

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178340
Decision Date:	12/13/2021	Hearing Date:	12/09/2021
Hearing Officer:	Christopher Jones		

Appearance for Appellant:




Appearance for MassHealth:

Katie LaDuke – Springfield Intake



*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 - Transfer
Decision Date:	12/13/2021	Hearing Date:	12/09/2021
MassHealth's Rep.:	Katie LaDuke	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center - 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

Through a notice dated October 12, 2021, MassHealth determined that the appellant is ineligible for MassHealth long-term-care benefits for 607 days, from April 21, 2021 through December 19, 2022 due to disqualifying transfers of assets.¹ Exhibit 2; 130 CMR 520.018-520.019. The appellant filed this appeal in a timely manner on November 2, 2021. Exhibit 2; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

Action Taken by MassHealth

MassHealth imposed a period of ineligibility for 602 days, from April 21, 2021 through December 19, 2022 based upon \$236,995.29 in gifts the appellant made within the five years before he entered the nursing facility.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.018-520.019, in determining that the appellant improperly transferred resources to qualify for Medicaid.

¹ Technically, this is an "approval," but it is styled a denial because the period of ineligibility runs for so long that a new application will be required to redetermine eligibility. See 130 CMR 520.018(C).

Summary of Evidence

The appellant is an elderly man who lived most of his life in Ohio, until very recently. The appellant individually owned at least three pieces of real property there since his wife's tragic death almost a decade ago. The appellant's representative testified that they are in a very difficult position regarding getting information about the appellant's financial transactions in another state. Several years ago, the appellant started selling off real property because he was no longer able to manage them due to his declining health. After he sold his primary residence, he moved in with the woman he was dating in Ohio. This woman's family lives in Massachusetts, and they became concerned about the two elderly people living alone together so far from any family. They purchased a two-family house here in Massachusetts to share with the appellant and his girlfriend. Unfortunately, within a month or two of the appellant moving to Massachusetts, he suffered a stroke, was hospitalized, and has been residing in the nursing facility ever since. An application for long-term-care benefits was submitted on April 13, 2021 seeking coverage as of April 21, 2021.

The appellant's representative testified that because of the appellant's stroke, it is very difficult to get information from him directly, and his girlfriend does not speak English fluently. Much of the information the appellant's representative has gathered is pieced together from the documentation required to verify eligibility for MassHealth benefits. Three pieces of real property are identified in the record. The first property sold, the "B Rd."² property, was sold about three years ago for \$106,000. The tax assessment from that time identified the property as worth \$207,000.³ MassHealth identifies this discrepancy as a disqualifying transfer. The appellant's representatives only have the documentation surrounding this transaction—no affidavit regarding this transaction is offered. Regardless, they argue that this was a fair-market-value transaction at the time of sale and should not be considered a disqualifying transfer.

The second property sold was the appellant's primary residence on "S. D. Highway." The appellant netted \$59,788 from this property. The appellant's representative acknowledges that the proceeds of the sale of this property were given to the appellant's step-daughter, because it was the home he shared with her mother and he knew that's what her mother would have wanted. Finally, the third property, property "C," was sold about six months before moving to Massachusetts. The appellant appears to have netted \$24,586.42 from this sale. In addition to these properties, MassHealth also identified many checks to cash or to a family friend that it determined to be disqualifying transfers. The amounts of these checks range from \$1,000 to \$20,200, and all together MassHealth determined the disqualifying transfer amount to be \$236,995.29.

The appellant's representative argues that this family friend provided services "for value" as the appellant's health was failing, and he was unable to manage his medications and household. Despite this, the appellant argues that none of these transfers were made with any intent to qualify for Medicaid and that the appellant had no intention of ever going into a nursing home. Though the

² All real property is referred to by the first letter of the street name for sake of easing potential redactions.

³ The record does appear to reflect that this assessment was reviewed by a Tax Appeals Board, and the valuation was revised down to \$181,400 about 2 years after the sale. Exhibit 3, p. 3.

appellant disputes that these transactions should not be deemed disqualifying transfers based upon intent, the appellant does not challenge MassHealth's math in calculating the disqualifying transfer amount. The appellant acknowledged that their arguments regarding intent were unlikely to succeed on their merits but identified them as a required step in the process of seeking a hardship waiver of the transfer amount.

Findings of Fact

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

1. The appellant is an elderly individual who applied for MassHealth long-term-care benefits on April 13, 2021 and is seeking coverage as of April 21, 2021. Exhibit 3; testimony by MassHealth's representative.
2. Within five years of applying for MassHealth, the appellant sold three pieces of real property. One was sold for \$101,000 less than its tax-assessed value. The two others were sold for fair-market value, but the proceeds along with other assets were given away. The total transfer amount was \$236,995.29. Testimony by MassHealth's representative; testimony by appellant's representative; Exhibits 3; 4.
3. The appellant's health has been in decline for several years, and shortly after moving to Massachusetts he had a stroke. While he still lived in Ohio, he required assistances with household activities. He paid a friend large amounts of money for this assistance, but there is no documented billing for this arrangement. The appellant's own understanding of this arrangement has also not been provided into the record. Testimony by the appellant's representative; Exhibit 4.

Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her eligibility, including that a transfer of resources was legitimate, not gratuitous, or for less than fair market value. 130 CMR 515.001, 520.007; and MGL Ch. 118E, § 20. If an applicant or member has transferred resources for less than fair-market value, MassHealth long-term-care benefits may not be paid until a period of ineligibility has been imposed and expires. See 42 USC §1396p(c)(1)(A); MGL Ch. 118E, § 28. The federal law is reflected in MassHealth regulations 130 CMR 520.018 and 520.019, which provide that a disqualifying transfer exists where an applicant transfers an interest during the appropriate look-back period for less than fair-market value. "A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available," unless the transfer is "listed as permissible in 130 CMR 520.019(D), identified in 130 CMR 520.019(F), or exempted in 130 CMR 520.019([K])."⁴ 130 CMR 520.019(C).

⁴ As published, the last cross-reference is to subsection (J) and is a typographical error. Subsection (J) specifically **includes** as disqualifying transfers of home equity loans and reverse mortgages if transferred for less than fair market

The applicant's intent can affect whether a transfer of resources results in a period of ineligibility:

(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.

130 CMR 520.019(F) (emphasis added). Federal guidance requires an applicant to make a heightened evidentiary showing on this issue: "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." Gauthier v. Dir., Office of Medicaid, 80 Mass. App. Ct. 777, 785 (2011) (citing State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, § 3258.10(C)(2)).

The appellant's representative is in an unfortunate situation, whereby they cannot even offer the verbal assurance of the appellant as to their intentions of ever applying for Medicaid. What is clear from the record, however, is that the appellant's health was in decline when he began disposing of assets. His gift to his stepdaughter may have been motivated by his desire to see her benefit from the home he shared with her mother, but the federal legal framework also creates a presumption that such gifts are designed to preserve assets rather than use them for care that will likely be required in the next five years. Similarly, it is possible that the appellant's sale of the "B. Rd." property was a fair-market value transaction, but in the absence of a contemporaneous appraisal it is impossible to credit that its sale for \$100,000 below assessed value was a purely fair-market arrangement. Finally, I cannot credit that the checks to a family friend were fair-market remuneration for services performed. While some valuable service may have been provided upon the expectation of payment, it is ultimately the appellant's burden of proof to establish the value of the services received. See Gauthier v. Dir. of the Office of Medicaid, 80 Mass. App. Ct. 777 (2011). There is insufficient evidence in the record to do so.

For these reasons, the appeal must be DENIED. Because the appellant does not challenge the specific calculation of the disqualifying transfer amount, that amount shall stand.

value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility. A corrected version of this regulation is pending publication.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Dori Mathieu, Springfield MassHealth Enrollment Center, 88 Industry Avenue, Springfield, MA 01104

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