

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2178981
Decision Date:	1/10/2022	Hearing Date:	January 4, 2022
	Hearing Officer:	Stanley M. Kallianidis	

Appellant Representative:



MassHealth Representative:

Yisell Medina, Taunton



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Transfer of assets
Decision Date:	1/10/2022	Hearing Date:	January 4, 2022
MassHealth Rep.:	Yisell Medina	Appellant Rep.:	[REDACTED]

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 22, 2021, MassHealth denied the appellant's application for MassHealth benefits prior to July 22, 2021 due to disqualifying asset transfers (see Exhibit 1). The appellant filed this appeal in a timely manner on October 13, 2021 (see 130 CMR 610.015) and Exhibit 2). A dispute over the amount of assistance is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied the appellant's application for MassHealth benefits prior to July 1, 2021.

Issue

Whether MassHealth was correct, pursuant to 130 CMR 520.019 in determining that the appellant made disqualifying transfers in the amount of \$18,690.00?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on August 12, 2020. The appellant's application was approved with benefits beginning on July 22, 2021. The appellant died on April 26, 2021 (Exhibits 1-3). The application was denied prior to July 22, 2021 due to disqualifying transfers totaling \$18,690.00 (Id). The MassHealth representative explained the calculation of the transfer penalty. The appellant had two brokerage accounts holding Exxon Mobile stock and a PGM investment account. These accounts were jointly owned by a family member and passed on to the joint owner after the appellant died. The transfer of the appellant's share to her relative after her death were considered to be disqualifying transfers because these were countable assets while she was living (Id).

These transfers, totaling \$18,690.00, were then divided by the state's average private nursing home per diem cost, \$367.00, resulting in a penalty period of 51 days starting June 1, 2021 and ending July 21, 2021 (Exhibit 1).

The appellant's estate representative disputed that any disqualifying transfers had taken place in this case. She testified that the appellant herself did not make any transfers when she was living and that the accounts in question merely passed on to the joint owner following the appellant's death. Also, the accounts were inaccessible during her lifetime because they were jointly owned. She further testified that the appellant was readmitted to a long-term care facility on October 3, 2020 and remained there until her death after being initially discharged on June 25, 2020.

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on August 12, 2020 (Exhibit 3).
2. The appellant's application was approved with benefits beginning on July 22, 2021. The appellant died on April 26, 2021 (Exhibits 1-3).
3. The application was denied prior to July 22, 2021 due to disqualifying asset transfers totaling \$18,690.00 (Exhibit 3).
4. The assets in question were the appellant's share of two brokerage accounts holding Exxon Mobile stock and a PGM investment account (Exhibit 3).
5. These accounts were jointly owned by a family member and passed on to the joint owner after the appellant died (Exhibit 3 and testimony).

6. The transfers which totaled \$18,690.00, were then divided by the state's average private nursing home per diem cost, \$367.00, resulting in a penalty period of 51 days starting June 1, 2021 and ending July 21, 2021 (Exhibit 1).

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. Action taken to avoid receiving a resource may include, but is not limited to, waiving the right to receive a resource, not accepting a resource, agreeing to the diversion of a resource, or failure to take legal action to obtain a resource. In determining whether or not failure to take legal action to receive a resource is reasonably considered a transfer by the individual, MassHealth will consider the specific circumstances involved. 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)).

130 CMR 520.019(F) provides with regard to intent of transferring assets:

Determination of Intent: In addition to the permissible transfers described in 130 CMR 520.019(D), MassHealth 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 MassHealth'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.

In the instant appeal, I have found that the appellant who died on April 26, 2021, applied for MassHealth on August 12, 2020. Her application was approved with benefits beginning on July 22, 2021. The application was denied prior to July 22, 2021 due to disqualifying asset transfers totaling \$18,690.00.

The assets in question were the appellant's share of two brokerage accounts holding Exxon Mobile stock and a PGM investment account. These accounts were jointly owned by a family member and passed on to the joint owner after the appellant died. The transfers which totaled \$18,690.00, were then divided by the state's average private nursing home per diem cost, \$367.00, resulting in a penalty period of 51 days starting June 1, 2021 and ending July 21, 2021.

There is no dispute that the appellant herself did not make any transfers when she was living and that the accounts in question merely passed on to the joint owner following her passing away. Nor did the appellant take any action to make her assets unavailable for her use while she was alive. I therefore conclude that the appellant did not violate the provisions of 130 CMR 520.019 so as to have a penalty period imposed upon her.

The appeal is therefore approved.

Order for MassHealth

Rescind penalty period and redetermine eligibility for MassHealth long-term care benefits.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this notice, you should contact your local office. 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

Taunton MEC

