

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2177275
Decision Date:	11/24/2021	Hearing Date:	10/18/2021
Hearing Officer:	Patricia Mullen		

Appearance for Appellant:




Appearances for MassHealth:

Kathleen Racine, Senior Policy Analyst,
Member Policy Implementation Unit; Joe
Adams, Director of Member Policy
Implementation Unit (observing)



*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:	Approved	Issue:	Transfer Hardship Waiver
Decision Date:	11/24/2021	Hearing Date:	10/18/2021
MassHealth's Reps.:	Kathleen Racine, Senior Policy Analyst, Member Policy Implementation Unit; Joe Adams, Director of Member Policy Implementation Unit (observing)	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South Tower		

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 September 1, 2021, MassHealth denied the appellant's application for a transfer of resources hardship waiver because MassHealth determined that the appellant did not meet the requirements for a hardship waiver. (see 130 CMR 520.019(L) and Exhibit 1). The appellant filed this appeal in a timely manner on September 22, 2021. (see 130 CMR 610.015(B) and Exhibit 2). Denial of a request for a hardship waiver is valid grounds for appeal (see 130 CMR 610.032). The appellant's conservator authorized an attorney to represent the appellant at the hearing. (Exhibits 2, 3).

Action Taken by MassHealth

MassHealth denied the appellant's application for a transfer of resources hardship waiver.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019(L), in determining that the appellant did not meet the regulatory requirements for a hardship waiver of the disqualifying transfer of assets ineligibility period.

Summary of Evidence

The appellant was represented telephonically by her attorney. MassHealth was represented telephonically by a Senior Policy Analyst from its Member Policy Implementation Unit.

The MassHealth representative testified that the appellant submitted an application for MassHealth Standard for long term care residents on November 4, 2020. MassHealth denied the appellant's application for MassHealth Standard for long term care residents by notice dated March 4, 2021, because MassHealth determined that the appellant transferred assets for less than fair market value resulting in an ineligibility period from August 1, 2020 to November 30, 2025. (Exhibit 7, p. 10). The appellant's representative stated that the appellant was admitted to the nursing facility on [REDACTED] and privately paid the nursing facility through January 31, 2020. The appellant's attorney stated that the appellant appealed the March 4, 2021 denial notice and a hearing was held on May 7, 2021. The appellant's attorney stated that after reviewing documentation submitted during a record open period, MassHealth reduced the disqualifying transfer amount to \$90,000.00 and calculated an ineligibility period through September 12, 2020¹. (Exhibit 7, p. 22). Appeal number 2111846 was withdrawn on July 26, 2021. (Exhibit 7, p. 22). By notice dated July 26, 2021, MassHealth approved the appellant for MassHealth with a start date of September 1, 2020². (Exhibit 8, p. 8).

Subsequent to the hearing, the hearing officer listened to the digital recording for the hearing for appeal 2111846 and reviewed the hearing record for that appeal. The MassHealth representative at that hearing testified that the application date was November 4, 2020, and although the appellant was seeking a February 1, 2020 MassHealth start date, the MassHealth representative stated that the earliest possible start date on the November 4, 2020 application was August 1, 2020. The appellant's attorney did not raise any dispute to the November 4, 2020 MassHealth application date at that hearing. The MassHealth representative at that hearing testified that the penalty period started on the earliest possible start date, August 1, 2020. During the record open period, the

¹ MassHealth erred in determining an ineligibility period to end September 12, 2020; the application dated November 4, 2020 would only allow for an earliest possible start date of August 1, 2020 and thus the ineligibility period would start on that date. (130 CMR 516.006; 520.019).

² It was indicated on the withdrawal form dated July 26, 2021 that MassHealth determined a MassHealth start date of September 13, 2020, however the July 26, 2021 approval notice listed a start date of September 1, 2020. (Exhibit 7, p. 22; exhibit 8, p. 8).

MassHealth representative³ accepted a Service Contract as a partial cure of the transfer and adjusted the disqualifying transfer amount to \$90,000.00. (Exhibit 9). In a series of emails between the appellant's attorney and the MassHealth representative, the appellant's attorney pointed out that the appellant had paid the nursing facility through January 31, 2020. (Exhibit 9). The MassHealth representative noted that the penalty period would be adjusted to 230 days in light of the reduced disqualifying transfer amount. (Exhibit 9). The appellant's attorney asked for confirmation that the MassHealth start date would be September 13, 2020 and the MassHealth representative agreed with that date. (Exhibit 9).

The appellant submitted an application for a transfer of resources hardship waiver on August 19, 2021 asking that MassHealth benefits be effective February 1, 2020. (Exhibit 8, p. 3). In the application for hardship, the appellant's attorney noted that the penalty period imposes a serious and undue burden on the appellant such that her health and life are endangered; there are no feasible options to retrieve the transferred assets; the appellant is at serious risk for discharge from the nursing facility; and there are no other viable options for the appellant's necessary skilled nursing care. (Exhibit 8, p. 3).

The MassHealth representative stated that the criteria necessary to meet a hardship waiver of an ineligibility period due to a disqualifying transfer of resources is set forth at 130 CMR 520.019(L)(1). (Exhibit 8, p. 12). The MassHealth representative stated that MassHealth may waive a period of ineligibility only when all of the 4 circumstances in 130 CMR 520.029(L)(1)(a)-(d) exist. The MassHealth representative noted that MassHealth determined that the appellant did not satisfy any of the 4 required sections listed in the regulation. (130 CMR 520.019(L)).

The MassHealth representative stated that 130 CMR 520.019(L)(1)(a) requires that the denial of MassHealth would deprive the appellant of medical care such that her health or life would be endangered, or the appellant would be deprived of food, shelter, clothing, or other necessities such that she would be at risk of serious deprivation. The MassHealth representative stated that as of September 1, 2021, the appellant has had MassHealth Standard coverage and she could transfer to another nursing facility and thus would not be deprived of care.

The appellant's physician issued a statement dated August 4, 2021 attesting that the appellant suffers from failure to thrive, atrial fibrillation, protein/calorie malabsorption, cognitive deficits, dementia, history of cerebral vascular stroke, and chronic obstructive pulmonary disease; she has muscle weakness, is unable to ambulate, is incontinent, and requires 24 hour care; appellant requires full time skilled nursing care and if she were unable to obtain 24 hour skilled nursing care, her health and/or life would be endangered; without full time skilled nursing care, the appellant would be unable to obtain proper medical care, food, clothing, or shelter. (Exhibit 7, pp. 24-25).

The appellant's attorney stated that the appellant's physician's statement supports that the appellant meets part (a) of the regulation in that her health and life depend on 24 hour a day skilled nursing care. The appellant's attorney noted further that MassHealth's argument is based on speculation

³ A different MassHealth representative appeared at the hearing to cover for the MassHealth representative who was assigned the appellant's case.

and the hypothetical that the appellant would be well enough to be moved to another facility, such facility would accept her, such facility would accept MassHealth, and such facility would be able to meet her needs. The appellant's attorney argued that the regulation looks at the period of time for which MassHealth is denied and does not address nor is it based on the possibility of a member transferring to another facility that might meet her needs. The appellant's attorney pointed out that the regulation only requires that the denial of MassHealth would deprive the appellant of medical care such that her health or life would be endangered. The appellant's attorney noted that the appellant is being denied MassHealth for a period of time, and during that time, the appellant's health and life would have been endangered without MassHealth coverage of a 24 hour nursing facility stay.

The MassHealth representative stated that 130 CMR 520.019(L)(1)(b) requires documentary evidence that demonstrates to the satisfaction of MassHealth that all appropriate attempts to retrieve the transferred resources have been exhausted and the resource or other adequate compensation cannot be obtained to provide payment to the appellant or nursing facility. The MassHealth representative stated that there is no evidence that attempts were made to retrieve the transferred resources.

The appellant's attorney stated that the funds were transferred into a trust and the trust assets were exhausted for the benefit of the appellant. In an affidavit dated August 9, 2021, the trustee of the appellant's family's irrevocable trust attested that the assets of the trust have been exhausted for the care and support of the appellant. (Exhibit 7, p. 29). The trustee attested further that the trust no longer owns assets originally transferred to it from the appellant and therefore the trust is unable to return the assets. (Exhibit 7, p. 29). The appellant's attorney noted that the trust was countable to the appellant and the trust assets were depleted as of January 31, 2020 and there is nothing left in it. The appellant's attorney stated that he cannot initiate a frivolous lawsuit against the trust and there is no one else to go after. The appellant's attorney reiterated that the appellant's assets were transferred into a countable trust and the trust assets were spent on the appellant's care pursuant to a caregiver agreement. (Exhibit 7, pp. 29, 46). The appellant's attorney noted that MassHealth accepted the caregiver agreement and determined that the majority of payments from the trust were for the appellant's care, except for \$90,000.00.

The MassHealth representative stated that 130 CMR 520.019(L)(1)(c) requires that the nursing facility has notified the appellant of its intent to initiate a discharge of the appellant because the appellant has not paid for her institutionalization. The MassHealth representative stated that the appellant agreed with \$90,000.00 in transfers and therefore the nursing facility should not have issued a discharge notice.

The appellant's attorney argued that the regulatory provision simply requires that the nursing facility has notified the appellant of its intent to initiate a discharge due to failure to pay and the fact that the appellant withdrew the appeal with regard to the remaining \$90,000.00 in transfers has no bearing on this provision. The appellant's attorney pointed to the nursing facility's Intent to Begin Discharge Process dated August 4, 2021. (Exhibit 7, p. 32). In the notice of Intent, the nursing facility's administrator writes that the appellant has an unpaid balance of \$100,895.09 and the nursing facility can no longer provide services without payment. (Exhibit 7, p. 32). The notice

states further that the nursing facility is working to develop a safe discharge plan and once a discharge plan has been developed, the facility will issue a notice of discharge. (Exhibit 7, p. 32). The appellant's attorney stated that it is very clear that the nursing facility has notified the appellant of its intent to initiate a discharge, and nothing else is required under 130 CMR 520.019(L)(1)(c).

The MassHealth representative stated that 130 CMR 520.019(L)(1)(d) requires that there is no less costly noninstitutional alternative available to meet the appellant's needs. The MassHealth representative stated that the appellant does not address this in the documentation provided. The MassHealth representative stated further that the appellant could be transferred to another nursing facility. The appellant's attorney pointed out that the regulation requires that there is no *noninstitutional* alternative available to meet the appellant's needs, and thus MassHealth's argument that the appellant could be transferred to another nursing facility fails. (emphasis added). The appellant's attorney referred to the statement from the appellant's physician in which the physician affirms that the appellant's needs can only be met in a 24 hour skilled nursing facility. (Exhibit 7, pp. 24, 25).

The appellant's attorney argued that MassHealth's denial notice does not meet the law requiring specificity in notice as set forth in the Hirvi/Maas cases. (*Maas v. Sudders, Hirvi v. Sudders*, MA Superior Ct., Civil Action Nos. 18-129-D, 18-845-D, June 22, 2018). The appellant's attorney argued that it is impossible to know why the appellant's application for a waiver was insufficient to meet 130 CMR 520.019(L). The appellant's attorney pointed out that there is no checklist on the notice and no way to know if and in what way MassHealth considered any of the submitted documentation. The appellant's attorney argued that the defective notice was akin to MassHealth not stating exactly what verifications were needed. The appellant's attorney stated that he reached out to MassHealth on several occasions starting September 15, 2021 and received no response. The appellant's attorney stated that he sent four emails to MassHealth and the only response he received was a copy of the denial notice dated September 1, 2021. The appellant's attorney stated that he reached out to the MassHealth representative at the hearing but she only reiterated the notice dated September 1, 2021.

The Transfer of Resources Hardship Waiver Denial Notice states that MassHealth reviewed and denied the appellant's request for a hardship waiver of the period of ineligibility; the hardship waiver is denied because "you have not met the requirements of 130 CMR 520.019(L)". (Exhibit 1). The notice states further "if you have questions about this hardship denial, please contact your eligibility worker at the MassHealth Enrollment Center...[i]f you think our decision is incorrect, you have the right to ask for a fair hearing. (Exhibit 1).

Findings of Fact

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

1. The appellant submitted an application for MassHealth Standard for long term care residents on November 4, 2020.
2. MassHealth denied the appellant's application for MassHealth Standard for long term care residents by notice dated March 4, 2021, because MassHealth determined that the appellant transferred assets for less than fair market value resulting in an ineligibility period from August 1, 2020 to November 30, 2025.
3. The appellant appealed the March 4, 2021 MassHealth denial notice and a hearing on appeal 2111846 was held on May 7, 2021.
4. At the hearing for appeal 2111846, the MassHealth representative testified that although the appellant was seeking a February 1, 2020 MassHealth start date, the earliest possible start date on the November 4, 2020 application was August 1, 2020
5. After reviewing documentation submitted during a record open period, MassHealth accepted payments made pursuant to a service contract, among other expenses, as a partial cure and reduced the disqualifying transfer amount to \$90,000.00 with an ineligibility period of 230 days; MassHealth agreed to a MassHealth start date of September 13, 2020.
6. Appeal number 2111846 was withdrawn on July 26, 2021.
7. By notice dated July 26, 2021, MassHealth approved the appellant for MassHealth with a start date of September 1, 2020.
8. The appellant submitted an application for a transfer of resources hardship waiver on August 19, 2021 asking that MassHealth benefits be effective February 1, 2020.
9. By MassHealth notice dated September 1, 2021, the appellant's application for a transfer of resources hardship waiver was denied.
10. The Transfer of Resources Hardship Waiver Denial Notice states that MassHealth reviewed and denied the appellant's request for a hardship waiver of the period of ineligibility; the hardship waiver is denied because "you have not met the requirements of 130 CMR 520.019(L)"; the notice states further "if you have questions about this hardship denial, please contact your eligibility worker at the MassHealth Enrollment Center...[i]f you think our decision is incorrect, you have the right to ask for a fair hearing.
11. The appellant suffers from failure to thrive, atrial fibrillation, protein/calorie malabsorption, cognitive deficits, dementia, history of cerebral vascular stroke, and chronic obstructive pulmonary disease; she has muscle weakness, is unable to ambulate, is incontinent, and requires 24 hour care; appellant requires full time skilled nursing care and if she were unable to obtain 24 hour skilled nursing care, her health and/or life would be endangered; without full time skilled nursing care, the appellant would be unable to obtain proper medical care, food, clothing, or shelter.

12. In an affidavit dated August 9, 2021, the trustee of the appellant's family's irrevocable trust attested that the assets of the trust have been exhausted for the care and support of the appellant.
13. The trust assets were depleted as of January 31, 2020 and the trust is unable to return the assets.
14. The appellant's nursing facility's issued an Intent to Begin Discharge Process dated August 4, 2021; in the notice of Intent, the nursing facility's administrator writes that the appellant has an unpaid balance of \$100,895.09 and the nursing facility can no longer provide services without payment; the notice states further that the nursing facility is working to develop a safe discharge plan and once a discharge plan has been developed, the facility will issue a notice of discharge.

Analysis and Conclusions of Law

Waiver of the Period of Ineligibility Due to Undue Hardship. In addition to revising a trust and curing a transfer, the nursing-facility resident may claim undue hardship in order to eliminate the period of ineligibility.

(1) The MassHealth agency may waive a period of ineligibility due to a disqualifying transfer of resources if ineligibility would cause the nursing-facility resident undue hardship. The MassHealth agency may waive the entire period of ineligibility or only a portion when all of the following circumstances exist.

(a) The denial of MassHealth would deprive the nursing-facility resident of medical care such that his or her health or life would be endangered, or the nursing-facility resident would be deprived of food, shelter, clothing, or other necessities such that he or she would be at risk of serious deprivation.

(b) Documentary evidence has been provided that demonstrates to the satisfaction of the MassHealth agency that all appropriate attempts to retrieve the transferred resource have been exhausted and that the resource or other adequate compensation cannot be obtained to provide payment, in whole or part, to the nursing-facility resident or the nursing facility.

(c) The institution has notified the nursing-facility resident of its intent to initiate a discharge of the resident because the resident has not paid for his or her institutionalization.

(d) There is no less costly noninstitutional alternative available to meet the nursing-facility resident's needs.

(2) Undue hardship does not exist when imposition of the period of ineligibility would merely inconvenience or restrict the nursing-facility resident without putting the nursing-facility resident at risk of serious deprivation.

(3) Where the MassHealth agency has issued a notice of the period of ineligibility due to a disqualifying transfer of resources, the nursing-facility resident may request a hardship waiver. For transfers occurring on or after February 8, 2006, nursing facilities may apply for a hardship waiver on behalf of a resident, with the consent of the nursing-facility resident or the resident's authorized representative.

(4) If the nursing-facility resident feels the imposition of a period of ineligibility would result in undue hardship, the nursing-facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within 15 days after the date on the notice. Within 30 days after the date of the nursing-facility resident's request, the MassHealth agency will inform the nursing-facility resident in writing of the undue-hardship decision and of the right to a fair hearing. The MassHealth agency will extend this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances as determined by the MassHealth agency require additional time.

(5) The nursing-facility resident may appeal the MassHealth agency's undue-hardship decision and the imposition of a period of ineligibility by submitting a request for a fair hearing to the Office of Medicaid Board of Hearings within 30 days after the nursing-facility resident's receipt of the MassHealth agency's written undue-hardship notice, in accordance with 130 CMR 610.000: *MassHealth: Fair Hearing Rules*.

(6) The nursing-facility resident's request for consideration of undue hardship does not limit his or her right to request a fair hearing for reasons other than undue hardship.

130 CMR 520.019(L).

MassHealth argued that the appellant did not meet any of the criteria under 130 CMR 520.019(L)(1). MassHealth argued that the denial of MassHealth would not deprive the appellant of medical care such that her health or life would be endangered, because the appellant was approved for MassHealth Standard coverage as of September 1, 2020 and she could transfer to another nursing facility to provide her care.

The appellant suffers from failure to thrive, atrial fibrillation, protein/calorie malabsorption, cognitive deficits, dementia, history of cerebral vascular stroke, and chronic obstructive pulmonary disease; she has muscle weakness, is unable to ambulate, is incontinent, and requires 24 hour care; appellant requires full time skilled nursing care and if she were unable to obtain 24 hour skilled nursing care, her health and/or life would be endangered; without full time skilled nursing care, the appellant would be unable to obtain proper medical care, food, clothing, or shelter. The appellant was denied MassHealth for a period of time due to the transfer of assets. The denial of MassHealth deprived the appellant of medical care such that her health or life would be endangered for that period of time. To argue that the appellant could transfer to another facility is based on speculation and hypotheticals not set forth in the regulation. The regulatory provision looks at the period of time for which MassHealth is denied and does not address nor is it based on the possibility of a member

transferring to another facility that might meet her needs. The regulation only requires that the denial of MassHealth would deprive the appellant of medical care such that her health or life would be endangered. The appellant has shown support for this provision and meets the criteria of 130 CMR 520.019(L)(1)(a).

MassHealth argues that the appellant has not submitted documentary evidence that demonstrates to the satisfaction of MassHealth that all appropriate attempts to retrieve the transferred resources have been exhausted and the resource or other adequate compensation cannot be obtained to provide payment to the appellant or nursing facility. The appellant submitted an affidavit from the trustee of the trust into which assets were transferred. The appellant's assets were transferred into a countable trust and the trust assets were spent on the appellant's care pursuant to a caregiver agreement. The trustee of the trust attested that the assets of the trust have been exhausted for the care and support of the appellant. The trust assets were depleted as of January 31, 2020 and therefore the trust is unable to return the assets to the appellant. The appellant has provided documentary evidence that the transferred resources cannot be obtained because the resources were spent and the trust is depleted. The appellant meets the criteria of 130 CMR 520.019(L)(1)(b).

MassHealth representative argues that because the appellant agreed with \$90,000.00 in disqualifying transfers, the nursing facility should not have issued a discharge notice. The appellant's agreement with MassHealth's determination and withdrawal of the transfer appeal has no bearing on the nursing facility's right to issue a notice of discharge for failure to pay. The nursing facility had no standing at the previous hearing and was not a party in that appeal.

The provision at 130 CMR 520.019(L)(1)(c) simply requires that the nursing facility has notified the appellant of its intent to initiate a discharge of the appellant because the appellant has not paid for her institutionalization. The appellant's nursing facility issued an Intent to Begin Discharge Process dated August 4, 2021. In the notice of Intent, the nursing facility's administrator writes that the appellant has an unpaid balance of \$100,895.09 and the nursing facility can no longer provide services without payment. The notice states further that the nursing facility is working to develop a safe discharge plan and once a discharge plan has been developed, the facility will issue a notice of discharge. The appellant meets the criteria at 130 CMR 520.019(L)(1)(c).

MassHealth argues that the appellant does not address whether there is no less costly noninstitutional alternative available to meet her needs in the documentation submitted and reiterates that the appellant could be transferred to another nursing facility. The regulatory provision requires that there is no *noninstitutional* alternative available to meet the appellant's needs, and thus MassHealth's argument that the appellant could be transferred to another nursing facility fails. (emphasis added). The appellant submitted documentation from her physician that supports that she requires 24 hour skilled care and thus her needs could not be met in a noninstitutional setting. The appellant meets the criteria at 130 CMR 520.019(L)(1)(d).

Based on the specific facts in this case, I determine that the appellant has meet the requirements of 130 CMR 520.019(L)(1) for a hardship waiver of the whole period of ineligibility due to the disqualifying transfer of \$90,000.00.

Coverage Date

(A) Start Date of Coverage.

(1) For individuals applying for coverage, the date of coverage for MassHealth is determined by the coverage type for which the applicant may be eligible. 130 CMR 519.000: MassHealth: Coverage Types describes the rules for establishing this date.

(2) The begin date of MassHealth Standard, Family Assistance, or Limited coverage may be retroactive to the first day of the third calendar month before the month of application, if covered medical services were received during such period, and the applicant or member would have been eligible at the time services were provided. If more than one application has been submitted and not denied, the begin date will be based on the earliest application that is approved. Retroactive eligibility does not apply to services rendered under a home- and community-based services waiver provided under section 1915(c) of the Social Security Act.

(130 CMR 516.006(A)).

The earliest possible start date on a November 4, 2020 application is August 1, 2020. (130 CMR 516.006). The MassHealth representative in appeal 211846 testified that although the appellant was seeking a February 1, 2020 start date, the earliest possible start date was August 1, 2020 on the November, 2020 application. The appellant's attorney did not challenge the application date or offer any evidence of an earlier application date. In the denial notice dated March 4, 2021, MassHealth determined that the ineligibility period began August 1, 2020, the earliest possible MassHealth start date. (Exhibit 7, p. 18). During the record open period, the MassHealth representative erroneously started the penalty period on February 1, 2020, when such penalty period should have begun on August 1, 2020. (130 CMR 520.019; 516.006). The error was to the benefit of the appellant and either the appellant's attorney did not notice the error or was not compelled to point it out to the MassHealth representative. The appeal of the denial of the application for the hardship waiver is approved, however the appellant's start date can be no earlier than August 1, 2020 based on her November 4, 2020 application date⁴. (130 CMR 516.006). Because the ineligibility period is now waived due to a finding of hardship, MassHealth shall approve the appellant for MassHealth Standard for long term care residents with a start date of August 1, 2020.

Because the appeal is approved, I need not address the appellant's argument with regard to the specificity of the MassHealth notice because she has been given the relief sought, namely approval of the application for a hardship waiver of a period of ineligibility. I do note that the notice on appeal did provide the regulatory provision relied on by MassHealth and MassHealth reported that the appellant did not meet the requirements of 130 CMR 520.019(L). A review of 130 CMR 520.019(L) shows there are 4 criteria to be met in order to meet 130 CMR 520.019(L) and thus the appellant was on notice as to the exact criteria necessary to meet the waiver. The fact that MassHealth determined that the appellant did not meet any of the criteria does not defeat the notice and the appellant has the appeal as a recourse. I agreed with the appellant's interpretation of the regulations and found the evidence supported the appellant's interpretation

⁴ The appellant is in no worse position for having withdrawn the previous appeal because even if that appeal had been approved by the hearing officer, the earliest possible start date would have been August 1, 2020.

and thus the appeal was approved.

Order for MassHealth

Rescind the notice of denial of transfer of resources hardship waiver dated September 1, 2021 and determine that the appellant has met the hardship waiver requirements at 130 CMR 520.019(L). Waive the period of ineligibility and determine the appellant eligible for MassHealth with a start date of August 1, 2020.

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Rep.: Kathleen Racine, MassHealth Operations, 100 Hancock St., Quincy MA 02171

