

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2200360
<b>Decision Date:</b>	03/03/2022	<b>Hearing Date:</b>	02/08/2022
<b>Hearing Officer:</b>	Samantha Kurkijy		

**Appearances for Appellant:**  
Pro se

**Appearances for MassHealth:**  
Eileen Smith—Chelsea MEC



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

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Eligibility—Transfers
<b>Decision Date:</b>	03/03/2022	<b>Hearing Date:</b>	02/08/2022
<b>MassHealth Rep.:</b>	Eileen Smith	<b>Appellant Rep.:</b>	Pro se
<b>Hearing Location:</b>	Remote	<b>Aid Pending:</b>	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 December 17, 2021, MassHealth approved the appellant's application for MassHealth long-term care benefits but calculated an ineligibility period from October 15, 2021 to December 14, 2021 due to a disqualifying transfer of assets. (Exhibit 1; Exhibit 5.) The appellant filed an appeal in a timely manner on January 15, 2022. (Exhibit 2.) Denial of assistance is a valid ground for appeal. (130 CMR 610.032.)

## Action Taken by MassHealth

MassHealth approved the appellant's application for MassHealth long-term care benefits but calculated an ineligibility period from October 15, 2021 to December 14, 2021 due to a disqualifying transfer of assets.

## Issue

Whether MassHealth was correct in calculating an ineligibility period from October 15, 2021 to December 14, 2021 due to a disqualifying transfer of assets.

## Summary of Evidence

The MassHealth representative testified that on November 16, 2021, the appellant submitted an application for MassHealth long-term care benefits. He requested a benefit start date of October 15, 2021. On December 17, 2021, MassHealth approved the appellant's application but determined a period of ineligibility from October 15, 2021 to December 14, 2021 due to a disqualifying transfer of assets. The appellant submitted an appeal on January 15, 2022. The MassHealth representative testified that the appellant has been discharged from the nursing facility.

The MassHealth representative testified that the disqualifying transfers are as follows: \$9,000 on June 10, 2021; \$2,500 on March 23, 2021; \$4,000 on January 28, 2021; and \$8,000 on August 20, 2021. As the average daily rate of the nursing facility is \$391, MassHealth calculated an ineligibility period of 61 days ( $\$23,50 / \$391$ ).

The appellant testified that the \$9,000 consists of a treasurer's check which is sitting aside. He testified that the \$2,500 went to pay a web developer for his small business on Cape Cod. He further testified that the \$4,000 consisted of expenses traveling back and forth to Cape Cod, and the \$8,000 consisted of housing on Cape Cod, meals, and building his business website. The appellant testified that he did not have receipts for any of these expenses. The appellant was offered a record open period during which he could have established that he received fair market value for his expenses, but he declined the hearing officer's offer, as he was "lax" about keeping receipts.

The MassHealth representative responded that the appellant's current and previous application do not say anything about the appellant owning a business. She testified that the \$9,000 treasurer's check makes the appellant over assets for MassHealth benefits, but she is considering it a transfer because she has no proof of anything else.

## Findings of Fact

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

1. On November 16, 2021, the appellant submitted an application for MassHealth long-term care benefits. He requested a benefit start date of October 15, 2021.
2. On December 17, 2021, MassHealth approved the appellant's application but determined a period of ineligibility from October 15, 2021 to December 14, 2021 due to a disqualifying transfer of assets.
3. The appellant submitted a timely appeal on January 15, 2022.
4. MassHealth determined that the disqualifying transfers consist of the following: \$9,000 on

June 10, 2021; \$2,500 on March 23, 2021; \$4,000 on January 28, 2021; and \$8,000 on August 20, 2021. As the average daily rate of the nursing facility is \$391, MassHealth calculated an ineligibility period of 61 days (\$23,50 / \$391).

5. The appellant testified that the transfers in question relate to his small business on Cape Cod.
6. The appellant did not disclose his small business ownership on his current or previous application.
7. The \$9,000 consists of a treasurer's check which is sitting aside.
8. The appellant does not have receipts for any of the transfers in question.

## **Analysis and Conclusions of Law**

MassHealth "denies payment for nursing-facility services to an otherwise eligible nursing-facility resident as defined in 130 CMR 515.001: Definition of Terms who transfers or whose spouse transfers countable resources for less than fair-market value during or after the period of time referred to as the look-back period." (130 CMR 520.018(B).) Resources transferred on or after February 8, 2006 generally are subject to a 60-month look-back period. (130 CMR 520.019(B)(2).) MassHealth considers any transfer of a resource owned by the resident "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)." (130 CMR 520.019(C).)

Pursuant to 130 CMR 520.019(C),

The MassHealth agency 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, the MassHealth agency considers the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Further,

In addition to the permissible transfers described in 130 CMR 520.019(D) [and the exempted transfers described in 130 CMR 520.019(J)], 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).)

Pursuant to 130 CMR 520.019(G)(1),

If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency will calculate a period of ineligibility. The number of months in the period of ineligibility is equal to the total, cumulative, uncompensated value as defined in 130 CMR 515.001: Definition of Terms of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly cost to a private patient receiving nursing-facility services in the Commonwealth of Massachusetts at the time of application, as determined by the MassHealth agency.

The appellant testified that the transfers in question related to his small business on Cape Cod, but he was unable to provide any receipts or other forms of evidence for these expenses as proof. Without more, such a statement is not sufficient to show that "the resources were transferred **exclusively** for a purpose other than to qualify for MassHealth[.]" (130 CMR 520.019(F)(1)) (emphasis added). The appellant has not carried his burden in this case. Consequently, MassHealth was correct to consider these transfers disqualifying and, in light of the appellant's failure to provide evidence of the \$9,000 treasurer's check, did not err in its calculation of the period of ineligibility.<sup>1</sup>

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<sup>1</sup> The MassHealth representative testified that the \$9,000 is considered a transfer because there is no proof it is anything other than that. The appellant did not provide documentation of the \$9,000.

The appeal is denied.

## **Order for MassHealth**

Allow the appellant 30 days from the date of this decision to provide proof the transfers were cured. If such proof is provided, redetermine eligibility.

## **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.

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Samantha Kurkja  
Hearing Officer  
Board of Hearings

cc:  
MassHealth Representative: Nancy Hazlett