

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Dismissed in Part; Denied in Part	<b>Appeal Number:</b>	2176123
<b>Decision Date:</b>	11/23/2021	<b>Hearing Date:</b>	09/27/2021
<b>Hearing Officer:</b>	Susan Burgess-Cox	<b>Record Open to:</b>	11/17/2021

**Appearance for Appellant:**



**Appearance for MassHealth:**

Yisell Medina



*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>	Dismissed in Part; Denied in Part	<b>Issue:</b>	Start Date
<b>Decision Date:</b>	11/23/2021	<b>Hearing Date:</b>	09/27/2021
<b>MassHealth's Rep.:</b>	Yisell Medina	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	All Parties Appeared by Telephone	<b>Aid Pending:</b>	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 August 6, 2021, MassHealth determined the appellant is not eligible for long-term care coverage from June 14, 2021 to October 18, 2021 due to asset transfers, (130 CMR 520.019; Exhibit 1). The appellant filed this appeal in a timely manner on August 11, 2021. (130 CMR 610.015; Exhibit 2). 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 August 23, 2021. (Exhibit 3A). The hearing was rescheduled due to projected weather conditions for that day. The hearing was scheduled for September 27, 2021. (Exhibit 3B). At the request of the parties and clarification of the facts at issue, the record was held open until November 17, 2021. (Exhibits 5-11).

### Action Taken by MassHealth

MassHealth determined that the appellant was not eligible for MassHealth until October 18, 2021 due to asset transfers.

## **Issue**

Whether MassHealth was correct in determining that the appellant was not eligible until October 18, 2021.

## **Summary of Evidence**

All parties appeared by telephone. Documents presented by MassHealth were incorporated into the hearing record as Exhibit 5.

The appellant applied for MassHealth long-term care seeking coverage as of June 14, 2021. MassHealth determined the appellant ineligible for long-term care coverage from June 14, 2021 to October 18, 2021 due to asset transfers totaling \$49,469.78. Included in this initial calculation were checks totaling \$29,800 and a portion of a "gift of equity" noted on the settlement statement of the sale of the appellant's condominium to her daughter. Based on information provided prior to the hearing and during the record open period, MassHealth adjusted the total transfer amount to \$17,254.17. The amount included in the new calculation only involved a portion of the "gift of equity". The appellant's representative did not provide all the documents presented to MassHealth to the Board of Hearings to include in the hearing record.

On December 10, 2018, the appellant sold her condominium to her daughter for \$156,250. The appellant's daughter took out a mortgage in the amount of \$125,000. Records show a good faith deposit of \$650 and a "gift of equity" deposit of \$31,250. MassHealth regarded this as a sale for fair market value but considered the portion of the transaction titled "gift of equity" as a disqualifying transfer. The appellant's representative informed MassHealth that the "gift of equity" was due to the condition of the condominium, reimbursement for repairs paid by the appellant's daughter and financing conditions. The appellant's daughter provided MassHealth with invoices and receipts for less than one half of the total amount of the "gift of equity". MassHealth utilized those receipts to recalculate the transfer amount from \$31,250 to \$17,254.17. The MassHealth representative determined that the agency could not make any further adjustments. The appellant's daughter was living in the condominium at the time of the sale. The appellant's daughter did not provide evidence of being a caretaker child.

At hearing, the appellant's representative testified that the appellant's daughter incurred expenses over \$31,250 in repairs to the condominium and was attempting to collect all receipts. During the record open period, the appellant's

representative presented a statement from the appellant's daughter regarding the condition of the house, the agreement on the sale price and an explanation of the notation on the settlement statement of \$31,250 as a deposit of a "gift of equity". The appellant's daughter noted that the "gift in equity" was to avoid having to pay private mortgage insurance (PMI). The settlement statement also notes a good faith deposit of \$650. The good faith deposit and "gift in equity" raised the total deposit on the purchase to 20 percent. The appellant's daughter noted in her statement that the appellant was 90 years old at the time of the transfer, she could not longer climb the stairs on her own so went to live with her sister and sold the condominium to her daughter to avoid having to make repairs and place it on the market.

## **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 June 14, 2021.
2. MassHealth determined the appellant ineligible for long-term care coverage from June 14, 2021 to October 18, 2021 due to asset transfers totaling \$49,469.78.
3. Based on information provided prior to the hearing and during a record open period, MassHealth adjusted the total transfer amount to \$17,254.17.
4. In December 2018, the appellant sold her condominium to her daughter for fair market value of \$156,250.
5. Payment for the condominium included a mortgage of \$125,000, a cash deposit of \$650 and a "gift of equity" of \$31,250.
6. The total down payment for the condominium was 20 percent of the sale price.
7. The appellant's daughter did not have to pay for private mortgage insurance (PMI) at the time of the sale.
8. The appellant's daughter lived in the home and paid for some repairs prior to the sale.
9. The appellant's daughter produced receipts for repairs that MassHealth

took into consideration in adjusting the transfer amount to \$17,254.17.

## **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)). MassHealth determined that the appellant would have received fair market value for the overall sale of the condominium. However, the records presented to MassHealth and at hearing do not demonstrate that the "gift of equity" called into question by MassHealth, can be regarded as a permissible transfer. (130 CMR 520.019).

In looking at the transaction as a whole, while MassHealth determined that the overall sale price was for fair market value, the "gift of equity" reduced the value provided to the appellant resulting in a transfer for less than fair market value. The appellant's daughter produced receipts related to repairs she made to the property. However, the receipts were for less than one half of the total gift. Not being able to produce records of more than one half of the possible expenses incurred makes it difficult to conclude that the daughter actually incurred costs at or above \$31,250.

Additionally, while the appellant's daughter stated that the purpose was to avoid PMI, not to qualify for MassHealth, the gift assisted in an overall purchase done when the appellant was 90 years old. It is difficult to conclude that one at that age is not looking to the possible inheritance of their heirs. One of the primary reasons why the value of one's estate decreases is due to the payment for long-term care. The overall intent of transferring the condominium to her daughter and assisting in the financing terms to allow for the purchase, leads to the conclusion that the gift was not exclusively for a purpose other than to qualify for MassHealth. Simply providing another purpose does not render the transfer as one without the possible intent to reduce one's assets to qualify for programs such as MassHealth.

The decision made by MassHealth was correct.

This appeal is denied in part and dismissed in part as MassHealth agreed to adjust the initial calculation of the transfers at issue.

## **Order for MassHealth**

If such action has not already occurred, determine the appellant's eligibility by adjusting the transfer amount at issue to \$17,254.18.

## **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.

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Susan Burgess-Cox  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Nancy Hazlett, Chelsea MassHealth Enrollment Center, 45-47 Spruce Street, Chelsea, MA 02150, 617-551-2028

