

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2202972
Decision Date:	7/7/2022	Hearing Date:	05/25/2022
Hearing Officer:	Susan Burgess-Cox	Record Open to:	06/28/2022

Appearance for Appellant:



Appearance for MassHealth:

Ilesha Pittman



*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	Issue:	Eligibility
Decision Date:	7/7/2022	Hearing Date:	05/25/2022
MassHealth's Rep.:	Iesha Pittman	Appellant's Rep.:	[REDACTED]
Hearing Location:	All Parties Appeared by Telephone	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 March 24, 2022, MassHealth determined the appellant ineligible from November 20, 2021 to November 11, 2024 due to a transfer of assets. (130 CMR 520.000; Exhibit 1). The appellant's Attorney-in-Fact appealed this decision in a timely manner on April 20, 2022. (130 CMR 610.015(B); Exhibit 2; Exhibit 3). Denial of assistance and a decision regarding the scope and amount of assistance are both valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined that the appellant was not eligible until November 12, 2024 due to a transfer of assets.

Issue

Whether MassHealth was correct in determining that the appellant is not eligible until November 12, 2024.

Summary of Evidence

All parties appeared by telephone. The MassHealth representative, from the Taunton MassHealth Enrollment Center, presented a summary that was incorporated into the hearing record as Exhibit 5. Counsel for the appellant submitted documents that were incorporated into the hearing record as Exhibit 6. MassHealth received an application for long-term care seeking coverage as of a date in November 2021. MassHealth determined the appellant ineligible from November 20, 2021 to November 11, 2024 due to a transaction that MassHealth considered a disqualifying transfer.

In 1988, the appellant and her daughter became joint owners with the right of survivorship of a home where they both resided. (Testimony; Exhibit 6). The 1988 deed lists the appellant acting as the initial property owner as well as guardian of her daughter. (Exhibit 6). The appellant's daughter was a minor at the time of the initial change in ownership. On October 21, 2021, the appellant transferred her interest in the home to her daughter. MassHealth regarded this as a disqualifying transfer as the agency determined that the appellant did not provide sufficient evidence to demonstrate that it qualified for any exceptions under the regulations including consideration of the daughter as a caretaker child.

The MassHealth representative testified that considering the daughter as a caretaker child would require: copies of 2 years of income tax returns filed by the daughter with the address in question listed on the return; a copy of a birth certificate; and a letter from a physician stating that the daughter provided care that permitted the appellant to live in the home rather than a medical institution. (Exhibit 5). At the hearing, the MassHealth representative could not cite any regulations or policies regarding requirements for these specific documents.

MassHealth acknowledged receipt of: an affidavit from the daughter regarding her residence and ownership interest in the home and the care she provided the appellant; deeds for the property in question from 1998 and 2021; a copy of the daughter's driver's license with the address of the property in question; and a letter from a nurse practitioner stating that the daughter served as the appellant's primary caregiver prior to her admission. The MassHealth representative would not accept these documents as sufficient to determine that the daughter met the definition of a caretaker child. The MassHealth representative did not present any clear testimony or evidence regarding the reason for requiring these specific documents except stating that it was an office practice to require the specific documents.

Counsel for the appellant responded that she could provide a copy of a birth

certificate and an income tax return but noted that the appellant had not seen a doctor from 2016 to 2021. The letter from a nurse practitioner states that the appellant has been in her geriatric home care program since April 2021 until she went into long-term care. (Exhibit 6). The nurse practitioner states that the appellant lived in a private home with her daughter as her primary caregiver. (Exhibit 6).

An affidavit from the appellant's daughter states that the appellant is her mother, she has lived in the home for her entire life, and the appellant began to suffer from dementia, depression and weakening of her physical abilities over the last several years. (Exhibit 6). The appellant's daughter states that she has provided care for the appellant due to the decline in her mental and physical health. (Exhibit 6). The appellant's daughter states that the appellant was distrustful of people she did not know so began to refuse to see doctors or allow anyone in the home to provide care. (Exhibit 6). The affidavit states that the appellant encountered a series of hospitalizations and short-term rehabilitation stays since the beginning of the pandemic. (Exhibit 6). After each time in rehabilitation, the appellant was discharged back into the community with her daughter serving as the sole caretaker. (Exhibit 6).

In her time providing care for the appellant, the daughter performed the following tasks: bathing, grooming, medication administration, meal preparation, shopping, housekeeping, laundry and any billing or maintenance-related tasks. (Exhibit 6). In a cover letter, counsel noted that there was an error on the initial application omitting information about the appellant's caretaker child. (Exhibit 6). A new application page was submitted with documents for the hearing indicating that the appellant's daughter lived with her at least 2 years before the admission and provided care for the appellant. (Exhibit 6). As noted above, the MassHealth representative did not regard this submission as sufficient.

As counsel for the appellant stated that she could provide a copy of a birth certificate and tax returns for MassHealth to consider, the record was held open to provide the opportunity to present such records for MassHealth to review and consider. (Exhibit 7). During the record open period, the counsel provided: a copy of the daughter's birth certificate naming the appellant as her mother; the first page of the daughter's tax returns from 2020 and 2021 with the address of the property at issue; a threat of legal action by the appellant's sons should the daughter not transfer 50% interest in the home to them; and a case that counsel argues does not indicate "the exact evidence that is needed to prove a caretaker child situation".¹ (Exhibit 8).

¹ Maquire v. Director of the Office of Medicaid, 82 Mass. App. Ct. 549 (2012).

In reviewing the records presented by the appellant, MassHealth upheld their decision as the records were not sufficient for the agency to make an adjustment. (Exhibit 9). The MassHealth representative stated that she did not receive a letter from a physician stating that the care provided to the appellant kept her out of an institution. (Exhibit 9).

Findings of Fact

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

1. MassHealth received an application for long-term care seeking coverage as of a date in November 2021.
2. MassHealth determined the appellant ineligible from November 20, 2021 to November 11, 2024 due to a transaction that MassHealth considered a disqualifying transfer.
3. In 1988, the appellant and her daughter became joint owners with the right of survivorship of a home where they both resided.
4. The deed lists the appellant acting as owner of the property and guardian of her daughter.
5. The appellant's daughter was a minor at the time of the initial change in ownership.
6. The appellant's daughter is now an adult.
7. The appellant's daughter has resided in the same residence as the appellant for her entire life.
8. The daughter has the address of the property in question on her driver's license.
9. On October 21, 2021, the appellant transferred her interest in the home to her daughter.
10. MassHealth regarded this as a disqualifying transfer.
11. The appellant did not receive consistent care from one provider from 2016 to 2021 due to a distrust of those who she did not know.

12. The appellant's health began to decline prior to the beginning of the pandemic.
13. The appellant had several hospitalizations and short-term rehabilitation stays over the past few years.
14. The appellant was discharged to her daughter's care after each admission.
15. In her time providing care for the appellant, the daughter performed the following tasks: bathing, grooming, medication administration, meal preparation, shopping, housekeeping, laundry and any billing or maintenance-related tasks.
16. In April 2021, the appellant began receiving treatment from a nurse practitioner.
17. The nurse practitioner validated that the appellant lived with her daughter who was her primary caregiver.

Analysis and Conclusions of Law

MassHealth is responsible for the administration and delivery of health-care services to low- and moderate-income individuals and couples. (130 CMR 515.002(A)). The regulations at 130 CMR 515.000 through 522.000: Other Division .Programs provide the MassHealth requirements for persons who are institutionalized, 65 years of age or older, or who would be institutionalized without community-based services in accordance with all applicable laws, including Title XIX of the Social Security Act. (130 CMR 515.002(B)). The appellant is an institutionalized individual so the regulations at 130 MR 515.000 through 522.000 apply to this case.

The regulations at 130 CMR 520.019 apply to nursing-facility residents, as defined at 130 CMR 515.001, requesting MassHealth payment for nursing-facility services provided in a nursing facility or in any institution for a level of care equivalent to that received in a nursing facility or for home- and community-based services provided in accordance with 130 CMR 519.007(B). Under this section, transfers of resources are subject to a look-back period, beginning on the first date the individual is both a nursing facility resident and has applied for or is receiving MassHealth Standard. (130 CMR 520.019(B)).

MassHealth considers any transfer during the appropriate look-back period by

the nursing facility resident of a resource or interest in a resource, owned by or available to the nursing-facility 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). A disqualifying transfer may include any action taken that would result in making a formerly available asset no longer available. (130 CMR 520.019(C)).

MassHealth does consider certain transfers as permissible. (130 CMR 520.019(D)). Such permissible transfers include a transfer of 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 younger than 21 years old, 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 than in a nursing facility.

In this case, the appellant transferred title to a home to her daughter who was living in the home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, and who, provided care to the appellant that permitted her to live at home rather than in a nursing facility. (130 CMR 520.019(d)(6)). The appellant's daughter provided evidence of this relationship and care prior to and at hearing.

While the regulations require applicants to provide verification of dependency and residence of a relative living in the former home in considering real property as a countable asset, the portion of the regulations considering a transfer of such property as permissible do not include specific documentation requirements. (130 CMR 520.007(G); 130 CMR 520.019). Even if one were to

apply the verification requirements for dependency and residence of a relative living in the home under the regulations governing a transfer of assets, the appellant's daughter satisfied these requirements. (130 CMR 520.007(G)(9)).

First, while the regulations ask for a birth certificate or marriage license as a means to verify the relationship of the member and relative, the regulations also allow any other documents necessary to establish the relationship. (130 CMR 520.007(G)). Prior to the hearing, the appellant's daughter provided information about her residence and interest in the home from at least 1988 with a deed noting the appellant's role as her guardian. (130 CMR 520.007(G)). The second requirement is verification of dependency. (130 CMR 520.007(G)). The appellant's daughter is not a dependent so does not need to verify that requirement. Finally, an individual is required to verify residency only if there is conflicting or contradictory evidence regarding the relative's residence. (130 CMR 520.007(G)). Neither party presented conflicting or contradictory evidence regarding the daughter's residence. Instead, all of the evidence clearly demonstrated the residence of the daughter in the appellant's home for most of her life. (130 CMR 520.007(G)(9)).

The case cited by counsel for the appellant appears to address issues regarding the role of a caretaker. (Maguire v. Director of the Office of Medicaid, 82 Mass. App. Ct. 549 (2012)). While the court gave deference to the findings of the hearing officer who did not regard the level of care provided as meeting the regulatory standards, counsel is correct that the court did not list any specific requirements or standards for making such a determination. The court does reference the Social Security Administration's Program Operations Manual System (POMS), which also allows a transfer of home to a child who provided care that enabled the transferor to reside at home instead of an institution. POMS notes that such care is substantial but not necessarily full-time care. POMS also lists services which are consistent with those provided by the appellant's daughter. While the court did not regard this as a definitive list, it supports the evidence presented in this appeal.

In this case, the agency's requirements for providing two years of tax returns, a letter from a physician rather than a nurse practitioner, and a birth certificate are too specific and excessive. No agency policies or guidelines were cited by MassHealth showing such requirements. The evidence, caselaw and regulatory citations presented by the appellant support the arguments presented by counsel for the appellant rather than the decision made by MassHealth.

The decision made by MassHealth was not correct.

This appeal is approved.

Order for MassHealth

Determine the appellant eligible without regarding the transfer of her home as a disqualifying transfer.

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.

Susan Burgess-Cox
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

Appellant Representative: [REDACTED]