

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Approved in part; denied in part	<b>Appeal Number:</b>	2202218
<b>Decision Date:</b>	8/24/2022	<b>Hearing Date:</b>	5/13/2022
<b>Hearing Officer:</b>	Cynthia Kopka	<b>Record Open to:</b>	8/3/2022

**Appearance for Appellant:**



**Appearance for MassHealth:**

Jennifer Carroll, Taunton



*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; denied in part	<b>Issue:</b>	LTC eligibility – transfers
<b>Decision Date:</b>	8/24/2022	<b>Hearing Date:</b>	5/13/2022
<b>MassHealth's Rep.:</b>	Jennifer Carroll	<b>Appellant's Rep.:</b>	POA
<b>Hearing Location:</b>	Taunton (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

By notice dated February 15, 2022, MassHealth denied Appellant's application for MassHealth long term care services for making impermissible transfers of assets, resulting in a period of ineligibility from July 9, 2021 through May 2, 2022. Exhibit 1. Appellant filed this appeal in a timely manner on March 23, 2022. Exhibit 2. 130 CMR 610.015(B), Eligibility Operations Memo (EOM) 20-09. Challenging the denial or scope of assistance is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through August 3, 2022 for submission of additional information. Exhibits 6, 9.

## Action Taken by MassHealth

MassHealth denied Appellant's application for MassHealth long term care services for making impermissible transfers of assets, resulting in a period of ineligibility from July 9, 2021 through May 2, 2022.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that Appellant made disqualifying transfers during the look-back period and in calculating the period of ineligibility.

## Summary of Evidence

The MassHealth representative appeared by telephone and provided documents in support of MassHealth's position. Exhibit 4. A summary of testimony and documentation follows.

On October 28, 2021, MassHealth received Appellant's application for long-term care benefits seeking July 9, 2021 as a benefit start date. MassHealth denied the application for missing verifications on January 10, 2022. MassHealth received the requested verifications on February 15, 2022. On February 15, 2022, MassHealth determined that Appellant had made an impermissible transfer of assets when proceeds from the sale of property owned by Appellant were deposited into Appellant's son's bank account during MassHealth's five year lookback period. The proceeds from the sale totaled \$148,371.98. Exhibit 4 at 10-12. MassHealth deducted \$32,000 spent by Appellant's son to repair the property and convert it to a residence for sale. *Id.* at 15. This left a disqualifying transfer of \$116,371.98. MassHealth used the average daily rate of \$391 and calculated a period of ineligibility of 297 days, from July 9, 2021 through May 2, 2022. Appellant would be eligible for coverage beginning May 3, 2022.

MassHealth testified that it would not be able to deduct \$25,000 paid to a relative in Greece as loan repayment, as evidence of the loan agreement or payment were not submitted.

Appellant's son and power of attorney appeared by phone and presented documents in support. Exhibit 5. A summary follows. Appellant's spouse wrote a letter, submitted to MassHealth, explaining that the \$25,000 was paid to the relative in Greece to repay a loan. This letter also states that Appellant's health began to decline in 2012. Exhibit 4 at 14. Appellant's relative in Greece also wrote a letter to confirm receipt of the \$25,000 loan repayment, which was to repay money given gradually to Appellant's spouse. Exhibit 5 at 3. Appellant's son testified that the relative provided financial support for Appellant and his spouse. There was no loan agreement, but the relative would wire money to Appellant and his spouse when they needed it. The \$25,000 was the accumulated amount of this support. Appellant's son withdrew money in cash and paid it to the relative in cash when he visited Greece with his parents in 2017.

Appellant's son had been paying Appellant's mortgage on his home since 2013, at approximately \$2,600 per month. Exhibit 5 at 6. Appellant's son and spouse currently live in the property. Appellant's son testified that when the office property sold, his parents told the son to keep the money since he had been paying the bills. Appellant's son continued to pay the house mortgage. Appellant's son agreed to provide proof to show that the proceeds from the home sale was used towards Appellant's mortgage.

Appellant's son testified that at the time the office property sold, the family did not foresee Appellant going into a nursing home. Prior to the admission, Appellant was on hospice in his home. Appellant's son would have kept him home a little longer if he had known there would be a penalty and Appellant would not be covered.

The hearing record was held open through May 27, 2022 and extended through July 11, 2022 for

Appellant's son to submit additional evidence, and through August 3, 2022 for MassHealth to review and respond. Exhibits 6, 9. Appellant's son submitted bank and mortgage statements showing \$62,037.97 in payments made on Appellant's behalf from 2017 to April 2022. Exhibits 7, 8. MassHealth reviewed the statements and deducted \$62,037.97 from the transfer penalty for the verified mortgage payments made on Appellant's behalf. Exhibit 10. MassHealth divided the remaining amount of the transfer, \$54,334.01, by the daily rate of \$410.00 and calculated a total penalty period of 132 days, from July 9, 2021 to November 16, 2021. *Id.*

## Findings of Fact

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

1. On October 28, 2021, MassHealth received Appellant's application for long-term care benefits seeking July 9, 2021 as a benefit start date.
2. On February 15, 2022, MassHealth denied Appellant's application, having determined that Appellant had made an impermissible transfer of assets totaling \$116,371.98. Exhibit 1, Exhibit 4 at 10.
3. In May 2017, Appellant sold an office property. The proceeds of the sale, \$148,371.98, were deposited into Appellant's son's account. Exhibit 4 at 10-12.
4. MassHealth deducted \$32,000 spent by Appellant's son to repair the property and convert it to a residence for sale. *Id.* at 15.
5. MassHealth used the average daily rate of \$391 and calculated a period of ineligibility of 297 days, from July 9, 2021 through May 2, 2022. Exhibit 1.
6. Appellant appealed in a timely manner on March 23, 2022. Exhibit 2.
7. In 2017, Appellant and his spouse gave a relative in Greece \$25,000 to repay wire transfers and other financial support. Exhibit 4 at 14, Exhibit 5 at 3.
8. Between 2017 and April 2022, Appellant's son paid \$62,037.97 on Appellant's behalf for Appellant's mortgage. Exhibits 7, 8.
9. MassHealth deducted \$62,037.97 from the transfer penalty for the verified mortgage payments made on Appellant's behalf. Exhibit 10.
10. MassHealth divided the remaining amount of the transfer, \$54,334.01, by the daily rate of \$410.00 and calculated a total penalty period of 132 days, from July 9, 2021 to November 16, 2021. *Id.*

## Analysis and Conclusions of Law

Per 130 CMR 519.006(A)(4), to qualify for MassHealth Standard coverage as a resident of a long term care facility, an individual must have countable assets of \$2,000 or less. MassHealth considers any transfer of a resource owned by a nursing facility resident for less than fair market value during the appropriate look-back period to be a disqualifying transfer unless the transfer in question is permitted or exempted under the regulations. Specifically, 130 CMR 520.018(B) states that MassHealth “will deny payment for nursing facility services to an otherwise eligible nursing-facility resident ... 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.” The look-back period for transfers of resources occurring on or after February 8, 2006 is 60 months. 130 CMR 520.019(B)(2).

According to 130 CMR 520.019(C), set forth in pertinent part,

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). 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.

Per 130 CMR 520.0019(G),

Where the MassHealth has determined that a disqualifying transfer of resources has occurred, the MassHealth 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 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.

A transfer may be cured if the full value or a portion of the full value of the transferred resources is returned to the applicant. 130 CMR 520.019(K)(2)(b). Additionally, per 130 CMR 520.019(F), MassHealth will not impose a period of ineligibility for transferring resources at less than fair market value if the resident 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.

Here, MassHealth initially determined that Appellant made a disqualifying transfer of resources because the proceeds from the sale of Appellant's property was deposited into Appellant's son's account, not Appellant's. Based on this, MassHealth determined that Appellant did not receive fair market value for the sale of the property. However, Appellant's son was able to successfully cure a portion of the transfer by verifying the mortgage payments made on Appellant's behalf, effectively returning the funds to Appellant as per 130 CMR 520.019(K)(2)(b). To the extent Appellant was able to cure a portion of the transfer, this appeal is approved in part. MassHealth's adjustment of \$62,037.97 is addressed in the order below.

Appellant's son also argued that the \$25,000 repayment to the relative in Greece should also be adjusted. However, the two letters from Appellant's spouse and the relative in Greece, written at the time of hearing and not at the time of repayment, are not sufficient evidence to show that Appellant received fair market value for the \$25,000 payment. There is no loan agreement or any accounting of the amount of money received by Appellant and his spouse, and no written promise or schedule of repayment. There was also no convincing evidence that the transfer was for a purpose other than to qualify for Medicaid. *See* Health Care Finance Administration (HCFA) Transmittal No. 64, Section 3258.10. To the extent Appellant seeks additional adjustment of the transfer penalty, this appeal is denied in part.

## **Order for MassHealth**

Rescind the February 15, 2022 denial. Adjust the transfer penalty to \$54,334.01 and the total penalty period to 132 days, from July 9, 2021 to November 16, 2021. Approve MassHealth long-term care benefits without a new application in accordance with this order.

## **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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Cynthia Kopka  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment Center, 21 Spring St., Ste. 4, Taunton, MA 02780, 508-828-4616



Policy Implementation Unit 7<sup>th</sup> fl. Rm 7004

General Counsel's Office –Sharon Boyle