

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	APPROVED IN PART; DENIED IN PART	Appeal Number:	2200631
Decision Date:	4/27/22	Hearing Date:	02/23/2022
Hearing Officer:	Christopher Taffe	Record Open to:	02/24/2022

Appearance for Appellant:



Appearance for MassHealth:

Jennifer Moreno of the Springfield MEC
(by phone)



*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:	APPROVED IN PART; DENIED IN PART	Issue:	LTC – Eligibility – Disqualifying Transfer
Decision Date:	4/27/22	Hearing Date:	02/23/2022
MassHealth’s Rep.:	J. Moreno	Appellant’s Rep.:	██████████
Hearing Location:	Taunton MassHealth Enrollment Center (heard remotely)	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 January 3, 2022, MassHealth denied Appellant’s application for MassHealth Standard Long-Term Care (LTC) benefits for the period from 09/01/2021 to 12/05/2022 because “...[y]ou recently gave away or sold assets to become eligible for MassHealth long-term-care services.” See 130 CMR 520.018; 130 CMR 520.019; and Exhibit 1. The notice also approved Appellant for MassHealth Community-Based Services with a start date of November 1, 2021 and a benefit level of Standard plus Senior Buy-In benefits. See Exhibit 1. Appellant filed a request for a Fair Hearing on January 27, 2022. See Exhibit 1; 130 CMR 610.015. Challenging a MassHealth denial and/or determination of the scope of assistance is a valid ground for appeal to the Board of Hearings. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth denied LTC benefits to Appellant for the period from 09/01/2021 to 12/05/2022.

Issue

The appeal issue is whether there is sufficient evidence to support a conclusion that there should be no penalty period for this Appellant.

Summary of Evidence

At all times relevant to the eligibility request period, Appellant is a single/widowed individual. Appellant was institutionalized in her nursing facility on [REDACTED]. For this appeal, Appellant applied for MassHealth benefits on November 2, 2021 and is seeking LTC benefits with a retroactive start date of September 1, 2021.

The MassHealth Representative explained that she assessed an appropriate penalty period for a series of transfers totaling \$180,000. The transfers consisted of 3 transfers of funds from Appellant's bank account totaling \$150,000 in October 2020, and a \$30,000 deposit from November 2020 in Appellant's bank account. Due to documentation submitted and exchanged by the parties post-hearing on the hearing date, the \$30,000 deposit is no longer an issue, see Exhibits 4 and 5, and as of the record closure date, MassHealth believes there should only be a penalty for \$150,000.¹

The three transfers in question consist of three \$50,000 transfers to Appellant's descendants. Specifically, on October 13, 2020, \$50,000 was transferred to Appellant's daughter ("D"). On October 19, 2020, \$50,000 was transferred to Appellant's Granddaughter ("GD"), and on October 28, 2020, \$50,000 was transferred to Appellant's Grandson ("GS").² Appellant was [REDACTED] years of age at the time of these transfers.

MassHealth initially calculated a penalty period of 461 days by dividing the original amount of \$180,000 by the relevant public rate of \$391/day. [Although not part of Exhibit 5, the new penalty urged by MassHealth, pending the outcome of this decision, will be reduced to the quotient of \$150,000 divided by \$391/day, or 384 days. With a penalty period of 384 days, the penalty period should run from September 1, 2021 through September 19, 2022, with eligibility potentially starting on September 20, 2022.]

The money transferred appeared to come from the proceeds of the October 2020 sale of Appellant's

¹ It is unclear mathematically how the agency could give Appellant a "transfer" penalty Appellant for receiving money. If anything, the unclear receipt of funds may create a verification issue that prevents eligibility, but not a disqualifying transfer issue. That said, it is a moot issue and will not be further revisited. The \$30,000 was related to an escrow amount, owed to Appellant, because of a September 18, 2020 sale of her property. See Exhibits 4 and 5. It is also noted that neither party submitted material to the Hearing Officer prior to the hearing date or schedule start time for the hearing. A one-day record open period was created as a result per 130 CMR 610.081, and this brief need for a Record Open period may justify any minor delay in the issuance of this decision.

² Per 130 CMR 610.014 and state and federal privacy laws, these acronyms used in this paragraph and decision are related to the family relationship of the individuals, and not to actual names or initials. The two grandchildren in this matter are direct descendants of Appellant's daughter D.

former residence. As history, Appellant owned her home since 1989. In the spring of 2020, Appellant's home experienced a flood, and she began to fall behind on the payments on her reverse mortgage and, due to the pressure and expenses related to flood damage, she decided to sell her home. Appellant's Appeal Representative prepared a submission which included an 1/7/2022 email from Appellant's physician which stated that "[Appellant] was under my care for several years. In it. In (sic) the last 2 years of my care spanning approximately the years 2019 in 2020 (sic), I felt her judgment was impaired and she was not able to make sound financial or self-care decisions." See Exhibit 3. The Appeal Representative states that she believes Appellant gave her daughter and grandchildren the money with the idea that they would take her in after her home sale. There are also November 2021 letters in Exhibit 3, from the Appeal Representative's office to D and GD, referring to the "gifting" of the home proceeds and asking for the money to be returned.³ These letters were submitted to MassHealth as part of a waiver request of the penalty, and the Appeal Representative asked that these be considered part of the appeal record. See Exhibit 4. [The waiver request is not part of this appeal and should not be determined until this appeal has concluded and determined whether there is any penalty to consider waiving.]

Allegedly after the sale of Appellant's home, D and Appellant's grandchildren took Appellant into their home in the greater Boston area for a while, but they only did so until Appellant had a stroke in December 2020. Appellant was hospitalized from [REDACTED], and then transferred to a nursing facility for rehabilitation, before being transferred to another and her current nursing facility on [REDACTED]. She has been medically institutionalized on a continuous basis since [REDACTED]. Appellant's daughter D and grandson GS experienced battles with drug addiction, and eventually stopped calling and visiting Appellant after her nursing facility admission. Appellant's grandson GS died in [REDACTED] of 2021. Although the granddaughter GD does not have the level of addiction issues as her family members, she has not been in touch with Appellant, nor has she been responsive to the Appeal Representative's office.

Findings of Fact

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

1. As a [REDACTED]-year-old, Appellant sold her house in the fall of 2020 after she began to fall behind on expenses and making her reverse mortgage obligations. (Testimony and Exhibit 3)
2. In October of 2020, Appellant transferred \$50,000 to each of
 - a. her daughter D;
 - b. her grandson GS; and
 - c. her granddaughter GD. (Testimony and Exhibits 3 and 5)
3. Appellant was medically institutionalized after a stroke in [REDACTED] 2020, and she has been a resident of her current nursing facility continuously since [REDACTED] 2021. (Testimony and Exhibits 3 and 5)

³ Appellant's grandson GS had passed away prior to these letters, so he was not sent such a letter.

4. After selling her home in the fall of 2020, Appellant lived with her daughter and her family for some of the period prior to her stroke in December 2020. (Testimony and Exhibit 3)
5. Letters sent from the Appeal Representatives to Appellant's descendants during the application period describe the \$50,000 transfers as gifts. (Exhibit 3)
6. There is no direct evidence in record of Appellant's intent, showing that qualifying for Medicaid was not a consideration. (Testimony and Exhibit 3)
7. There is no evidence in the record showing that Appellant made those transfers with the intent of receiving appropriate and valuable consideration. (Testimony and Exhibit 3)
8. An application for LTC benefits was filed on Appellant's behalf in November of 2021, seeking benefits with a retroactive start date of September 1, 2021. (Testimony and Exhibit 5)
9. In the appealable action notice, MassHealth assessed a 491-day penalty period based on a total of \$180,000 in disqualifying transfers. As of the close of record, MassHealth agreed that \$30,000 was accounted for and the agency believed that there should only be a penalty for the \$150,000 consisting of the three \$50,000 transfers to D, GS, and GD. (Testimony and Exhibit 5)
10. In response to the appealable action notice, Appellant has filed with the MassHealth agency a request for a waiver of the period of ineligibility. That waiver is pending and will not be acted on by the agency until the outcome of this appeal. (Testimony and Exhibit 3)

Analysis and Conclusions of Law

130 CMR 520.019 lays out the introduction to eligibility requirements for individuals like Appellant seeking Medicaid or MassHealth LTC benefits to cover one's nursing facility stay. To ensure such governmental benefits properly go to these in financial need in accordance with the purpose of the program, there are many rules regarding assets and how applicants may disburse their assets prior to a nursing facility admission.

519.006: Long-Term-Care Residents

(A) Eligibility Requirements. Institutionalized individuals may establish eligibility for MassHealth Standard coverage subject to the following requirements. They must

(1) be younger than 21 years old or 65 years of age or older or, for individuals 21 through 64 years of age meet Title XVI disability standards or be pregnant;

(2) be determined medically eligible for nursing-facility services by the MassHealth agency or its agent as a condition for payment, in accordance with 130 CMR 456.000: Long Term Care Services;

(3) contribute to the cost of care as defined at 130 CMR 520.026: Long-Term-Care General Income Deductions;

(4) have countable assets of \$2,000 or less for an individual and, for married couples where one member of the couple is institutionalized, have assets that are less than or equal to the standards at 130

CMR 520.016(B): *Treatment of a Married Couple's Assets When One Spouse Is Institutionalized*; and
(5) **not have transferred resources for less than fair market value**, as described at 130 CMR
520.018: *Transfer of Resources Regardless of Date of Transfer* and 520.019: *Transfer of Resources
Occurring on or after August 11, 1993*.
(**Bolded emphasis added.**)

The transfer of asset regulations read from 130 CMR 520.019 in relevant part as follows:

520.019: Transfer of Resources Occurring on or after August 11, 1993

...

(C) Disqualifying Transfer of Resources. The MassHealth agency 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).⁴

...

(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.**

(**Bolded emphasis added.**)

Based on my review of the record and the above and related MassHealth regulations, I find the agency decision to consider the three \$50,000 transfers (totaling \$150,000) as disqualifying to be proper and supported by the record. First there is no evidence of the Appellant's intent to enter into any sort of fair market transaction with any of her descendants regarding this transfer, nor is there evidence that a contractual relationship exists for which the \$50,000 transfers could serve as any form of binding and legal consideration. Specifically, there is nothing suggesting that there was any contemporaneous agreement between the Appellant and her descendants specifying (1) why \$50,000 was the specific amount agreed upon or chosen by the parties, and (2) what duties or agreement justified the payment. There is nothing indicating that Appellant expected to receive something akin to \$50,000 in value from each of the three individuals, or what each of the family members would each do for these distributions. There is no evidence suggesting that the grandchildren or children took in Appellant, but only for two months or so,

⁴ There is no argument raised at hearing that the transfer was given properly in a permissible fashion per 130 CMR 520.019(D), nor that the transfer should be among the "exempted" transfers discussed in 130 CMR 520.019(C). Despite the urging of the Board of Hearings, the MassHealth agency has not updated the cross-citation regulation within 130 CMR 520.019(C); this cite should be 520.019(K) which discusses transactions that are exempt due to the fact that they have been cured and the transfers reversed. The erroneous citation to the reverse mortgage-related regulation in 520.019(J) does not factor into this analysis. Although this Appellant had a reverse mortgage prior to her home sale, the proceeds are not from a reverse mortgage, but were from a property sale.

out of any contractual obligation that could invoke 130 CMR 520.019(F)(2). These transfers also appear to be transactions between an applicant and three younger family members, so it is incredibly hard to justify them as “*fair market*” transactions, which usually involves one party entering into agreements with unrelated party who they are dealing with at arm’s length.

Instead the \$50,000 transfers here appear to simply be gifts given by Appellant to her descendants. Appellant’s own Appeal Representative and her firm even describes the transfers as “gifts” in their letters to the daughter and granddaughter in Exhibit 3. Furthermore, the \$50,000 transfers were given less than two months before the Appellant, who was at that time in her late 70s, became medically institutionalized on a long-term basis. This timing does not suggest that there was no intent of qualifying for Medicaid benefits. Instead, the proximity of the timing may suggest the opposite; that Appellant may have thought giving her money to the next generation of her family instead of using it to cover herself, suggesting that someone (such as the state) may provide her with medical assistance if she was impoverished. There is no direct evidence and little circumstantial evidence to the contrary. There is no firsthand testimony or contemporaneous evidence suggesting Appellant’s real intent in the end of 2020. Instead, Appellant’s side offers a conclusory claim about what Appellant was allegedly not thinking about during that time, without any supportive basis, and which happens to be self-serving. Such a position urged by Appellant’s side is neither credible nor supported by the record.

For these reasons, I find this portion of the appeal is DENIED and MassHealth acted properly in assessing a penalty for the \$150,000 transfers per 130 CMR 520.019(C) and (F).

As covered in the Summary, there is no longer a separate or rationale basis to support MassHealth’s initial decision to also penalize the \$30,000. The final penalty amount will be reduced from \$180,000 to \$150,000, and this appeal is thus partially APPROVED.

Having concluded that there should be only a disqualifying transfer amount of \$150,000, this should result in a penalty of 384 days. The modified penalty period should thus run from September 1, 2021 through September 19, 2022. See 130 CMR 520.019(G) and Eligibility Operations Memorandum 20-17.⁵ Appellant is not potentially eligible for benefits to start on September 20, 2022.

Accordingly, this appeal is APPROVED IN PART and DENIED IN PART.

⁵ See <https://www.mass.gov/doc/eom-20-17-average-cost-of-nursing-facility-services/download> (last viewed on April 25, 2022) for the explanation and source of the \$391/day penalty divisor for this November 2021 LTC application.

Order for MassHealth

Rescind the January 3, 2022 denial notice and shorten the penalty period so that it runs from September 1, 2021 through September 19, 2022. Eligibility for LTC benefits may not begin before September 20, 2022. Issue an appropriate notice or notice of implementation within 30 days of the date of this decision to all parties confirming the reduced penalty period to the Appellant, the Appeal Representative, and any other party entitled to notice under 130 CMR 516.008.

The MassHealth agency should also proceed with the pending waiver request filed on Appellant's behalf in a timely manner.

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.

Christopher Taffe
Hearing Officer
Board of Hearings

cc: Appeals Coordinator @ Taunton MEC

