

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2155821

Decision Date: 10/04/2021

Hearing Date: September 16,
2021

Hearing Officer: Stanley M.
Kallianidis

Appellant Representative:



MassHealth Representative:



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Transfer of Assets
Decision Date:	10/04/2021	Hearing Date:	September 16, 2021
MassHealth Rep.:	Mary Ellen Aspden		.

Authority

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

Jurisdiction

Through notice dated July 21, 2021, MassHealth denied the appellant's application for MassHealth benefits for the period March 24, 2021-May 15, 2021 due to disqualifying transfers (see Exhibit 1). The appellant filed this appeal in a timely manner on July 30, 2021 (see 130 CMR 610.015) and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits for the period March 24, 2021-May 15, 2021.

Issue

Was MassHealth correct, pursuant to 130 CMR 520.019 in determining that the appellant made disqualifying transfers of \$20,670.00?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on June 25, 2021 following her nursing home admission date three months prior (Exhibit 3). The application was denied for the period March 24, 2021-May 15, 2021 due to disqualifying transfers of assets totaling \$20,670.00. The appellant was approved for MassHealth long-term care benefits beginning May 15, 2021 (Exhibit 1).

The MassHealth representative explained that, between September 21, 2020 and May 20, 2021, the appellant made 30 cash withdrawals for \$500.00 each in addition to a \$3,100.00 cash withdrawal. She also made \$1,810.00 in car payments for a car she did not own following her nursing home admission. Additionally, the appellant made \$760.00 in payments to two home improvement stores following her admission date. These were all considered disqualifying transfers as the appellant gave away assets for no fair market value consideration. The MassHealth representative testified that there were multiple payments to grocery stores during this period, but that these were not considered disqualifying transfers (Exhibit 3).

The representative explained that the ineligibility period was 52 days. This was determined by taking the total transferred amount, \$20,670.00 and dividing it by the average daily private nursing home rate, \$391.00, beginning March 24, 2021, the date that she was otherwise eligible for MassHealth (Exhibit 3).

The appellant's son did not dispute any of the transfers that were cited by the MassHealth representative. He explained that his mother was helping him with his household expenses, particularly his rent which he could not afford to pay on his own. He stated that his mother lived with him for a few months in his apartment prior to her nursing home admission. He acknowledged that she was not on the lease, nor was there any formal agreement that she would pay him rent. The appellant's son further testified that the account in question was a joint account and he and his mother were the co-owners. He did not claim ownership over the funds however, as he stated that the money in the account belonged to his mother.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on June 25, 2021 following her nursing home admission date three months prior (Exhibit 3).
2. The application was denied for the period March 24, 2021-May 15, 2021 due to disqualifying transfers of assets totaling \$20,670.00 (Exhibit 1).

3. The appellant was approved for MassHealth long-term care benefits beginning May 15, 2021 (Exhibit 1).
4. The appellant's ineligibility period was 52 days. This was determined by taking the total transferred amount, \$20,670.00 and dividing it by the average daily private nursing home rate, \$391.00, beginning March 24, 2021, the date that she was otherwise eligible for MassHealth (Exhibit 3).
5. Between September 21, 2020 and May 20, 2021, the appellant made 30 cash withdrawals for \$500.00 each in addition to a \$3,100.00 cash withdrawal (Exhibit 3).
6. The appellant also made \$1,810.00 in car payments for a car she did not own following her nursing home admission (Exhibit 3).
7. In addition, the appellant made \$760.00 in payments to two home improvement stores following her admission date (Exhibit 3).
8. The appellant's funds in question were used to pay her son's expenses including his rent (Exhibit 3 and testimony).
9. The appellant lived with her son in his apartment for a few months prior to her nursing home admission, but she was not on the lease nor part of any formal rental agreement with her son (testimony).
10. The account in question was a joint account with the appellant and her son listed as co-owners. The son did not claim ownership over any of the funds (testimony).

Analysis and Conclusions of Law

MassHealth 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). MassHealth 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, MassHealth will consider the specific

circumstances involved. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

130 CMR 520.019(F) provides with regard to intent of transferring assets:

Determination of Intent: In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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 MassHealth'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.

The appellant applied for MassHealth on June 25, 2021 following her nursing home admission date three months prior. The application was denied for the period March 24, 2021-May 15, 2021 due to disqualifying transfers of assets totaling \$20,670.00. The appellant was approved for MassHealth long-term care benefits following this period.

The appellant's ineligibility period was 52 days. This was determined by taking the total transferred amount, \$20,670.00 and dividing it by the average daily private nursing home rate, \$391.00, beginning March 24, 2021, the date that she was otherwise eligible for MassHealth. The record shows that between September 21, 2020 and May 20, 2021, the appellant made 30 withdrawals for \$500.00 each in addition to a \$3,100.00 cash withdrawal. The appellant also made \$1,810.00 in car payments for a car she did not own following her nursing home admission. In addition, the appellant made \$760.00 in payments to two home improvement stores following her admission date. MassHealth deemed these transactions, totaling \$20,670.00, to be disqualifying transfers as the appellant gave away assets for no fair market value consideration.

I agree with MassHealth that these transactions were for no fair market value consideration. The money was used for the sole benefit of her son's living expenses, who himself acknowledged that he needed help with his rent. No evidence was submitted at the hearing to show that the funds were used to pay the appellant's own expenses rather than her son's. With regard to rent, while the appellant lived with her son for a period, I have found that there was no formal rental agreement between them, and she was not part of the apartment's lease.

Finally, I also find that there was intent to qualify for MassHealth on the part of the appellant. The transactions all took place in the months just prior to and just after her nursing home admission date, a time when the appellant needed to financially qualify for MassHealth benefits.

Accordingly, where the appellant transferred \$20,670.00 for less than fair market value, and where the transfers were not “exclusively for a purpose other than to qualify for MassHealth,” they were indeed disqualifying transfers.

The appeal is therefore denied.

Order for the MassHealth

None.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

Cc: MEC at Taunton