

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2176744
Decision Date:	11/26/2021	Hearing Date:	10/12/2021
Hearing Officer:	Cynthia Kopka	Record Open to:	10/19/2021

Appearance for Appellant:



Appearance for MassHealth:

Kathleen Towle, Springfield



*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

Appeal Decision:	Denied	Issue:	LTC eligibility – transfers
Decision Date:	11/26/2021	Hearing Date:	10/12/2021
MassHealth’s Rep.:	Kathleen Towle	Appellant’s Rep.:	██████████
Hearing Location:	Springfield (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

By notice dated August 4, 2021, MassHealth approved Appellant for MassHealth Standard long term care benefits effective December 31, 2021. MassHealth calculated a period of ineligibility from December 1, 2020 through December 30, 2021. Exhibit 1. Appellant filed this appeal in a timely manner on September 2, 2021. Exhibit 2. 130 CMR 610.015(B). Challenging the scope of assistance is a valid basis for appeal. 130 CMR 610.032. Appellant requested that the record be held open through October 19, 2021 for submission of additional evidence. Exhibit 6.

Action Taken by MassHealth

MassHealth approved Appellant for MassHealth Standard long term care benefits effective December 31, 2021. MassHealth calculated a period of ineligibility from December 1, 2020 through December 30, 2021.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

Summary of Evidence

The MassHealth representative appeared by telephone and provided documents in support of MassHealth's position. Exhibit 4. A summary of testimony and documentation follows.

On March 3, 2021, MassHealth received Appellant's application for long-term care benefits. MassHealth denied the application for missing verifications on April 16, 2021. Appellant appealed the denial and preserved the application date. On August 4, 2021, MassHealth approved the application effective December 31, 2020. MassHealth determined that Appellant had transferred assets totaling \$11,600. MassHealth used the average daily rate of \$391 and calculated a period of ineligibility from December 1, 2020 (the earliest eligibility date from the application date) through December 30, 2020. Exhibit 1.

MassHealth determined that there were two unverified withdrawals from Appellant's bank account during the lookback period. On March 22, 2021, there was a withdrawal of \$5,000. Exhibit 4 at 2. On April 14, 2021, a check was issued to [REDACTED] for \$6,600. The check is signed illegibly but with "P.O.A." written on the signature line. *Id.* at 2-3. Without verification, MassHealth could not determine that these transfers were for fair market value or made for a non-disqualifying reason.

Appellant's representative appeared by phone and submitted documents in support. Exhibit 5. A summary of testimony and evidence follows. Appellant has resided at the nursing facility since June 2020. Her longtime partner paid privately for Appellant's stay at the facility from their joint account. Appellant's partner passed away in December 2020. The facility referred Appellant to her representative for assistance with applying for MassHealth. Appellant's representative reached out to Appellant's son, a resident of North Carolina named [REDACTED], in January 2021 to assist with the MassHealth application. Appellant's son was initially cooperative but would not return calls after February 2020. Appellant's son claimed to be her power of attorney, but the facility did not have record of this.

In lieu of applying for conservatorship, Appellant, who is competent, assigned Appellant's representative as power of attorney, invalidating all prior powers of attorney. Exhibit 5 at 21-24. With this authority, Appellant's representative was able to complete the verification process and finish the MassHealth application. The new power of attorney was signed on June 23, 2021. *Id.* Appellant's representative soon discovered that Appellant's son had added his name to the bank account, removed the name of Appellant's partner, and drained the account by withdrawal and check written to Appellant's son's wife. *Id.* at 8, 11, 14. Appellant's representative testified that Appellant did not give her son authority to take the money and had no knowledge of his actions. The facility assisted Appellant in filing an elder abuse report with LifePath but has not heard back regarding this claim. Appellant has not filed a criminal or civil complaint against her son or his wife.

The hearing record was held open through October 19, 2021 to allow Appellant to submit additional evidence, including but not limited to Appellant's attestation, signed under the pains and penalties of perjury, regarding the transfers. Exhibit 6. Appellant submitted a statement not signed under the pains and penalties of perjury stating that she did not have knowledge that her son "still held power

of attorney” for Appellant as they had been estranged for many years. Appellant wrote that she would have never authorized her son to have access to her account or money. Exhibit 7.

Findings of Fact

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

1. On March 3, 2021, MassHealth received Appellant’s application for long-term care benefits. MassHealth denied the application for missing verifications on April 16, 2021. Appellant appealed the denial and preserved the application date.
2. On August 4, 2021, approved the application effective December 31, 2020. MassHealth determined that Appellant had transferred assets totaling \$11,600. MassHealth used the average daily rate of \$391 and calculated a period of ineligibility from December 1, 2020 (the earliest eligibility date from the application date) through December 30, 2020. Exhibit 1.
3. Appellant appealed in a timely manner on September 2, 2021. Exhibit 2.
4. On March 22, 2021, there was a withdrawal of \$5,000 from Appellant’s account. Exhibit 4 at 2.
5. On April 14, 2021, a check was issued to Appellant’s son’s wife for \$6,600. The check is signed illegibly but with “P.O.A.” written on the signature line. *Id.* at 2-3.
6. Appellant, who is competent, signed a power of attorney assigning Appellant’s representative as power of attorney, invalidating all other prior powers of attorney. Exhibit 5 at 21-24.
7. Appellant submitted a statement not signed under the pains and penalties of perjury stating that she did not have knowledge that her son “still held power of attorney” for Appellant as they had been estranged for many years. Appellant wrote that she would have never authorized her son to have access to her account or money. Exhibit 7.
8. The facility assisted Appellant in filing an elder abuse report with LifePath but has not heard back regarding this claim. Appellant has not filed a criminal or civil complaint against her son or his wife.

Analysis and Conclusions of Law

Per 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth “will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... 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.” The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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.

Per 130 CMR 520.0019(G),

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth 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 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.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident 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 federal Health Care Finance Administration (HCFA) Transmittal No. 64, Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.--
Require the individual to establish, to your satisfaction, that the asset was

transferred for a purpose other than to qualify for Medicaid. Verbal assurances that the individual was not considering Medicaid when the asset was disposed of are not sufficient. Rather, convincing evidence must be presented as to the specific purpose for which the asset was transferred.

In this case, MassHealth found that Appellant was ineligible for MassHealth long-term care coverage for 30 days because there were two withdrawals from Appellant's account during the lookback period totaling \$11,600. Appellant has the burden of demonstrating that the transfers were made for fair market value or that the transfer was permissible or exempted. Alternatively, Appellant could establish that the transfer was made exclusively for a purpose other than to qualify for MassHealth and must meet this burden by providing convincing evidence of the specific purpose for which the asset was transferred.

Appellant argued that her son wrongfully withdrew the amount from her account. Appellant therefore did not receive fair market value, and none of the regulatory exemptions fit the circumstances here. Appellant's statement that the money was withdrawn wrongfully by her son is not convincing evidence. It appears from Appellant's statement, which is not attested, that Appellant's son did have power of attorney in the past and may have had proper authority to make the withdrawal. According to Appellant's representative, Appellant's son was aware that Appellant was applying for Medicaid at the time the transfers were made. No reason for the transfer, apart from suspected theft, was offered for the transfer, and no criminal or civil action against the theft had been made.

The evidence presented was insufficient to show that Appellant received fair market value for the transferred funds, or that the funds were transferred exclusively for a purpose other than to qualify for MassHealth. Accordingly, this appeal is denied.

Order for MassHealth

None.

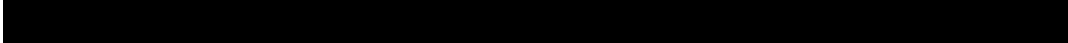
Notification of Your Right to Appeal to Court

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

A solid black rectangular redaction box covering several lines of text.