassHealth long-term care benefits. He requested a benefit start date of July 22, 2020. On September 16, 2020, the appellant's application was denied for excess countable assets. The appellant passed away on [REDACTED] and a Personal Representative was appointed to represent the appellant's estate on March 8, 2021. The case was relogged on May 17, 2021. On June 22, 2021, MassHealth denied the appellant's application due to a disqualifying transfer of assets and determined a period of ineligibility from July 22, 2020 to December 15, 2021. The appellant submitted an appeal on July 28, 2021. The MassHealth representative testified that the appeal at issue relates to the original application date of August 4, 2020.

The MassHealth representative testified that MassHealth determined a transfer amount of \$200,000, consisting of partial proceeds from the sale of a house owned by the appellant. Those proceeds are subject to a holdback agreement between the appellant and the buyer. The MassHealth representative testified that because the appellant owned the property, the \$200,000 would have gone to the appellant but instead is subject to a holdback agreement and is inaccessible to the appellant. The MassHealth representative cited to 130 CMR 520.019 as support for MassHealth's determination that a disqualifying transfer of assets occurred. As the average daily rate of the nursing facility is \$391, MassHealth calculated an ineligibility period of 545 days ($\$200,000 / \391).¹

The appellant's representatives submitted a packet into evidence, marked Exhibit 6. The packet shows that on [REDACTED], the appellant sold the home to a third party for \$287,243.40. The appellant's representatives testified that the \$200,000 that is subject to the holdback agreement is inaccessible to the appellant. Because of courthouse and registry closures due to COVID-19, the title examiner could not get into the courthouse to ensure that the title was clean. The appellant's representatives explained that in order to allow the sale to go through, the buyer's attorney's office held back some of the proceeds for insurance until they could make sure the title was clean. The funds were held in the buyer's attorney's escrow account. The appellant's representatives testified that the funds were released on May 10, 2021 and are in the appellant's attorney's escrow account. They testified that the funds will be paid to the appellant's estate. They argued that at the time the

¹ The total transferred amount is \$200,000 and the average daily rate of a nursing facility is \$391. The MassHealth representative presumably misspoke when he testified that MassHealth calculated an ineligibility period of 545 days, as dividing \$200,000 by \$391 is approximately 512 days. It does not appear that a mistake was made on the June 22, 2021 MassHealth denial notice.

appellant passed away on [REDACTED], the funds were still inaccessible to him.

The holdback agreement reads, in part, as follows:

1. BUYER and SELLER hereby agree that the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) shall be deducted from the SELLER'S net proceeds at closing and shall be held in escrow in a non-interest bearing account by [REDACTED] until Suffolk County Probate File [REDACTED] is obtained, reviewed and approved. Due to registry and court house closures as a result of the COVID-19 pandemic, [REDACTED] is unable to obtain the file from Suffolk County Probate Court prior to closing.

(Exhibits 6 & 8.)

Findings of Fact

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

1. On August 4, 2020, the appellant submitted an application for MassHealth long-term care benefits. He requested a benefit start date of July 22, 2020.
2. On September 16, 2020, the appellant's application was denied for excess countable assets.
3. The appellant passed away on [REDACTED] and a Personal Representative was appointed to represent the appellant's estate on March 8, 2021.
4. The case was relogged on May 17, 2021.
5. On June 22, 2021, MassHealth denied the appellant's application due to a disqualifying transfer of assets and determined a period of ineligibility from July 22, 2020 to December 15, 2021.
6. The appellant submitted a timely appeal on July 28, 2021.
7. The appeal at issue relates to the original application date of August 4, 2020.
8. MassHealth determined a transfer amount of \$200,000, consisting of partial proceeds from the sale of a house owned by the appellant and subject to a holdback agreement. As the daily rate of the nursing facility is \$391, MassHealth calculated an ineligibility period of approximately 512 days (\$200,000 / \$391).

9. On [REDACTED], the appellant sold the home to a third party for \$287,243.40.
10. Because of courthouse and registry closures due to COVID-19, the title examiner could not get into the courthouse to ensure that the title was clean.
11. In order to allow the sale to go through, the buyer's attorney's office held back some of the proceeds (\$200,000) for insurance until they could make sure the title was clean. The funds were held in the buyer's attorney's escrow account.
12. The funds were released on May 10, 2021 and are in the appellant's attorney's escrow account. The funds will be paid to the appellant's estate.
13. The holdback agreement reads, in part, as follows:

1. BUYER and SELLER hereby agree that the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) shall be deducted from the SELLER'S net proceeds at closing and shall be held in escrow in a non-interest bearing account by [REDACTED] until Suffolk County Probate File [REDACTED] is obtained, reviewed and approved. Due to registry and court house closures as a result of the COVID-19 pandemic, [REDACTED] is unable to obtain the file from Suffolk County Probate Court prior to closing.

(Exhibits 6 & 8.)

14. The packet submitted by the appellant, marked Exhibit 6, states that the sale of the property did not occur in order for the appellant to qualify for MassHealth benefits. This issue was not addressed further in the packet or at hearing.

Analysis and Conclusions of Law

MassHealth "denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: *Definition of Terms* who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period." (130 CMR 520.018(B).) Resources transferred on or after February 8, 2006 generally are subject to a 60-month look-back period. (130 CMR 520.019(B)(2).) MassHealth considers any transfer of a resource owned by the 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)." (130 CMR 520.019(C).)

Pursuant to 130 CMR 520.019(C),

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.

Further,

In addition to the permissible transfers described in 130 CMR 520.019(D) [and the exempted transfers described in 130 CMR 520.019(J)], 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).)

Pursuant to 130 CMR 520.019(G)(1),

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 monthly 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.

Regulation 130 CMR 520.006, Inaccessible assets, reads as follows:

(A) Definition. An inaccessible asset is an asset to which the applicant or member has no legal access. The MassHealth agency does not count an inaccessible asset when determining eligibility for MassHealth for the period that it is inaccessible or is deemed to be inaccessible under 130 CMR 520.006.

(B) Examples of Inaccessible Assets. Inaccessible assets include, but are not limited to

- (1) property, the ownership of which is the subject of legal proceedings (for example, probate and divorce suits); and
- (2) the cash-surrender value of life-insurance policies when the policy has been assigned to the issuing company for adjustment.

(C) Date of Accessibility. The MassHealth agency considers accessible to the applicant or member all assets to which the applicant or member is legally entitled

- (1) from the date of application or acquisition, whichever is later, if the applicant or member does not meet the conditions of 130 CMR 520.006(C)(2)(a) or (b); or
- (2) from the period beginning six months after the date of application or acquisition, whichever is later, if

(a) the applicant or member cannot competently represent his or her interests, has no guardian or conservator capable of representing his or her interests, and the authorized representative (which may include a provider) of such applicant or member is making a good-faith effort to secure the appointment of a competent guardian or conservator; or

(b) the sole trustee of a Medicaid Qualifying Trust, under 130 CMR 520.022(B), is one whose whereabouts are unknown or who is incapable of competently fulfilling his or her fiduciary duties, and the applicant or member, directly or through an authorized representative (which may include a provider), is making a good-faith effort to contact

the missing trustee or to secure the appointment of a competent trustee.

MassHealth determined that the \$200,000 subject to the holdback agreement is a disqualifying transfer of resources due to the provisions of 130 CMR 520.019(C). However, both MassHealth and the appellant's representatives testified that the property was inaccessible during this time. The appellant took action "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." (130 CMR 520.019(C).) The appellant agreed to subject \$200,000 to a holdback agreement on [REDACTED]. The appellant elected to allow these funds to which he would have been entitled to be withheld from him until clear title could be determined, essentially "agreeing to the diversion of a resource[.]" (130 CMR 520.019(C).) By entering into this agreement, the appellant voluntarily made a portion of the sale proceeds inaccessible to himself and therefore unavailable for MassHealth eligibility purposes. The property could have been sold to another individual without the imposition of such a holdback agreement, and the appellant's representatives offered no evidence to demonstrate that this option was not a possibility.

The packet submitted by the appellant, marked Exhibit 6, states that the sale of the property did not occur in order for the appellant to qualify for MassHealth benefits. This issue was not addressed further in the packet or at hearing. Without more, such a statement is not sufficient to show that "the resources were transferred **exclusively** for a purpose other than to qualify for MassHealth[.]" (130 CMR 520.019(F)(1)) (emphasis added).

The appeal is denied.

Order for MassHealth

Allow the appellant 30 days from the date of this decision to provide proof the transfer was cured. If such proof is provided, redetermine eligibility.


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.

Samantha Kurkji
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett

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