

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	DENIED	<b>Appeal Number:</b>	2176684
<b>Decision Date:</b>	11/23/2021	<b>Hearing Date:</b>	10/06/2021
<b>Hearing Officer:</b>	Kenneth Brodzinski		

**Appearance for Appellant:**



**Appearance for MassHealth:**

Katie LaDuke – Springfield MEC



*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>	DENIED	<b>Issue:</b>	Asset Transfer
<b>Decision Date:</b>	11/23/2021	<b>Hearing Date:</b>	10/06/2021
<b>MassHealth's Rep.:</b>	Katie LaDuke	<b>Appellant's Rep.:</b>	[REDACTED]
<b>Hearing Location:</b>	Springfield MEC		

## 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 August 12, 2021, MassHealth denied Appellant's requested start date for MassHealth Long Term Care benefits and assessed a period of ineligibility upon determining that Appellant made disqualifying transfers of countable assets (Exhibit A). Appellant filed for this appeal in a timely manner on August 31, 2021 (Exhibit A). Start date determinations constitute valid grounds for appeal (see 130 CMR 610.032).

## Action Taken by MassHealth

MassHealth denied Appellant's requested start date for MassHealth Long Term Care benefits and assessed a period of ineligibility upon determining that Appellant made disqualifying transfers of countable assets.

## Issue

The appeal issue is whether or MassHealth properly applied the controlling regulation(s) to accurate facts when it denied Appellant's requested start date for MassHealth Long Term Care benefits and assessed a period of ineligibility upon determining that Appellant made disqualifying transfers of countable assets.

## Summary of Evidence

The MassHealth representative testified that Appellant filed an application for MassHealth Long-Term Care benefits on July 7, 2021 seeking a start date of July 31, 2021. The application was approved with a start date of August 12, 2021. MassHealth did not grant the requested start date because MassHealth determined that Appellant had given away countable assets totaling \$10,250.00.

The MassHealth representative testified that Appellant closed out an annuity and made all of the subject transfers on March 9, 2021 dispersing the annuity funds to various family members. The MassHealth representative also testified that these transfers were reported by Appellant on her application. Because these transfers were made within five years of the date of application, MassHealth determined them to be disqualifying and calculated a period of ineligibility. The MassHealth representative explained that the total of \$10,250.00 was divided by the average public daily rate in the Commonwealth of \$391 yielding 26.25 which was rounded up to 27 days of disqualification. The disqualifying period runs from the requested start date of July 31, 2021 through August 26, 2021.

Appellant was represented by her daughter who testified that Appellant had a long-standing intention to give money to her children and did not make the transfers in order to qualify for MassHealth. The daughter explained that in the autumn of 2020, prior to making the subject transfers, the family consulted a financial advisor in order to make prepaid funeral and burial arrangements and was told by the advisor that any left-over funds could be dispersed to Appellant's children. The daughter testified that Appellant also had been told on multiple occasions that she was not eligible for MassHealth because her income was too high; therefore, she was not thinking of qualifying for MassHealth when she gave away some of her assets.

Upon questioning by the hearing officer, Appellant's daughter testified that Appellant is [REDACTED] years old and in "failing" health, however, previously she had been living alone in the community in senior housing with support services and the help of family. While in the community she had no prescriptions.

When asked what precipitated Appellant's admission to a skilled nursing facility, the daughter testified that Appellant had a number of hospitalizations and started to display a "little bit" of dementia. The daughter testified that in late [REDACTED] and early [REDACTED] Appellant was admitted to [REDACTED] with complaints of weakness. She was discharged after about 10 days directly to home without rehabilitation. A few days after returning home, Appellant went to the University of Massachusetts Medical Center where they discovered that a hiatal hernia was pushing on her heart and lungs and causing the weakness. After treatment at UMass, Appellant was approved for rehabilitation services at CareOne and then moved to another skilled nursing facility on August 16, 2021 where she still resides.

Upon further questioning, Appellants' daughter testified that Appellant had broken her hip a few years ago and took Tylenol for pain and antacid for GERD, but otherwise had no other medications and still has no prescription medications. Appellant's daughter further testified that Appellant's current diagnoses include gastroenteritis and colitis; hernia with obstruction, abnormal gait and dysphasia.

## Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant filed an application for MassHealth Long-Term Care benefits on July 7, 2021 seeking a start date of July 31, 2021.
2. The application was approved with a start date of August 12, 2021.
3. MassHealth did not grant the requested start date because MassHealth determined that Appellant had given away countable assets totaling \$10,250.00.
4. Appellant closed out an annuity and on March 9, 2021 dispersed the annuity funds to various family members by check.
5. The transfers were reported by Appellant on her application.
6. Because the transfers were made within five years of the date of application, MassHealth determined them to be disqualifying and calculated a period of ineligibility.
7. MassHealth divided the total transfer amount of \$10,250.00 by the average public daily rate in the Commonwealth of \$391 yielding 26.25 which was rounded up to 27 days of disqualification.
8. The disqualifying period runs from the requested start date of July 31, 2021 through August 26, 2021.
9. As of the date of hearing, Appellant was [REDACTED] years old (and in "failing" health).
10. Prior to entering the skilled nursing facility, Appellant had been living alone in the community in senior housing with support services and the help of family.
11. Prior to entering the skilled nursing facility, Appellant had a number of hospitalizations and had already started to display some signs of dementia.

12. In late June and early [REDACTED] Appellant was admitted to [REDACTED] with complaints of weakness.
13. Appellant was discharged after about 10 days directly to home without rehabilitation.
14. A few days after returning home, Appellant went to the University of Massachusetts Medical Center where they discovered that a hiatal hernia was pushing on her heart and lungs and causing her weakness.
15. After treatment at UMass, Appellant was approved for rehabilitation services at CareOne and then moved to another skilled nursing facility on [REDACTED] where she still resides.
16. A few years prior to her admission to the skilled nursing facility, Appellant had broken her hip a few years ago and took Tylenol for pain and antacid for GERD, but otherwise had no other medications and still has no prescription medications.
17. Appellant's current diagnoses include gastroenteritis and colitis; hernia with obstruction, abnormal gait and dysphasia.

## Analysis and Conclusions of Law

Regulation 130 CMR 520.019 governing resource transfer states as follows:

*(B) Look-back Period. 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.*

*(1) For transfers occurring before February 8, 2006, this period generally extends back in time for 36 months.*

*(2) For transfers of resources occurring on or after February 8, 2006, the period generally extends back in time for 60 months. The 60-month look-back period will begin to be phased in on February 8, 2009. Beginning on March 8, 2009, applicants will be asked to provide verifications of their assets for the 37 months prior to the application. As each month passes, the look-back period will increase by one month until the full 60 months is reached on February 8, 2011.*

*(3) For transfers of resources from or into trusts, the look-back period is described in 130 CMR 520.023(A).*

*(C) Disqualifying Transfer of Resources. The MassHealth agency 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). 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.*

There was no dispute that Appellant transferred her own funds to family members within the applicable look back period. Appellant argues that the transfers should not be deemed disqualifying because of the intent behind the transfers was not to gain MassHealth eligibility, but to make monetary gifts that had been contemplated for some time.

Regulation 130 CMR 520.019(F), which governs intent, states:

*(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 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.*

(Emphasis supplied).

Under subpart 1 of the regulation, it is not enough to demonstrate that the applicant intended to derive a benefit from the transfer other than the benefit of reducing assets and qualifying for MassHealth (here, making gifts to family members). Pursuant to the regulation's use of the word "*exclusively*" an applicant must demonstrate "*to MassHealth's satisfaction*" that qualifying for MassHealth had absolutely nothing to do with the matter. This requirement is not easily met and would be meaningless if it could be satisfied merely by averring an intent other than qualifying for MassHealth.

To be satisfied that MassHealth eligibility considerations were in no way a part of the purpose of the transfer, it is reasonable for MassHealth and/or the hearing officer to require a finding that it would have been unreasonable for the applicant to have anticipated a possible nursing home placement, in the foreseeable future, at the time the transfers were made. Such a finding is warranted in cases where an applicant is in relatively good physical and mental health prior to the transfer and some unforeseen disabling accident or medical event suddenly occurs. That is not the case here.

Appellant made the transfers just 3 months prior to her admission. At that time, she was already [REDACTED] years old and had suffered a broken hip. She was living alone in senior housing, but not independently, as she required support services and assistance from her family. Given these factors, it would have been unreasonable at the time the transfers were made to exclude the possibility of a nursing home admission in the foreseeable future up through the end of the 5-year look-back period. Said another way, it would not be reasonable for MassHealth and/or this hearing office to conclude that Appellant was of an age and in such good physical and mental health, at the time the transfers were made, that a nursing home placement was unforeseeable.

Accordingly, it would also not be reasonable to conclude with any confidence that Appellant made the transfers "*exclusively*" for a purpose other than to qualify for MassHealth.

For the foregoing reasons, the appeal is DENIED.

## **Order for MassHealth and Appellant**

Appellant may cure the transfer consistent with the manner and timeline set forth in 130 CMR 520.019(K)(2)(b), said timeline to run from the date of this decision.

## 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.

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Kenneth Brodzinski  
Hearing Officer  
Board of Hearings

cc:

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