

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved	<b>Appeal Number:</b>	2175920
<b>Decision Date:</b>	11/10/2021	<b>Hearing Date:</b>	10/22/2021
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	10/29/2021

**Appearance for Appellant:**



**Appearance for MassHealth:**

Jamie Lapa



*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>	Start Date
<b>Decision Date:</b>	11/10/2021	<b>Hearing Date:</b>	10/22/2021
<b>MassHealth's Rep.:</b>	Jamie Lapa	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone		

### 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 August 13, 2021, MassHealth determined the appellant is not eligible for long-term care coverage from April 16, 2021 to September 11, 2021 due to asset transfers, (130 CMR 520.019; Exhibit 1). The appellant's representative, authorized under an agreement with the appellant's attorney-in-fact, filed this appeal in a timely manner on September 8, 2021. (130 CMR 610.015; Exhibit 2; Exhibit 3). Denial of assistance and a determination regarding the scope and amount of assistance are valid grounds for appeal. (130 CMR 610.032).

The Board of Hearings scheduled a hearing for October 22, 2021. (Exhibit 4). At the request of counsel for the appellant at hearing, the record was held open until October 29, 2021. (Exhibit 6).

### Action Taken by MassHealth

MassHealth determined that the appellant was not eligible for MassHealth until September 11, 2021 due to asset transfers.

## **Issue**

Whether MassHealth was correct in determining that the appellant was not eligible until September 11, 2021.

## **Summary of Evidence**

The appellant applied for MassHealth long-term care seeking coverage as of April 16, 2021. MassHealth determined that the appellant was not eligible from April 16, 2021 to September 11, 2021 due to transfers totaling \$118,500. The transfers in question were made to the appellant's daughter and son-in-law between August 2018 and May 2019. Prior to the hearing, the appellant's daughter provided MassHealth with receipts for expenses that MassHealth reviewed and calculated a new transfer amount of \$39,163.71. This adjustment resulted in a new start date of July 26, 2021.

The information provided by the appellant's daughter prior to the hearing included receipts and information for expenses she incurred on behalf of the appellant including: medical expenses for the appellant's husband, funeral costs for the appellant's husband and son, payments associated with the sale of the appellant's home and legal fees incurred by the appellant. The appellant moved from her home in Connecticut to live with her daughter after her husband and son passed away. The MassHealth representative acknowledged that the records show that the appellant's daughter handled a lot of the appellant's finances during the period in question. Transfers called into question were for amounts ranging from \$1,000 to \$24,000.

Counsel for the appellant noted that in addition to payments to reimburse her daughter, the appellant gave her grandson funds to pay off student loans for enrollment in college from 2012 to 2014. In 2014, the appellant's grandson stopped taking classes. In 2018, he was considering re-enrollment. The appellant and her husband wanted to support this decision by paying off prior student loans totaling \$55,052.57. Funds were transferred to the appellant's daughter to pay off the loans. Counsel for the appellant argued that this payment was done exclusively for a purpose other than to qualify for MassHealth.

The total transfer amount was less than the expenses verified and the loan payment.

## **Findings of Fact**

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

1. The appellant applied for MassHealth long-term care seeking coverage as of April 16, 2021.
2. MassHealth determined that the appellant was not eligible from April 16, 2021 to September 11, 2021 due to transfers totaling \$118,500.
3. The transfers in question were made to the appellant's daughter and son-in-law from August 2018 to May 2019.
4. The appellant's husband passed away in [REDACTED]
5. The appellant's son passed away in [REDACTED]
6. The appellant moved to Massachusetts to live with her daughter and son-in-law in 2019.
7. During the period in question, the appellant's daughter handled most of the appellant's finances.
8. The appellant's daughter often paid for services or bills through her own funds and the appellant provided reimbursement to her daughter.
9. Several transfers called into question correspond with large expenses such as medical expenses for the appellant's husband, funeral costs for the appellant's husband and son, payments associated with the sale of the appellant's home and legal fees incurred by the appellant.
10. The appellant's daughter provided MassHealth with receipts for expenses that MassHealth reviewed and calculated a new transfer amount of \$39,163.71.
11. In 2012, the appellant's grandson enrolled in college and took out loans to pay for school.
12. The appellant's grandson stopped taking classes in 2014.
13. In 2018, the appellant's grandson considered returning to college.
14. To support her grandson's decision to return to school, the appellant and

her husband paid off prior student loans totaling \$55,052.57.

15. Funds were transferred to the appellant's daughter to pay off the loans.
16. The total transfer amount was less than the expenses presented to MassHealth.

## **Analysis and Conclusions of Law**

MassHealth administers and is responsible for the delivery of health-care services to MassHealth members. (130 CMR 515.002). The regulations governing MassHealth at 130 CMR 515.000 through 522.000 (referred to as Volume II) provide the requirements for noninstitutionalized persons aged 65 or older, institutionalized persons of any age, persons who would be institutionalized without community-based services, as defined by Title XIX of the Social Security Act and authorized by M.G.L. c. 118E, and certain Medicare beneficiaries. (130 CMR 515.002). The appellant in this case is an institutionalized individual. Therefore, the regulations at 130 CMR 515.000 through 522.000 apply to this case. (130 CMR 515.002).

The regulations at 130 CMR 520.019 apply to nursing-facility residents as defined at 130 CMR 515.001 requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B). Under this section, transfers of resources are subject to a look-back period, beginning 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)).

MassHealth 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). (130 CMR 520.019(C)). 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)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). Such permissible transfers include a transfer of resources to the spouse of the nursing-facility resident, a transfer from the spouse to a third-party for the benefit

of the spouse, a transfer to a permanently and totally disabled or blind child, a transfer to a trust for the sole benefit of a permanently and totally disabled person who was under 65 years of age, a transfer to a pooled trust created for the sole benefit of the nursing-facility resident, certain transfers of the nursing-facility resident's home, and a transfer to a burial account or similar device. (130 CMR 520.019(D)). The transfers in question do not reflect any such transfer. (130 CMR 520.019(D)).

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 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. (130 CMR 520.019(F)).

The regulations state that valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource. (130 CMR 520.019(F)). Both parties presented evidence to demonstrate that the appellant received fair market value for several of the transfers initially called into question as the appellant's daughter was able to verify expenses incurred on behalf of the appellant. (130 CMR 520.019). The appellant also provided evidence of a transfer made for the purpose of paying off a student loan.

While MassHealth was correct in questioning these transfers, the appellant demonstrated prior to and at hearing that she made them for fair market value or for a purpose other than to qualify for MassHealth. Additionally, the evidence presented prior to and at hearing demonstrates that the appellant's daughter may have incurred more expenses than those for which she received reimbursement. While the appellant may have provided reimbursement for expenses with transfer amounts lower than those taken into consideration by MassHealth, the fact that the larger transfers were accounted for with expenses over the amount in question shows a pattern of the appellant reimbursing her daughter for expenses incurred.

The decision made by MassHealth was not correct.

This appeal is approved.

## Order for MassHealth

Rescind the notice on appeal and process the appellant's application for long-term care without regarding the transfers at issue.

### 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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104, 413-785-4186

[REDACTED]