

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2178240
Decision Date:	01/24/2022	Hearing Date:	12/02/2021
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Cassandra Moura, Taunton 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

Appeal Decision:	DENIED	Issue:	Asset Transfer
Decision Date:	01/24/2022	Hearing Date:	12/02/2021
MassHealth's Rep.:	Cassandra Maura	Appellant's Rep.:	██████████
Hearing Location:	Springfield		

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 September 29, 2021, MassHealth approved Appellant's application for MassHealth Long Term Care benefits, subject to a period of disqualification due to a disqualifying transfer of countable assets (Exhibit A). Appellant filed for this appeal in a timely manner on October 18, 2021 (Exhibit A). Determining a period of disqualification constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth approved Appellant's application for MassHealth Long Term Care benefits, subject to a period of disqualification due to a disqualifying transfer of countable assets.

Issue

The appeal issue is whether or MassHealth properly applied the controlling regulation(s) to accurate facts when it approved Appellant's application for MassHealth Long Term Care benefits, subject to a period of disqualification due to a disqualifying transfer of countable assets.

Summary of Evidence

Both parties appeared by telephone. Each party submitted one packet of documents, MassHealth (Exhibit B) and Appellant (Exhibit C).

The MassHealth representative testified that a long-term care conversion was received on February 24, 2021. The conversion was denied due to Appellants' failure to file requested verifications. Appellant appealed the denial but failed to appear at the hearing. Appellant filed a new long-term care application on June 28, 2021 and the case was approved subject to a penalty transfer arising from a disqualifying transfer of countable assets. The MassHealth representative explained that Appellant sold her home in December 2016 which is within five years of the application date. At the time of sale, Appellant had a life estate interest in the property and Appellant's two children held the remainder interest. The MassHealth representative testified that the house sold for \$186,046.32, but Appellant did not receive any of the proceeds of the sale.

The MassHealth representative further explained how the disqualifying amount was determined. See explained that at the time of the sale, Appellant was 80 years old and applying the life estate value from Social Security Administration Tables of .436592 to the sale amount of \$186,046.32 yields the value of Appellant's life estate interest of \$81,225.96. Due to an error on MassHealth part, MassHealth only assessed a penalty of \$80,000.00. The MassHealth representative stated that MassHealth would stick with the lesser amount.

The MassHealth representative also noted that Appellants' attorney had calculated a much lower transfer amount based on his use of the Tiger Tables to determine the value of Appellant's life estate interest at the time of the sale. The MassHealth representative testified that pursuant to MassHealth Eligibility Operations Memo 19-12 dated August 15, 2019, as of September 3, 2019 MassHealth was instructed to no longer use the IRS and Tiger Tables and were instead directed to use the Social Security Administration Life Estate and Remainder Interest Table to calculate the value of remainder interest and life estates (Exhibit B, pages 3-4).

Appellant's representative complained that it was unfair to base the calculation of Appellant's life estate interest using a change in the valuation method which occurred three years after the sale of the subject property. According to Appellant's representative, at the time of the sale, Appellant's attorney calculated the value of Appellant's life estate using the Tiger Tables to be \$22,666.03. Appellant's representative asserted that the remainder persons, Appellant's children, no longer have the proceeds from the sale to return to Appellant.

Appellant's documentation includes a letter from Appellant's daughter dated October 28, 2021. In her letter, the daughter states that there was no way that their attorney could foresee those three years after the sale Medicaid would change the regulation on how

to calculate the value of the life estate. She states that she and her brother no longer have the "remainder value" received at the time of the sale to give back to Appellant. She asked that the penalty period be recalculated using the method that was in place at the time of the sale (Exhibit C, page 19).

Findings of Fact

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

1. Appellant filed a long-term care conversion on February 24, 2021.
2. The conversion was denied due to Appellants' failure to file requested verifications.
3. Appellant appealed the denial but failed to appear at the hearing.
4. Appellant filed a new long-term care application on June 28, 2021 and the case was approved subject to a penalty transfer arising from a disqualifying transfer of countable assets.
5. Appellant sold her home in December 2016.
6. At the time of sale, Appellant had a life estate interest in the property and Appellant's two children held the remainder interest.
7. The property sold for \$186,046.32, but Appellant did not receive any of the proceeds of the sale.
8. At the time of the sale, Appellant was 80 years old.
9. MassHealth applied the life estate value from Social Security Administration Tables of .436592 to the sale amount of \$186,046.32 to obtain the value of Appellant's life estate interest of \$81,225.96.
10. Due to an error on MassHealth part, MassHealth only assessed a penalty of \$80,000.00.
11. At the time of the sale, Appellant's attorney calculated the value of Appellant's life estate using the Tiger Tables to be \$22,666.03.
12. Pursuant to MassHealth Eligibility Operations Memo 19-12 dated August 15, 2019, as of September 3, 2019 MassHealth was instructed to no longer use the IRS and Tiger Tables and were instead directed to use the Social Security

Administration Life Estate and Remainder Interest Table to calculate the value of remainder interest and life estates (Exhibit B, pages 3-4).

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)). Appellant has not met his burden.

There was no dispute that a transfer of countable assets occurred in 2016 when the property was sold and that the transfer occurred within the 5-year look back period (130 CMR 520.019)

The record shows that MassHealth properly applied the directive contained in MassHealth Eligibility Operations Memo 19-12 dated August 15, 2019, in calculating the value of Appellant's remainder interest at the time of the sale. The Memo does not direct the change to apply to transfers made on or after September 3, 2019, but to all applications and renewals made on and after September 3, 2019 (Exhibit B, page 3).

Additionally, Appellant's claim of unfairness is not supported by the facts. Appellant received none of the proceeds of the sale. He relinquished his entire interest, whatever it was valued, to the remainder persons who got it all. Whether the life estate value was calculated using the Tiger Tables or the SSA Tables would not change the fact that Appellant got nothing and by the time of the LTC application the remainder persons had spent it all.

If the remainder persons had taken only their share at the time of the sale and then proceeded to use and deplete these funds maybe they would have been in a better position to challenge the fairness of the matter. But those are not the facts of this record. They took it all, so it is not reasonable to maintain that had they known of the future change the remainder persons would have acted differently (taken less) and would not have spent the amount of the difference between the two calculations.

For the foregoing reasons, the 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.

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

