

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Dismissed in part	Appeal Number:	2200022
Decision Date:	3/25/2022	Hearing Date:	01/28/2022
Hearing Officer:	Christopher Jones	Record Open to:	02/10/2022

Appearance for Appellant:



Appearance for MassHealth:
Ian Tincknell – 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:	Denied in part; Dismissed in part	Issue:	LTC - Transfer
Decision Date:	3/25/2022	Hearing Date:	01/28/2022
MassHealth's Rep.:	Ian Tincknell	Appellant's Rep.:	Pro se
Hearing Location:	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 29, 2021, MassHealth approved the appellant's application for MassHealth long-term-care benefits starting on July 5, 2021. This implicitly imposed a period of ineligibility from June 3, 2021 through July 4, 2021. Exhibit 2. The appellant filed this appeal in a timely manner on January 3, 2021. Exhibit 2; 130 CMR 610.015(B); see EOM 21-17 (Oct. 2021) (continuing to extend timeline for appeals to 120 days). Limitations on assistance are valid grounds for appeal. 130 CMR 610.032.

The record was left open following the hearing until February 10, 2022 for the appellant to submit additional evidence and arguments.

Action Taken by MassHealth

MassHealth imposed a 31-day period of ineligibility arising from a series of transfers from the appellant to her daughter shortly before and after the appellant entered the nursing facility.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred resources with the intention of qualifying for MassHealth coverage.

Summary of Evidence

The applicant is a single individual who was admitted to a nursing facility on [REDACTED]. An application for MassHealth long-term-care benefits was submitted in June 2021, seeking coverage as of June 3, 2021. Between November 10, 2021 and January 5, 2021, \$33,200 was withdrawn from the appellant's bank account. During the application process, the appellant verified \$21,031.94 as being spent on the appellant and her home. MassHealth treated the remaining \$12,168.06 unverified withdrawals as disqualifying transfers and imposed a 31-day period of ineligibility based upon the average daily nursing home rate at the time of \$391 per day.

The appellant's representatives agreed that this money was used by the appellant's daughter to cover her own living expenses. They argue, however, that this was done without the intention of qualifying for Medicaid, but rather with the intention of allowing the appellant to remain in the community with her daughter. In the summer of 2020, the appellant's daughter noticed a slight mental decline in the appellant, and she started managing the appellant's finances for her. After a minor surgery in the fall, the appellant never recovered. She started a significant mental decline, wandering, fainting, and falling. The appellant's daughter took Family Medical Leave Act Leave from her employer from November 2, 2020 through until March 25, 2021.

She testified that she took this time to care for her mother prior to the appellant's entering the nursing facility. She continued to remain on FMLA in part because the appellant's medical condition was uncertain—the appellant had several hospitalizations after entering the nursing facility—and in part because coordinating the FMLA leave with her employer had been difficult. The daughter's initial FMLA leave request, for November 2, 2020 through December 2, 2020 was not authorized until January 6, 2021. The second leave request went from December 3, 2020 through March 25, 2021; it was approved on February 3, 2021.

Financially, the appellant submitted paystubs showing that the appellant's daughter earned an average of \$1,135.92 bi-weekly prior to her FMLA leave. Throughout her leave, she only earned a total of \$1,610.18, and she incurred out-of-pocket costs of \$719.77 to pay for her health insurance while she was off payroll. The appellant's attorney testified that during the daughter's FMLA leave, she suffered a financial loss of \$10,847.75. The appellant's daughter asserted that she was unsure whether her mother would be able to return home until sometime in May 2021. The appellant's representatives argued that the unverified \$12,168.06 was reasonably used by the appellant's daughter for living expenses.

MassHealth's representative accepted the appellant's argument to the extent that the appellant's daughter was out of work, caring for her mother prior to the appellant's institutionalization. MassHealth agreed to treat as a "cure" \$7,295.63 of the disqualifying transfer, based upon the fact that the appellant's daughter earned an average of \$1,135.92 bi-weekly prior to November 2, 2020. The appellant's daughter's income stopped on November 8, 2020, and from November 8, 2020

through to the date the appellant was institutionalized, the appellant's daughter received \$1,066.63.¹ During this time, the appellant's daughter also paid \$410.82 for her health insurance. Based on this, MassHealth's representative agreed to reduce the original transfer amount of \$12,168.06 to \$4,872.43. Divided by \$391, this reduces the number of penalty days from 31 to 12.

The appellant's post-hearing submission characterizes the withdrawals from the appellant's bank account as compensation for the appellant's daughter's lost wages and expenses. The appellant argues that there was no intent to qualify for Medicaid at this time because the appellant "was privately paying during this period, and no further withdrawals were made."

Findings of Fact

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

1. The applicant is a single individual who applied for MassHealth long-term-care benefits in June 2021, seeking coverage as of June 3, 2021. She entered the nursing facility on [REDACTED]. Exhibit 3.
2. Between November 10, 2021 and January 5, 2021, \$33,200 was withdrawn from the appellant's bank account. The appellant's daughter used \$12,168.06 of this to pay her expenses while she took an unpaid leave from work to care for her mother as she transitioned into the nursing facility. Exhibit 3; testimony by the appellant's representatives.
3. Through its notice dated October 29, 2021, MassHealth treated the unverified withdrawals as disqualifying transfers and imposed a 31-day period of ineligibility based upon the average daily nursing home rate at the time of \$391 per day. Exhibits 2-3.
4. During the appellant's FMLA leave from November 8, 2020 through March 24, 2021, she incurred financial losses totaling \$10,847.75 because of lost wages and out-of-pocket expenses for health insurance. Testimony by the appellant's representatives.
5. MassHealth accepted as cured \$7,295.63 based upon lost wages and expenses incurred by the appellant's daughter during a leave of absence from work prior to the appellant's institutionalization. Exhibit 4.

Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove their 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

¹ The appellant's daughter received two payments during this time. One for \$856.36 is documented on the January 22, 2021 pay advice. It comes from personal and vacation time. A handwritten note indicates that this payment was for time used in November. The second is an annual bonus of \$201.27 that was paid on February 5, 2021.

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)).

The appellant argues that the resources were transferred without the intent to qualify for Medicaid. However, there are two deficiencies with this argument. First, there is no evidence in the record as to the appellant’s intentions as to why this transfer was made. The appellant’s daughter was managing the appellant’s resources. Reasonably, she withdrew the money to pay for living expenses for herself and her mother while she tried to figure out whether her mother could remain in the community or if she would need to move into a nursing facility. This may have been a reasonable decision; it does not evince clearly that the possible need for Medicaid was completely outside of the considerations of the appellant or her daughter.

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.

Second, the rationale that the transfer was to reimburse the appellant's daughter for lost wages due to the need to take time to care for the appellant supports the probability that the appellant and her daughter were aware of the fact that the appellant may need long-term-care, and therefore Medicaid assistance. This argument recasts the arrangement as a fair-market value transaction. The appellant's daughter was being reimbursed for the services she was providing to her mother. MassHealth appears to have accepted this argument as the basis for treating as cured an amount equivalent to the appellant's daughter's lost wages prior to the appellant's institutionalization. As MassHealth points out, this rationale loses force once the appellant is in the nursing facility. The appellant's daughter, again reasonably, may have continued to take time off due to the stress of having a parent undergoing a terribly difficult medical emergency. However, it is unclear why the love and affection of a child should be compensated.

I have sympathy for the appellant's arguments, but there is insufficient evidence for me to determine whether the services the appellant's daughter provided to her mother were a fair-market value transaction. The details of the care provided are not in evidence, furthermore the financial arrangement itself is entirely post-hoc. The appellant's own arguments concede that, while \$12,168.06 was transferred, the appellant's daughter's financial loss was \$10,847.75. This appeal is DISMISSED in part with regards to the \$7,295.63 of the transfer MassHealth already accepted as cured. With regards to the remaining \$4,872.43, 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.

Christopher Jones
Hearing Officer
Board of Hearings

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

[REDACTED]