

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2178447
Decision Date:	01/26/2022	Hearing Date:	12/08/2021
Hearing Officer:	Christopher Jones		

Appearance for Appellant:




Appearance for MassHealth:

Alfred Peach – Tewksbury 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:	Approved	Issue:	LTC – Transfer
Decision Date:	01/26/2022	Hearing Date:	12/08/2021
MassHealth's Rep.:	Alfred Peach	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center	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 28, 2021, MassHealth determined that the appellant is ineligible for MassHealth long-term-care benefits from February 20, 2021 through July 9, 2022 due to a disqualifying transfer of assets. Exhibit 2; 130 CMR 520.018-520.019. The appellant filed this appeal in a timely manner on November 5, 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 arising from the appellant's transferring an interest in her real property to her daughter.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant improperly transferred assets.

Summary of Evidence

The appellant applied for MassHealth long-term-care benefits on April 30, 2021, requesting coverage as of February 20, 2021. At issue in this appeal is the transfer of the remainder interest in appellant's home to her daughter in 2019. The appellant's attorney indicated that the facts surrounding this appeal are still deeply painful to the appellant and therefore her sworn affidavit was offered as evidence rather than testimony. Also submitted into evidence was an affidavit from the attorney who completed the two real property transactions at issue here.

These documents detail that the appellant's spouse died in 2019. Shortly thereafter the appellant made her daughter a joint tenant with rights of survivorship to her primary residence. The appellant's daughter and spouse agreed to move in with the appellant to provide emotional and financial assistance following the passing of the appellant's spouse. After her daughter moved in a couple months later the appellant transferred her remainder interest in the property to her daughter, though she retained a life estate. At the time of these transfers, the appellant was under the age of 65 and was living independently. Her daughter moved in largely for emotional comfort and support, but she was also providing a financial assistance with home maintenance.

Approximately a year and half after this second transfer, the appellant's daughter tragically and unexpectedly died. This compounding tragedy sent the appellant into an alcoholic depression, which resulted in her hospitalization in early 2021 for alcohol detox, compounded by hepatic encephalopathy, anxiety, and other ailments. The appellant's health issues were directly related to her depression and drinking, which arose from the compounding tragedies of losing her husband and daughter in rapid succession. Following her hospitalization, the appellant spent approximately 10 months in a nursing facility before being discharged home.

The attorney who performed the real estate transactions also submitted an affidavit that confirms the purpose of the transfers was in recognition of the appellant's daughter's agreement to assist with the maintenance of the property and provide companionship to the appellant following the loss of her husband. He confirmed that the appellant appeared in good physical health at the time of the transfers, and that Medicaid eligibility was never discussed.

MassHealth found that the transferred interest in the real property was a disqualifying transfer as it was not for fair market value. It calculated the value of the property transferred to be \$197,200, and the appellant was disqualified from long-term-care coverage from February 20, 2021 through July 9, 2022.¹ MassHealth determined the disqualifying transfer amount based upon the initial joint-tenancy transferred to the appellant's daughter. Because this transfer transferred a half-interest in the value of the property, MassHealth calculated the disqualifying transfer amount to be half the assessed value of the real property. MassHealth used the average daily nursing facility rate of \$391 to calculate a period of ineligibility of 504 days.

¹ The remainder balance of this period of ineligibility would remain on the appellant's MassHealth file and become effective if she ever reentered a long-term-care facility.

The appellant argues primarily that this is a permissible transfer because there was no intent to qualify for MassHealth long-term-care benefits at the time the transfer was made. The intentions of the transfer are documented by the appellant's affidavit, the affidavit of the real estate attorney, and the surrounding circumstances of the death of the appellant's spouse. Therefore, the appellant argues that the disqualifying transfer amount should be zero. Alternatively, the appellant argues that the true transferred interest is a remainder interest, and the disqualifying transfer value should be calculated based upon the retained life estate interest and EOM 20-16 (Aug. 28, 2020). The appellant calculated the life estate value to be \$60,437.86.

Findings of Fact

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

1. The appellant applied for MassHealth long-term-care benefits on April 30, 2021, requesting coverage as of February 20, 2021. Exhibits 3; 4.
2. On October 28, 2021, MassHealth denied this application based upon a disqualifying transfer of resources. MassHealth calculated the improperly transferred resources to be valued at \$197,200. The period of ineligibility ran from February 20, 2021 through July 9, 2022. Exhibit 3.
3. The appellant's spouse died in 2019. Her daughter moved in with her provide emotional and financial assistance. Out of grief and gratitude, the appellant first transferred a joint interest in the property to her daughter. A few months later, she transferred the entire remainder interest, but retained a life estate. Exhibits 3; 8.
4. In 2020, the appellant's daughter tragically and unexpectedly died. The appellant had been under the age of 65 at the time the transfers were made and in relatively good health. The death of the appellant's daughter triggered a depressive, alcoholic spiral. This resulted in a hospitalization and a temporarily stay in a long-term-care facility. The appellant has returned to her community home. Exhibit 8.

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]).”² 130 CMR 520.019(C). Permissible transfers are made to benefit a community spouse or a disabled person. Exempted transfers are cured in some manner after the fact.

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)).

I am convinced by the affidavits in evidence and the surrounding documentation evidencing the tragic history of the loss of the appellant’s spouse and daughter that the transfer of the remainder interest in her home was made regardless of her potential need for Medicaid benefits in the future. The transfer was made upon the daughter’s moving in with the appellant when she was under the age of 65 and relatively healthy. Her eventual institutionalization only arose following compounding tragedies that induced a period of self-neglect. For these reasons, the appellant’s appeal is APPROVED. MassHealth will approve benefits as of the requested start date of February 20, 2021, and otherwise ignore this transfer of resources.

Order for MassHealth

Approve the appellant’s benefits as of February 20, 2021.

² 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 value. Subsection (K), however, **exempts** listed transactions from the period of ineligibility. A corrected version of this regulation is pending publication.

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.

Christopher Jones
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957

