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**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2179682

Decision Date:

02/03/2022

Hearing Date:

January 11, 2022

Hearing Officer:

Stanley M.
Kallianidis

Appellant Representative:



MassHealth Representative:

Jessica Barney, 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:	Denied	Issue:	Transfer of Assets
Decision Date:	02/03/2022	Hearing Date:	January 11, 2022
MassHealth Rep.:	Jessica Barney		.

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 November 29, 2021, MassHealth denied the appellant's application for MassHealth benefits for the period September 28, 2021-November 23, 2022 due to a disqualifying transfer of assets (see Exhibit 1). The appellant filed this appeal in a timely manner on December 17, 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 for the period September 28, 2021-November 23, 2022.

Issue

Was MassHealth correct, pursuant to 130 CMR 520.019 in determining that the appellant made a disqualifying transfer of \$164,700.00?

Summary of Evidence

The MassHealth representative testified that the appellant applied for MassHealth on September 21, 2021 following his nursing home admission date earlier that month (Exhibit 3). The application was denied for the period September 28, 2021-November 23, 2022 due to a disqualifying transfer of assets of \$164,700.00 (Exhibit 1).

The MassHealth representative explained that on July 31, 2021, the appellant held a 1/3 ownership interest in real property located in East Walpole, Massachusetts. This real estate was not the appellant's principal place of residence. On November 7, 2021, the appellant transferred his interest to the two remaining joint owners for nominal consideration (less than \$100.00). The value of the property at the time of transfer was \$494,100.00. The value of the appellant's legal interest, \$164,700.00, was considered a disqualifying transfer as the appellant gave away this asset for no fair market value consideration (Exhibit 3).

The representative explained that the ineligibility period was determined by taking the transferred amount, \$164,700.00 and dividing it by the average daily private nursing home rate beginning September 28, 2021, the date that he was otherwise eligible for MassHealth (Exhibit 1).

The appellant's son disputed that a disqualifying transfer had taken place. However, he did not dispute any of the facts that were cited by the MassHealth representative, nor did he dispute the manner in which the penalty period was calculated. He explained that the house in question was purchased by the appellant's daughter and her boyfriend. Because the daughter and boyfriend did not have strong enough credit to finance the property on their own, the mortgage broker requested a co-signer on the mortgage to complete the transaction.

The son further testified that the appellant never resided in the home in question, and never made any payments toward the home's mortgage. Also, the appellant never requested an equity stake in the property. Finally, the son testified that the appellant's name was then removed from the deed to establish legal documentation that he has never had a financial stake in the property beyond his role as a mortgage co-signer (Exhibit 4).

Findings of Fact

Based on a preponderance of the evidence, I find:

1. The appellant applied for MassHealth on September 21, 2021 following his nursing home admission date earlier that month (Exhibit 3).
2. The application was denied for the period September 28, 2021-November 23, 2022 due to a disqualifying transfer of assets of \$164,700.00 (Exhibit 1).
3. On or about July 31, 2021, the appellant held a 1/3 ownership interest in real property located in East Walpole, Massachusetts. This real estate was not the appellant's principal place of residence (Exhibit 3).
4. On or about November 7, 2021, the appellant transferred his interest to the two remaining joint owners, his daughter and her boyfriend, for nominal consideration (less than \$100.00) (Exhibits 3 & 4).
5. The value of the property at the time of transfer was \$494,100.00. The value of the appellant's legal interest, \$164,700.00, was considered a disqualifying transfer as the appellant gave away this asset for no fair market value consideration (Exhibit 3).
6. The ineligibility period was determined by taking the transferred amount, \$164,700.00 and dividing it by the average daily private nursing home rate beginning September 28, 2021, the date that he was otherwise eligible for MassHealth (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 applied for MassHealth on September 21, 2021 following his nursing home admission date earlier that month. The application was denied for the period September 28, 2021-November 23, 2022 due to a disqualifying transfer of assets of \$164,700.00.

The ineligibility period was determined by taking the transferred amount, \$164,700.00 and dividing it by the average daily private nursing home rate beginning September 28, 2021, the date that he was otherwise eligible for MassHealth.

The record shows that, on or about July 31, 2021, the appellant held a 1/3 ownership interest in real property located in East Walpole, Massachusetts. This real estate was not the appellant's principal place of residence. On or about November 7, 2021, the appellant transferred his interest to the two remaining joint owners, his daughter and her boyfriend, for nominal consideration (less than \$100.00). The value of the property at the time of transfer was \$494,100.00. The value of the appellant's legal interest was 1/3 of the total value of the home, or \$164,700.00. MassHealth deemed this transaction to be a disqualifying transfer as the appellant gave away assets for no fair market value consideration.

In conclusion, I agree with MassHealth that this transaction was for no fair market value consideration. I also find that there was intent to qualify for MassHealth on the part of the appellant. The appellant's transactions to buy and sell his interest in the property took place in the days just prior to and just after his nursing home request date of approval.

Accordingly, where the appellant transferred \$164,700.00 for less than fair market value,

and where the transfer was not “exclusively for a purpose other than to qualify for MassHealth,” it was a disqualifying transfer.

The appeal is therefore denied.

Order for the 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings