

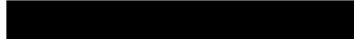
# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



|                         |                                     |                        |   |
|-------------------------|-------------------------------------|------------------------|---|
| <b>Appeal Decision:</b> | Approved in part;<br>Denied in part | <b>Appeal Number:</b>  | 2200366                                   |
| <b>Decision Date:</b>   | 4/14/2022                           | <b>Hearing Date:</b>   | 02/11/2022                                |
| <b>Hearing Officer:</b> | Christopher Jones                   | <b>Record Open to:</b> | 02/18/2022;<br>03/28/2022 –<br>04/01/2022 |

**Appearance for Appellant:**




**Appearance for MassHealth:**

Tamika Eutsay for Cassandra Moura



*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

|                           |                                      |                          |   |
|---------------------------|--------------------------------------|--------------------------|---|
| <b>Appeal Decision:</b>   | Approved in part;<br>Denied in part  | <b>Issue:</b>            | LTC – Transfer  |
| <b>Decision Date:</b>     | 4/14/2022                            | <b>Hearing Date:</b>     | 02/11/2022  |
| <b>MassHealth’s Rep.:</b> | Tamika Eutsay for<br>Cassandra Moura | <b>Appellant’s Rep.:</b> |  |
| <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 28, 2021, MassHealth denied the appellant’s application for MassHealth benefits because MassHealth determined that the appellant had given away assets to qualify for benefits. Exhibit 2; 130 CMR 520.018-520.019. MassHealth imposed a period of ineligibility for long-term-care benefits from August 18, 2021 through March 18, 2022. Exhibit 2. The appellant filed this appeal in a timely manner on January 12, 2022. Exhibit 2; 130 CMR 610.015(B). Denial of assistance is valid grounds for appeal. 130 CMR 610.032.

Following the hearing, the record was left open until February 18, 2022 for the appellant to submit paginated copies of their pre-hearing exhibit and additional evidence showing the withdrawal of the disputed assets. The record was later reopened for five days to allow for pagination.

## Action Taken by MassHealth

MassHealth imposed a period of ineligibility for long-term-care benefits from August 18, 2021 through March 18, 2022 based upon \$83,000 in cash withdrawal and transfers.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant improperly disposed of assets to qualify for MassHealth benefits.

## Summary of Evidence

The appellant is an elderly man whose spouse is already residing in a long-term-care facility and covered by MassHealth. She was approved on November 12, 2020.<sup>1</sup> The appellant filed an application in June 2021, seeking coverage as of August 18, 2021. This application was denied August 23, 2021 based upon the same disqualifying transfer of \$83,123.48. The appellant appealed that denial but did not appear at the hearing on October 13, 2021. This application was filed in October 2021.

The appellant and his spouse sold their home in 2018 and received net proceeds of \$83,123.48 on or around March 6, 2018. The proceeds from this sale appear to have been deposited into a checking account and converted into a series of cashier's checks ranging from \$1,000 to \$10,000 made out to the appellant, his spouse, and cash. With their request for a fair hearing, the appellant's representatives submitted a large, unpaginated packet that included a letter titled as a request for a hardship waiver. At the hearing, the parties confirmed that MassHealth had not yet reviewed a hardship waiver application, and that this hearing solely focused on evidence establishing the appellant's intent with regards to the \$83,123.48.

Elder services became involved with the appellant in early 2019, based upon a report of "self-neglect."<sup>2</sup> At that time, the appellant's utilities were being shut off for non-payment; he had been without heat or hot water for a week; he was heating his apartment by setting an electric oven to 370 degrees and leaving the door open; and he reported being unable to afford food or medicines. The elder services affidavit confirms difficulty in getting the appellant and his spouse services due to a language barrier and the appellant's difficulty in comprehending paperwork following a heart attack three years previously. The investigation also documented that the appellant was susceptible to financial abuse. For instance, he reportedly paid a "representative from the electric company" \$250 in cash when they came to his door so that they would not shut off his electricity.

The appellant's son was identified as a potential financial abuser when he was asked to help document where the proceeds from the sale of the appellant's home went. He identified that his parents would have needed to pay first and last months rent and buy new furniture. A couple weeks later, the son further explained that his parents were "old school Greek" and preferred to operate in cash. He also explained that they had run a Greek restaurant and did not pay meals taxes for 20 years. This resulted in a taxing authority garnishing their incomes. This was also the reason his parents converted the \$83,000 into cashier's checks; these checks could not be taken by the government. The appellant's son also stated that his parents continued to pay rent on the restaurant, even though he felt it was a lost cause. They lost the restaurant in October 2019. The appellant did not have a clear understanding as to where the money went, and he began to suspect that his son had

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<sup>1</sup> In processing her application, MassHealth assessed this transfer amount of \$83,123.48 against her. Because the transfer amount was less than the community-spouse-resource allowance, MassHealth treated it essentially as assets retained by the community spouse. Once the appellant entered the nursing facility and sought long-term-care benefits, however, this resource transfer needed to be reconciled.

<sup>2</sup> An affidavit is included in the appellant's exhibit that appears to have been filed with the Probate and Family Court as part of the guardianship proceedings. The submitted copy is unsigned.

been withdrawing money from his account. At this point, the appellant was relying upon donated food, his utilities were shut off, and he was served notice to quit by his landlord. Following a neurological evaluation, the elder services organization recommended that the appellant be put under guardianship.

The appellant's guardian filed an affidavit giving the findings of her own investigation. She was appointed because of the appellant was financially exploited, had dementia, and was unable to manage his own care. The appellant's guardian also became guardian of the appellant's spouse. The appellant believes that his son took his money, and the guardian avers that the appellant's son had convinced his mother to convert the proceeds from the sale of the home into bank checks so that they could not be seized by the Internal Revenue Service.

At the hearing, the appellant's representative testified that the investigation by the elder services organization substantiated a finding that the appellant's son misappropriated the proceeds of the sale of the home and that the matter had been referred to a District Attorney's office.<sup>3</sup> The appellant's representative testified that there were clear records showing all of the money being withdrawn from the appellant's bank account, and that those withdrawals could be directly traced to the elder services investigation's finding that the son had misappropriated the money. The record was left open for the appellant's representatives to submit "[p]aginated exhibits documenting that the appellant's son has been referred to the DA for investigation into elder abuse allegations and evidence showing the withdrawal of the \$83,000 to cash or otherwise being misappropriated by the appellant's son."<sup>4</sup>

The appellant submitted two documents during the record open period. One, a letter from the elder services organization, confirmed that their "Protective Service department had a substantiated case of financial exploitation for [the appellant] that was active from 2/11/2019-11/15/2019. It was substantiated for a misappropriate and a parasitic relationship. However, it was not sent on to the District Attorney as this is not an allegation that they investigate." The second submission were a series of hardly legible cashier's checks with partial bank statements. Between the original hardship letter and the post-hearing submission, there were \$67,000 in cashier's checks identified: \$62,000 in checks to the appellant's spouse; \$4,000 in checks to "cash;" and \$1,000 to the appellant. The post-hearing submission also showed approximately \$60,300 in cash deposits into the appellant's bank account between March and July 2018. The incomplete records submitted show that the money was then typically withdrawn as cash from ATMs.<sup>5</sup>

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<sup>3</sup> It was difficult to tie the appellant's representative's testimony to the documents in the appeal packet because it was unpaginated. However, the appellant's representative confirmed that there was both a letter referring the misappropriation to a District Attorney and financial records that linked the elder abuse findings to the proceeds from the sale of the appellant's home.

<sup>4</sup> The appellant's representative also confirmed during the hearing that the "hardship waiver" packet would be paginated and resubmitted.

<sup>5</sup> Many of these withdrawals are suspicious. For instance, shortly after \$4,000 was deposited into the account, \$880 was withdrawn from five different ATMs all on the same day.

The last page from the month the appellant sold his home was submitted. This statement shows \$108,633.28 in total deposits for the month, and \$98,868.92 in withdrawals. However, because only the last page was submitted, it is impossible to confirm whether it was the proceeds that were deposited, and the manner in which the money was removed. At the time these documents were submitted, the appellant's representative stated that more complete records of the cashier's checks were requested, but that it would take a month for them to be available.

About a month later, the hearing record was reopened to clarify the appellant's submission and ensure that paginated exhibits were submitted. The appellant's representative stated that parasitic relationships are not investigated by the District Attorney because the transactions occurred prior to a guardian being appointed. They further argued that the evidence supports a finding that the appellant did not transfer these assets with the intent to qualify for MassHealth benefits, and therefore should not be penalized by a disqualifying transfer.<sup>6</sup> MassHealth's representative confirmed that the agency had received all bank records that had been requested during the eligibility process, but no deposits were considered cures to the disqualifying transfer.

## Findings of Fact

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

1. The appellant is an elderly man with dementia who was put under guardianship due to self-neglect. The appellant primarily speaks Greek. Exhibit 3, pp. 25-37.
2. The appellant suffered a heart attack in 2016 or 2017 and had difficulty comprehending paperwork ever since. Exhibit 3, p. 27.
3. The appellant and his spouse have a history of operating using cash. They also operated a restaurant and were in arrears for unpaid meals taxes. Exhibit 3, pp. 29-30.
4. In March 2018, the appellant and his spouse sold their home. They received net proceeds of from the sale of their home totaling \$83,123.48. Exhibit 3, pp. 10-12.
5. In March 2018, the appellant's bank account had total deposits of \$108,633.28 and \$98,868.92 in withdrawals. Exhibit 6, p. 7.
6. Around the time of the sale of their home \$62,000 in cashier's checks were written out to the appellant's spouse, \$4,000 to "cash," and \$1,000 to the appellant. At least \$60,300 of this money was redeposited back into the appellant's checking account between March and July 2018. This financial scheme was done to protect the assets from seizure by a taxing authority. Exhibit 3, pp. 13-24, 175; Exhibit 6.

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<sup>6</sup> The appellant's representative again noted that any updated records of the cashier's checks would "take some time as the Dedham Savings Bank Office will need to re-research the 2018 Cashiers Checks." Exhibit 5.

7. By early 2019, the appellant had no money left. His utilities, except for electricity, had been shut off for non-payment; he was heating his home with his oven, and he was unable to afford his medications or food. An elder services investigation substantiated a finding of financial exploitation against the appellant's son. Exhibit 3, pp. 25-31, 174-175; Exhibit 6, p. 1.

## Analysis and Conclusions of Law

An applicant for MassHealth benefits has the burden to prove his or her 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 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])."<sup>7</sup> 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

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<sup>7</sup> 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.

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 submitted evidence does not clearly document the withdrawal of the entire proceeds from the appellant’s bank account, nor does it clearly tie the appellant’s son to the money. It does show that the appellant and his spouse had difficulty managing their finances and were attempting to willfully hide their resources from a taxing authority—an intention other than to qualify for Medicaid. Further, the appellant’s son was in a “a misappropriate and a parasitic relationship” with regards to his parents’ finances. More difficult to reconcile is the inability to track the sales proceeds into and out of the appellant’s account, because the relevant bank records were not submitted into evidence. What is in evidence is that in March 2018, the appellant sold his home. He received a check for \$83,123.48. In March 2018, a total of \$108,633.28 was deposited into his account and \$98,868.92 was withdrawn. MassHealth is only concerned with \$83,123.48 of these withdrawals. Of these withdrawals, \$67,000 were written out in cashier’s checks, mostly to the appellant’s spouse.

I am convinced that most of this money was likely spent by the appellant or misappropriated by the appellant’s son. Some of it may very well have been lost. The living conditions described in the elder services investigation and the financial habits documented therein convince me that the appellant’s descent into destitution was not done with intent to qualify for Medicaid. However, as an evidentiary matter, I cannot conclude that all \$83,123.48 was disposed of or spent in the same manner. The submitted documentation shows \$67,000 converted into cash, most of which was redeposited and spent over the next four months. This leaves \$16,123.48 of the \$83,123.48 unaccounted for. Despite the record being reopened to address the inconsistencies in the appellant’s presentation in their case, no further clarifying financial records were offered. Nor was additional time requested to do so. Because there is no evidence in the record as to what happened to the unaccounted for \$16,123.48, this appeal must be DENIED in part.

## **Order for MassHealth**

Reduce the disqualifying transfer amount to \$16,123.48 and recalculate the period of ineligibility.

## **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.

## Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

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Christopher Jones  
Hearing Officer  
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780

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