

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2202327
<b>Decision Date:</b>	5/25/2022	<b>Hearing Date:</b>	05/05/2022
<b>Hearing Officer:</b>	Thomas J. Goode	<b>Record Open to:</b>	05/13/2022

**Appearance for Appellant:**



**Appearance for MassHealth:**  
Jessica Adamiec, Taunton MEC



*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>	Denied	<b>Issue:</b>	Resource Transfers
<b>Decision Date:</b>	5/25/2022	<b>Hearing Date:</b>	05/05/2022
<b>MassHealth's Rep.:</b>	Jessica Adamiec	<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 16, 2021, MassHealth approved Appellant's application for MassHealth long-term care benefits effective May 23, 2021 and determined a period of ineligibility from March 1, 2021 through May 22, 2021 due to resource transfers. Through a subsequent notice dated December 31, 2021, MassHealth notified Appellant that eligibility was effective May 3, 2021 (130 CMR 520.019 and Exhibit 1). Appellant filed this appeal in a timely manner on March 28, 2022 (130 CMR 610.015(B) and Exhibit 2). Denial of assistance is valid grounds for appeal (130 CMR 610.032). The hearing record remained open until May 13, 2022 to allow MassHealth to review Appellant's legal memorandum and submit a response which was timely received (Exhibit 5).

## Action Taken by MassHealth

MassHealth approved Appellant's application for MassHealth long-term care benefits effective May 3, 2021 and determined a period of ineligibility from February 9, 2021 through May 2, 2021 due to resource transfers.

## Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining a period of ineligibility from February 9, 2021 through May 2, 2021 due to resource transfers.

## Summary of Evidence

The MassHealth representative testified that Appellant was admitted to a skilled nursing facility on [REDACTED]. A MassHealth long-term care application was submitted on his behalf on March 31, 2021 seeking coverage effective February 9, 2021. The application was approved by notice dated December 16, 2021, with long-term care benefits effective May 23, 2021, and a transfer penalty from March 1, 2021 through May 22, 2021. MassHealth issued an updated notice on December 31, 2021 notifying Appellant that eligibility was effective May 3, 2021. The MassHealth representative testified that life insurance proceeds totaling \$49,532 were deposited into Appellant's bank account on January 12, 2021. Funds were partially spent down on Appellant's care; however, two checks were written to two of Appellant's sons on January 19, 2021 for \$17,500 and \$14,766. Pursuant to 130 CMR 520.019, MassHealth determined that the resources were transferred for less than fair market value and calculated a transfer penalty period from February 9, 2021 through May 2, 2021.

An attorney appearing on behalf of Appellant's conservator stated that an initial application submitted on March 31, 2021 was denied due to verifications not submitted to MassHealth. A hearing held on October 15, 2021 resulted in MassHealth approving the March 2021 application effective May 23, 2021 with a transfer penalty from March 1, 2021 through May 22, 2021. An updated notice dated December 31, 2021 notified Appellant of an eligibility start date of May 3, 2021 but does not state a specific transfer penalty period. Through conversations with the caseworker, Appellant learned that the transfer penalty period was effective February 9, 2021.<sup>1</sup> Appellant asserts that MassHealth should begin on February 9, 2021 as requested in the March 31, 2021 application because the resource transfers at issue were made exclusively for a purpose other than qualifying Appellant for MassHealth coverage and should be exempted under 42 U.S.C. § 1396p, 20 C.F.R. § 416.1246, and 130 CMR 520.019(F). Appellant argued that there is sufficient evidence to show that the transfers at issue were made exclusively for the purpose of helping Appellant's sons who were experiencing financial crises due to the pandemic. One son owns and operates a small business in Tallahassee, Florida installing audio and light systems in vehicles which was forced to cease operations during the pandemic, resulting in financial hardship. Appellant's other son was out of work due to health issues because of the pandemic. Appellant agreed to provide financial assistance to both sons as evidenced in a sworn affidavit executed by one of his sons (Exhibit 4, pp. 43-44). Appellant argues further that the liquidation of funds was initiated several months before he received funds from his life insurance IRA on January 11, 2021. When the liquidation process was begun, Appellant was living independently and was not contemplating the need for nursing facility services. During the pendency of surrendering the funds, Appellant experienced a sudden medical decline and was admitted to the hospital and subsequently to the nursing facility. Appellant asserts that he has met his burden of proof that both resource transfers were made to support his sons and not for Medicaid planning purposes.

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<sup>1</sup> Although Appellant correctly notes that the December 31, 2021 notice fails to explicitly impose a penalty period, Appellant did not argue that the December 31, 2021 notice is inadequate, and instead presented substantive arguments concerning the transfer penalty period from February 9, 2021 through May 2, 2021. Therefore, it is presumed that Appellant received adequate notice of the MassHealth action (130 CMR 610.026).

## Findings of Fact

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

1. Appellant was admitted to a skilled nursing facility on [REDACTED].
2. A MassHealth long-term care application was submitted on Appellant's behalf on March 31, 2021 seeking coverage effective February 9, 2021. The application was approved by notice dated December 16, 2021, with long-term care benefits effective May 23, 2021, with a transfer penalty from March 1, 2021 through May 22, 2021.
3. MassHealth issued an updated notice on December 31, 2021 notifying Appellant that eligibility began effective May 3, 2021. MassHealth adjusted the transfer penalty period from February 9, 2021 through May 2, 2021.
4. Life insurance proceeds \$49,532 were deposited into Appellant's bank account on January 12, 2021. Funds were partially spent down on Appellant's care; however, two checks were written to two of Appellant's sons on January 19, 2021 for \$17,500 and \$14,766.

## Analysis and Conclusions of Law

A disqualifying transfer of resources is defined at 130 CMR 520.019<sup>2</sup>:

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<sup>2</sup> (D) Permissible Transfers. The MassHealth agency considers the following transfers permissible. Transfers of resources made for the sole benefit of a particular person must be in accordance with federal law. (1) The resources were transferred to the spouse of the nursing-facility resident or to another for the sole benefit of the spouse. A nursing-facility resident who has been determined eligible for MassHealth agency payment of nursing-facility services and who has received an asset assessment from the MassHealth agency must make any necessary transfers within 90 days after the date of the notice of approval for MassHealth in accordance with 130 CMR 520.016(B)(3). (2) The resources were transferred from the spouse of the nursing-facility resident to another for the sole benefit of the spouse. (3) The resources were transferred to the nursing-facility resident's permanently and totally disabled or blind child or to a trust, a pooled trust, or a special-needs trust created for the sole benefit of such child. (4) The resources were transferred to a trust, a special-needs trust, or a pooled trust created for the sole benefit of a permanently and totally disabled person who was under 65 years of age at the time the trust was created or funded. (5) The resources were transferred to a pooled trust created for the sole benefit of the permanently and totally disabled nursing-facility resident. (6) The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons: (a) the spouse; (b) the nursing-facility resident's child who is under age 21, or who is blind or permanently and totally disabled; (c) the nursing-facility resident's sibling who has a legal interest in the nursing-facility resident's home and was living in the nursing-facility resident's home for at least one year immediately before the date of the nursing-facility resident's admission to the nursing facility; or (d) the nursing-facility resident's child (other than the child described in 130 CMR 520.019(D)(6)(b)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather

(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). 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 will consider the specific circumstances involved. A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available.

Regulation 130 CMR 520.019(G)(3), effective February 8, 2006, provides in pertinent part:

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources have been transferred for less than fair-market value. For transfers occurring on or after February 8, 2006, the period of ineligibility will begin on the first day of the month in which resources were transferred for less than fair-market value or the date on which the individual is otherwise eligible for MassHealth payment of long-term-care services, whichever is later. For transfers involving revocable trusts, the date of transfer is the date the payment to someone other than the nursing-facility resident or the spouse is made.

Regulation 130 CMR 520.019(F)<sup>3</sup> follows:

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

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than in a nursing facility. (7) The resources were transferred to a separately identifiable burial account, burial arrangement, or a similar device for the nursing-facility resident or the spouse in accordance with 130 CMR 520.008(F).

<sup>3</sup> See also 42 U.S.C. §1396p(c)(J)(2)(C)(i-iii).

(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.

The State Medicaid Manual (HCFA Transmittal letter 64) at Section 3258.10 sets forth the following guidance to transfers exclusively for a purpose other than qualifying for Medicaid:

Transfers Exclusively for a Purpose Other Than to Qualify for Medicaid.-- Require the individual to establish, to your satisfaction, that the asset was transferred for a purpose other than to qualify for Medicaid. 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 (Emphasis added).<sup>4</sup>

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity.<sup>5</sup> Whether or not the transfers are allowable under 130 CMR 520.019(F) turns on Appellant's intent at the time the transfers were made. Appellant's representative asserts that Appellant transferred resources for a purpose other than to qualify for MassHealth. An individual's intent is subjective, and absent definitive evidence, difficult to demonstrate on another's behalf. Appellant's health was obviously in decline when he was admitted to the nursing facility on [REDACTED]. There is no dispute that two checks were written to two of Appellant's sons on January 19, 2021 for \$17,500 and \$14,766 while Appellant was residing in a nursing facility and beginning the process of applying for MassHealth benefits through an application submitted several weeks later in March 2021. Appellant opines those resources were transferred to his sons exclusively for a purpose other than qualifying for MassHealth benefits. The only evidence for this assertion is an affidavit from one of the sons that essentially states he needed the funds due to his financial situation and that Appellant intended for him to receive the resources to help him resolve his financial situation with no intention of qualifying for MassHealth (Exhibit 4, pp. 43-44).<sup>6</sup> The son also states in his affidavit that Appellant intended to provide him financial assistance prior to his admission to the nursing facility; however there is no objective evidence to support the assertion. Assurances of Appellant's intent proffered by the recipient of the gifted resources are of minimal evidentiary value in ascertaining *Appellant's* intent in transferring the resources, and do not rise to the level of convincing evidence to rebut the presumption that resources were transferred for the purpose of establishing MassHealth eligibility. Appellant has not carried the burden showing the

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<sup>4</sup> See also 20 C.F.R. § 416.1246(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility*. Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

<sup>5</sup> *Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989).

<sup>6</sup> There is no affidavit in evidence from the second son who received resources.

invalidity of the MassHealth action calculating a period of ineligibility due to resource transfers effective February 9, 2021 through May 2, 2021 (130 CMR 520.019(G)(3)).

The 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.

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Thomas J. Goode  
Hearing Officer  
Board of Hearings

cc:

MassHealth Representative: Appeals Coordinator, Taunton MassHealth Enrollment Center

