

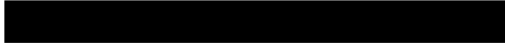
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178707
Decision Date:	3/10/2022	Hearing Date:	12/24/2021
Hearing Officer:	Christine Therrien	Record Open:	1/14/2022

Appearance for Appellant:



Appearance for MassHealth:

Eileen Smith, Tewksbury



*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
Decision Date:	3/10/2022	Hearing Date:	12/24/2021
MassHealth's Rep.:	Eileen Smith	Appellant's Rep.:	[REDACTED]
Hearing Location:	Telephonic		

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 10/18/21, MassHealth denied the appellant's application for MassHealth long term care (LTC) benefits because MassHealth determined that the appellant gave away or sold assets to become eligible resulting in an ineligibility period 3/3/21 to 11/22/25 (130 CMR 520.019 and Exhibit 1). The appellant filed this appeal in a timely manner on 11/17/21 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth LTC benefits.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant gave away or sold assets to become eligible for MassHealth LTC benefits.

Summary of Evidence

The MassHealth representative testified that appellant submitted an application for MassHealth LTC benefits on 3/15/21. The MassHealth representative testified that the appellant was admitted to the facility on [REDACTED]. The MassHealth representative testified that the application was denied on 5/4/21 because of missing verifications. The MassHealth representative testified that the application was

relogged on 5/18/21 and denied again for missing verifications on 6/30/21. The MassHealth representative testified that the 6/30/21 denial was appealed and the application date of 5/18/21 was preserved. All requested verifications were received, and the 10/18/21 denial notice was issued. The MassHealth representative testified that on 7/21/21 the appellant's home was transferred out of trust and then to the appellant's daughter. The MassHealth representative testified that the home was valued at \$674,700. The MassHealth representative testified that the home is a multi-family home, and the daughter did not live in same unit with the appellant. The MassHealth representative testified that MassHealth requires proof of the relationship between the daughter and the appellant, proof the daughter lived with the appellant for two years prior to admission to the facility, and a doctor's letter that states what care was provided by the daughter that kept the appellant out of facility for those two years. The MassHealth representative testified that the doctor's letter provided does not state how long the appellant needed to be in a facility, what are the appellant's health issues requiring admission to a facility, and what care was provided by the daughter to the appellant that kept her out of the facility. The MassHealth representative testified that taking the appellant to doctor, providing housekeeping, laundry, and cooking, and living in same building are not enough care to qualify for the caretaker child exception.

The appellant's attorney submitted an affidavit signed by the appellant's daughter which states.

I have been living in the same residence as my mother for thirty-five (35) years. I have been assisting my mother, [appellant], with daily/weekly obligations. Due to [appellant's] advanced age, it was necessary to assist her in various ways including but not limited to, grocery shopping, food preparation, laundry, cleaning, transportation and purchasing everyday household items and necessities. I also brought [appellant] to all of her medical appointments, picked up and administered her medications.
(Exhibit 4)

The appellant submitted several letters from her health care providers. The letter dated 8/10/21, signed by the appellant's physician assistant states that "over the past couple of years" the appellant required assistance with all her activities of daily living (ADLs)(Exhibit 2, p. 29).¹ This letter further states that the appellant lived in the same house as her daughter in her own apartment. The letter dated 8/31/21, signed by the appellant's physician is identical to the 8/10/21 letter with an additional sentence that says, "the care of her daughter has permitted [appellant] to stay within her home and not be admitted to a nursing home" (Exhibit 2, p.28). The appellant's attorney testified that the appellant's daughter lived with and cared for the appellant, so she did not need to enter a nursing facility.

The record was left open to allow the appellant time to submit further documentation from the appellant's health care provider describing the appellant's condition requiring nursing facility care and the length of time the appellant's daughter has provided care for the appellant such that she was

¹ "ADLs include activities such as eating, toileting, bathing, walking, and dressing. I[ncidental]ADLs are activities related to independent living that are incidental to a member's care, such as laundry, shopping, housekeeping, meal preparation and cleanup, transportation, and medication management." <https://www.mass.gov/info-details/overview-of-the-office-of-medicaid-masshealth-westmass-eldercare-inc#:~:text=ADLs%20include%20activities%20such%20as,%2C%20transportation%2C%20and%20medication%20management>.

able to remain at home. Additionally, MassHealth requires proof that the appellant's daughter lived in the same apartment with the appellant during the two years prior to her admission to the facility (Exhibit 6). The appellant's post-hearing submissions consisted of the appellant's daughter's birth certificate, homeowner's insurance bills for the appellant's daughter's apartment #14, and multiple utility bills for the appellant's daughter's apartment (Exhibit 7, pp. 2-11). Additionally, the appellant submitted another letter dated 1/10/22 from her physician assistant that states that "in late 2019 she [sic] her memory comprehension became very bad and she was doing dangerous things such as leaving the stove running and turning off the furnace." This letter further stated that the appellant required 24-hour monitoring (Exhibit 7, p. 12).

Findings of Fact

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

1. On 3/15/21, MassHealth received an application for LTC benefits.
2. The appellant was admitted to the facility on [REDACTED].
3. On 5/4/21, the application was denied because of missing verifications.
4. On 5/18/21, the application was relogged and denied again for missing verifications on 6/30/21.
5. The 6/30/21 denial was appealed and the application date of 5/18/21 was preserved.
6. All requested verifications were received, and the 10/18/21 denial notice was issued.
7. On 7/21/21 the appellant's home was transferred out of trust and then to the appellant's daughter.
8. The home was valued at \$674,700.
9. The home is a multi-family.
10. MassHealth requires proof of the relationship between the daughter and the appellant, proof the daughter lived with the appellant for two years prior to admission to the facility, and a doctor's letter that states what care was provided by the daughter that kept the appellant out of facility for those two years.
11. An affidavit signed by the appellant's daughter states.

I have been living in the same residence as my mother for thirty-five (35) years. I have been assisting my mother, [appellant], with daily/weekly obligations. Due to [appellant's] advanced age, it was necessary to assist her in various ways including but not limited to, grocery shopping, food preparation, laundry, cleaning,

transportation and purchasing everyday household items and necessities. I also brought [appellant] to all of her medical appointments, picked up and administered her medications.

(Exhibit 4)

12. The letter dated 8/10/21, signed by the appellant's physician assistant states that "over the past couple of years" the appellant required assistance with all her activities of daily living (ADLs)(Exhibit 2, p. 29). This letter further states that the appellant lived in the same house as her daughter in her own apartment.
13. The letter dated 8/31/21, signed by the appellant's physician is identical to the 8/10/21 letter with an additional sentence that says "the care of her daughter has permitted [appellant] to stay within her home and not be admitted to a nursing home" (Exhibit 2, p.28).
14. The record was left open to allow the appellant time to submit further documentation from the appellant's health care provider describing the appellant's condition requiring nursing facility care and the length of time the appellant's daughter has provided care for the appellant such that she was able to remain at home. Additionally, MassHealth requires proof that the appellant's daughter lived in the same apartment with the appellant during the two years prior to her admission to the facility (Exhibit 6).
15. The appellant's post-hearing submissions consisted of the appellant's daughter's birth certificate, homeowner's insurance bills for the appellant's daughter's apartment #14, and multiple utility bills for the appellant's daughter's apartment (Exhibit 7, pp. 2-11).
16. The appellant submitted another letter dated 1/10/22 from her physician assistant that states that "in late 2019 she [sic] her memory comprehension became very bad and she was doing dangerous things such as leaving the stove running and turning off the furnace" and the appellant required 24-hour monitoring (Exhibit 7, p. 12).

Analysis and Conclusions of Law

MassHealth 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).

MassHealth 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. A disqualifying transfer may include any action taken which would result in making a formerly available asset no longer available (130 CMR 520.019(C)).

The appellant's attorney argues the appellant's daughter is eligible for a permissible transfer under the

caretaker child exemption. This exemption allows a permissible transfer of the nursing facility resident's property if a child meets the two prongs of the regulation.

130 CMR 520.019: Transfer of Resources Occurring on or after August 11, 1993

(D) Permissible Transfers

- (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:
 - (d) the nursing facilities resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who as determined by the Division, provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility.

The first prong is that the child lived in the appellant's home for at least two years immediately before the date of admission to the facility. The second prong of that test states that the child "provided care to the nursing-facility resident that permitted him or her to live at home rather than in a nursing facility."

The post submission letter from the appellant's physician assistant stated that in late 2019 the appellant's memory became so bad that she required 24-hour monitoring because she was leaving the stove on and turning off the furnace. The appellant entered the facility [REDACTED] therefore it was not two years from the time the health care provider indicated the appellant required 24-hour monitoring due to her memory. While late 2019 is not defined it is arguably much later in the year than March. Further, the appellant submitted multiple documents showing her daughter lived at the address #14 and one utility bill showing the address as #14 apartment #2. The appellant's home is a multi-family home with an address of 12-14. When an individual owns a multi-family home the entire property is not considered the individual's home, only the area where the individual actually lives. The additional units continue to be the owner's property, but are no longer considered the owner's home, the units become the home of the renter or leaseholder. The appellant's daughter was living in a rented unit and not in the appellant's home. The appellant submitted two letters from health care providers stating that the appellant lived with her daughter in her own apartment. The totality of the evidence submitted shows the appellant's daughter did not live in the appellant's home for two years immediately prior to the date of admission and thus fails to meet the first prong of the caretaker child test under 130 CMR 520.019(D)(6)(d). The appellant is therefore not eligible for the permissible caretaker transfer exemption. 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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center. [REDACTED],
[REDACTED]