

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2203017

Decision Date: 7/22/2022

Hearing Date: 06/15/2022

Hearing Officer: Patricia Mullen

Record Open to: 07/06/2022

Appearances for Appellant:

[Redacted], POA/daughter;
[Redacted] son-in-law

Appearance for MassHealth:

Joanne Weldon, 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

Appeal Decision:	Denied	Issue:	Transfer of assets
Decision Date:	7/22/2022	Hearing Date:	06/15/2022
MassHealth's Rep.:	Joanne Weldon, Taunton MEC	Appellant's Reps.:	POA/daughter; son-in-law
Hearing Location:	Taunton MassHealth Enrollment Center		

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 April 1, 2022, MassHealth denied the appellant's application for MassHealth Standard benefits for long term care residents, because MassHealth determined that the appellant transferred assets for less than fair market value resulting in an ineligibility period from February 4, 2022 to October 18, 2022. (see 130 CMR 520.019 and Exhibit 1). An appeal was filed in a timely manner on April 21, 2022. (see 130 CMR 610.015(B) and Exhibit 2). The Board of Hearings (BOH) dismissed the appeal by notice dated April 27, 2022 because the appellant did not sign the appeal request. (Exhibit 3). On May 5, 2022, the appellant submitted a copy of the Durable Power of Attorney (POA) document and the appeal request signed by the POA. (Exhibit 4). BOH vacated the dismissal and scheduled the appeal for hearing. (Exhibit 5). Denial of MassHealth is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth determined the appellant transferred assets for less than fair market value resulting in an ineligibility period from February 4, 2022 to October 18, 2022.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 520.019, in determining that the appellant transferred assets for less than fair market value resulting in an ineligibility period.

Summary of Evidence

The appellant was represented telephonically by her POA/daughter and her son-in-law (Exhibit 4). MassHealth was represented telephonically by a worker from the MassHealth Enrollment Center (MEC) in Taunton.

The MassHealth representative stated that the appellant submitted a MassHealth application on February 28, 2022 seeking a MassHealth start date of February 4, 2022. The appellant is [REDACTED] and was admitted to the nursing facility on [REDACTED]. (Exhibit 9). The SC-1 states that the appellant was admitted from a nursing facility. (Exhibit 9). The appellant's representative testified that the appellant was hospitalized in [REDACTED] and had rehabilitation services at another facility prior to admission to her current facility.

The MassHealth representative stated that the appellant made transfers during the 5 year look back period, for which MassHealth determined she received no fair market value. The MassHealth representative stated that the appellant sold her home in June, 2017 and received net proceeds of \$393,362.45. (Exhibit 10). By check dated June 26, 2017, the appellant gave \$10,000.00 to her son and by check dated June 26, 2017, the appellant gave \$15,000.00 to her daughter. (Exhibit 10). The MassHealth representative stated that the appellant's POA reported that the payment of \$10,000.00 to the appellant's son was for dental work. (Exhibit 7, p. 2). The MassHealth representative stated that on January 14, 2021, the appellant transferred \$50,000.00 to her daughter, and on July 9, 2021, the appellant transferred \$30,000.00 to her daughter. (Exhibit 11, pp. 1, 91). The MassHealth representative stated that the transfers, for which MassHealth determined the appellant received no fair market value, amounted to \$105,000.00 (\$10,000 + \$15,000 + \$50,000 + \$30,000). The MassHealth representative stated that the total disqualifying transfer amount of \$105,000.00 was divided by the average daily cost of nursing facility care in the Commonwealth, \$410.00, which resulted in a 256-day penalty period ($\$105,000 / \$410 = 256$). The appellant had a balance of \$104,441.33 in her bank account on January 13, 2021 and a balance of \$54,473.91 in her bank account on July 8, 2021. (Exhibit 11; exhibit 12, p. 91). The MassHealth representative noted that the appellant's assets were reduced and she was otherwise eligible for MassHealth on February 4, 2022, and thus the penalty period starts on that date. Counting forward 256 days from February 4, 2022, results in a penalty period ending October 18, 2022. The MassHealth representative reported that the appellant receives Social Security income of \$1,639.00 a month.

With the appeal request, the appellant's representative submitted letters notarized on April 21, 2022. (Exhibit 2). The appellant's representative noted that she is the appellant's daughter and she is disabled. (Exhibit 2, p. 2). The appellant's representative wrote that she has polyarticular inflammatory arthritis, fibromyalgia, arthritis in her spine, limited ambulation, pain, swelling and stiffness in her joints, and she has a handicap placard and has had accommodations at work.

(Exhibit 2, p. 3). The appellant's representative submitted a letter from her physician dated April 11, 2022; the physician noted that the appellant's representative suffers from incapacitating, chronic pain, chronic kidney disease, and heart disease and her symptoms of pain, weakness and radiculopathy are disabling. (Exhibit 2, p. 4). The appellant's representative wrote that regarding the transfers of \$50,000.00, \$30,000.00 and \$15,000.00 made to her by her mother, it was her understanding that a parent could give money to a disabled child. (Exhibit 2, p. 3). The appellant's representative testified that she did not apply to the Social Security Administration for disability income, because she wanted to continue working.

The appellant's representative wrote that her brother, the appellant's son, is deceased and therefore cannot pay back the \$10,000.00 given to him. (Exhibit 2, pp. 2, 7). The appellant's representative wrote that since 2017, she has paid \$11,053.63 towards clothing, personal care items, bedding, and bathroom necessities for the appellant. (Exhibit 2, p. 2). In a letter submitted with MassHealth's hearing packet, the appellant's representative wrote that she is a registered nurse and provided care at the rate of \$22.00 an hour from March 20, 2021 to August 20, 2021, including 27/7 nursing care, evaluation of the appellant's medical conditions, meal preparation, medication preparation, physical therapy with walker, laundry, assistance with showering, transportation to medical appointments, food, clothing, toiletries. (Exhibit 12, p. 94). The appellant's representative noted that she purchased a lift recliner in 2018, bed linens, clock, teak bench, etc. in February and March, 2021. (Exhibit 12, pp. 94-104). The appellant's representative stated that the total amount for personal care and purchases was \$18,959.96. (Exhibit 12, p. 95). The MassHealth representative stated that according to the appellant's bank statements, she was also paying for things she needed during this time. The hearing officer asked the appellant's representative why the appellant's money was not being used to purchase things she needed, and the appellant's representative stated that it never dawned on her to go into the appellant's account and use her money to buy her things.

The appellant's primary residence was held in a trust established in 2012. (Exhibit 12, p. 10). The appellant's representative wrote that the appellant had to sell the family home and move into an assisted living facility after a fall resulting in a broken hip and a fall resulting in a broken shoulder. (Exhibit 2, p. 5). The appellant's representative stated that the appellant moved into the assisted living facility in November, 2016 and sold her home in June, 2017. The appellant's representative noted that the appellant was using a walker at that time and needed assistance with showering but was otherwise independent. The appellant's representative testified that the appellant transferred \$10,000.00 to the appellant's son in 2017 after the sale of the house, in consideration of the son's assistance in preparing the house for sale. The appellant's representative stated that the appellant gave her \$15,000.00 in 2017 to thank her for all the help she had given the appellant in preparing the house for sale and extra assistance while the appellant was in the assisted living facility.

The appellant's representative stated that she retired in November, 2019 due to chronic pain, and she and her husband purchased a two-bedroom penthouse condominium at that time. The appellant's representative wrote that the appellant became increasingly anxious and depressed during Covid lockdown and restrictions and became increasingly insistent and demanding about moving in with her daughter and son-in-law. (Exhibit 2, p. 5). The appellant's representative noted that the appellant offered her daughter \$50,000.00 to buy a bigger condo that she could live in. (Exhibit 2, p. 5). The appellant's representative stated that when a bigger two-bedroom, lower level

condominium became available in their building, she and her husband bought it. The appellant's representative and her spouse closed on the new home in March, 2021. (Testimony). The appellant's representative noted that the appellant moved in with her daughter and son-in-law on March 20, 2021. (Exhibit 2, p. 5). The appellant's representative stated that the appellant's name is not on the deed to the new property. In one of the letters submitted with the appeal, the appellant's representative wrote that the new condo is not wheelchair accessible, and the appellant would not be able to navigate around the condo at this time because she uses a wheelchair. (Exhibit 2, p. 2). The appellant's representative stated that the appellant is still competent, and only starting using a wheelchair after her most recent hospitalization and admission to the nursing facility.

The appellant's representative stated that after moving in with her, the appellant asked how she and her spouse were doing financially and the appellant's representative told her that things were tight. The appellant's representative explained that fees and utility costs had increased, and they had been assessed a \$4,000.00 charge because they broke the budget plan they had for their previous condo. The appellant's representative stated that the appellant said she would give the appellant's representative and her spouse \$30,000.00 to help them out because she had the money and was not using it.

The record was left open until July 6, 2022, to give the appellant's representative the opportunity to submit a copy of the settlement statement for the March, 2021 purchase of the condo, and the admission/discharge documentation for the appellant's hospitalization prior to her nursing facility admission. (Exhibit 13). On June 20, 2022, the appellant's representative submitted the hospital documentation and the settlement statement for the purchase of the condo. (Exhibit 14).

According to hospital notes, the appellant was brought by ambulance to the hospital on July 28, 2021 for difficulty with urination. (Exhibit 14, p. 3). The appellant was admitted to the hospital on [REDACTED] and discharged to a nursing facility on [REDACTED]. (Exhibit 14, pp. 4, 12). Admitting diagnoses were obsessive behavior and hypoxia; discharge diagnoses were urinary urgency, mass of right lung, stage IV chronic kidney disease, hypoxia and fall at home. (Exhibit 14, p. 4). The appellant's chronic diagnoses include lung cancer with current mass on right lung, stage IV chronic kidney disease, hypoxia, anxiety, history of malignant melanoma, congestive heart failure since at least 2018, chronic obstructive pulmonary disease with hospitalization for exacerbation, home oxygen use, compression fracture of thoracic spine, depression, hypertension, shortness of breath, traumatic brain injury status post fall. (Exhibit 14, pp. 4-5). The admitting physician noted that the appellant had radiation treatment to the right lung in March 2019; she followed up with oncology in May, 2021 after a chest CT scan in April, 2021 which showed possible tumor recurrence. (Exhibit 14, p. 5). The appellant reported to the admitting physician that she recently moved from assisted living to her daughter's home after running out of funds for assisted living. (Exhibit 14, p. 5).

According to the settlement statement, the appellant's representative and her spouse purchased their condo on March 15, 2021 for \$340,000.00 with closing costs of \$11,983.18, and prorated taxes and condo fees. (Exhibit 14, pp. 16, 18). The appellant's representative and her spouse paid with a mortgage loan of \$306,000.00, \$17,000.00 deposit, and cash at closing totally \$29,424.43. (Exhibit 14, p. 18). The appellant's representative and her spouse disclosed to the lender the gift from a

relative totaling \$48,050.52. (Exhibit 14, p. 22).

Findings of Fact

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

1. The appellant submitted a MassHealth application on February 28, 2022 seeking a MassHealth start date of February 4, 2022.
2. The appellant is [REDACTED] and was admitted to the nursing facility on [REDACTED] after a hospitalization beginning July 28, 2021, and subsequent rehab stay.
3. The appellant's primary residence was held in a trust established in 2012.
4. In 2016, the appellant had a fall resulting in a broken hip and a fall resulting in a broken shoulder.
5. The appellant moved into the assisted living facility in November, 2016; the appellant was using a walker at that time and needed assistance with showering.
6. The appellant sold her home in June, 2017 receiving net proceeds of \$393,362.45.
7. By check dated June 26, 2017, the appellant gave \$10,000.00 to her son and by check dated June 26, 2017, the appellant gave \$15,000.00 to her daughter; the appellant's son is deceased.
8. The appellant had a balance of \$104,441.33 in her bank account on January 13, 2021, and a balance of \$54,473.91 in her bank account on July 8, 2021.
9. The appellant's assets were reduced and she was otherwise eligible for MassHealth on February 4, 2022.
10. The appellant receives Social Security income of \$1,639.00 a month.
11. The appellant's representative/daughter has polyarticular inflammatory arthritis, fibromyalgia, arthritis in her spine, limited ambulation, pain, swelling and stiffness in her joints, suffers from incapacitating, chronic pain, chronic kidney disease, and heart disease; she has handicap placard and has had accommodations at work.
12. The appellant's representative has not been determined permanently and totally disabled by the Social Security Administration or by the Commonwealth of Massachusetts MassHealth regulations.
13. The appellant's representative is a registered nurse and retired in November, 2019 due to chronic pain; she and her husband purchased a two-bedroom penthouse condominium at that

time.

14. On January 14, 2021, the appellant transferred \$50,000.00 to her daughter.
15. The appellant's representative and her spouse purchased a bigger two-bedroom, lower level condominium in the same building on March 15, 2021 and the appellant moved in with them on March 20, 2021.
16. The appellant's name is not on the deed to the new property.
17. The new condo is not wheelchair accessible and the appellant would not be able to navigate around the condo in a wheelchair; the appellant began using a wheelchair after her July, 2021 hospitalization.
18. The appellant's representative and her spouse were assessed a \$4,000.00 charge because they broke the budget plan they had for their previous condo.
19. The appellant's representative stated that the appellant said she would give the appellant's representative and her spouse \$30,000.00 to help them out because she had the money and was not using it.
20. On July 9, 2021, the appellant transferred \$30,000.00 to her daughter.
21. The appellant was brought by ambulance to the hospital on July 28, 2021 for difficulty with urination; the appellant was admitted to the hospital on [REDACTED] and discharged to a nursing facility on [REDACTED].
22. The appellant's diagnoses at admission to the hospital included obsessive behavior and hypoxia; discharge diagnoses were urinary urgency, mass of right lung, stage IV chronic kidney disease, hypoxia and fall at home; the appellant's chronic diagnoses include lung cancer with current mass on right lung, stage IV chronic kidney disease, hypoxia, anxiety, history of malignant melanoma, congestive heart failure since at least 2018, chronic obstructive pulmonary disease with hospitalization for exacerbation, home oxygen use, compression fracture of thoracic spine, depression, hypertension, shortness of breath, traumatic brain injury status post fall.
23. The admitting physician noted that the appellant had radiation treatment to the right lung in March 2019; she followed up with oncology in May, 2021 after a chest CT scan in April, 2021 which showed possible tumor recurrence.
24. The appellant reported to the admitting physician that she recently moved from assisted living to her daughter's home after running out of funds for assisted living.
25. The appellant's representative and her spouse purchased their condo on March 15, 2021 for \$340,000.00 with closing costs of \$11,983.18, and prorated taxes and condo fees.

26. The appellant's representative and her spouse paid with a mortgage loan of \$306,000.00, \$17,000.00 deposit, and cash at closing totaling \$29,424.43.
27. The appellant's representative and her spouse disclosed to the lender the gift from a relative totaling \$48,050.52.

Analysis and Conclusions of Law

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 considers the specific circumstances involved. 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)).

The CMS State Medicaid Manual defines Fair Market Value as an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purpose of determining Medicaid eligibility.

NOTE: For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, HCFA presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable to the State. For example, you may require that a payback arrangement had been agreed to in writing at the time services were provided.

(CMS State Medicaid Manual, 11-94, Section 3258.1(A)(1)).

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...

- (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.

(130 CMR 520.019(D)(3)).

Disabled – having a permanent and total disability. (130 CMR 501.001). Permanent and Total Disability – a disability as defined under Title XVI of the Social Security Act or under applicable state laws. (130 CMR 501.001).

The CMS State Manual notes that there are a number of instances where, even if an asset is transferred for less than fair market value, the penalties do not apply. These exceptions are...

The assets were transferred to the individual's child...the child must be blind or permanently and totally disabled, as defined by a State program established under Title XVI, in States eligible to participate in such programs or blind or disabled as defined under SSI in all other States.

(CMS State Medicaid Manual, 11-94, Section 3258.10(B)).

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)).

Duration of Ineligibility. If the MassHealth agency has determined that a disqualifying transfer of resources has occurred, the MassHealth agency 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: Definition of Terms of all resources transferred by the nursing-facility resident or the spouse, divided by the average monthly¹ 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. (130 CMR 520.019(G)(1)).

Begin Date. For transfers occurring before February 8, 2006, the period of ineligibility begins 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 begins on the first day of the month in which resources were transferred for less than fair-market value or

¹ MassHealth uses the average daily private pay nursing facility cost in calculating the ineligibility period.

the date on which the individual is otherwise eligible for MassHealth agency payment of long-term-care services, whichever is later. (130 CMR 520.019(G)(3)).

The appellant transferred \$10,000.00 to her son after the sale of her house in June, 2017. MassHealth testified that the appellant's representative reported that the \$10,000.00 payment to the son was for dental work. No documentation to support this was provided and regardless, such payment would be considered a gift since the appellant did not receive fair market value for the \$10,000.00. The appellant's representative stated at the hearing that the appellant gave the \$10,000.00 to her son after the sale of her house in 2017 as payment for work he did to prepare the house for sale. There is no documentation to support that the appellant's son spent \$10,000.00 in supplies and labor to prepare the appellant's house for sale. The appellant made transfers to her son and daughter after the sale of her home and later made transfers to her daughter. Based on the totality of transfers, it appears the appellant wanted to give her children gifts after receiving proceeds from the sale of her home. There is no evidence to support that the appellant received fair market value for the transfer of \$10,000.00 made to her son on June 26, 2017. I understand that appellant's son is deceased and cannot pay back the money, but the issue on appeal is whether the appellant made a disqualifying transfer. The appellant can look into a request for a hardship to MassHealth pursuant to 130 CMR 520.019(L).

During the look back period, the appellant transferred a total of \$95,000.00 to her daughter. The appellant's representative argues that the transfers are permissible because they were made to a disabled child of the appellant. In order for a transfer to be considered a permissible transfer to a disabled child, the child must have a disability as defined under Title XVI of the Social Security Act or as defined by a state program established under Title XVI. The appellant's daughter has not been determined disabled by the Social Security Administration nor by the Commonwealth's MassHealth program. Accordingly, the appellant's daughter does not meet the definition of a disabled child and the transfers are not permissible pursuant to 130 CMR 520.019(D)(3).

In the alternative, the appellant's representative argued that the appellant received fair market value for the transfers to her daughter. The appellant's representative stated that the appellant gave her \$15,000.00 in June, 2017 for work done to prepare the house for sale and for assisting the appellant in other ways. There is no documentation to support that the appellant's daughter spent \$15,000.00 in supplies and labor to prepare the appellant's house for sale. And again, based on these transfers, and subsequent transfers made by the appellant to her daughter, it appears the appellant wanted to give her children gifts after receiving proceeds from the sale of her home. There is no evidence to support that the appellant received fair market value for the \$15,000.00 payment made to her daughter on June 26, 2017.

The appellant's representative noted that the appellant gave her \$50,000.00 to buy a larger condo so that the appellant could live with her daughter and son-in-law. It is not clear if the appellant's representative is arguing that the appellant received fair market value for this payment or that the appellant made the transfer exclusively for a purpose other than to qualify for MassHealth. The appellant only lived in the condo for 4 months and she had no ownership interest in the property despite contributing \$50,000.00 toward the purchase. The condo is not wheelchair accessible, and this should have been a consideration in light of the appellant's use of a walker, if she was in

fact considering this to be her long-term residence. The appellant's representative reported that the appellant asked to move in with her daughter and son-in-law due to feeling anxious and depressed during Covid lockdown at the assisted living facility. The appellant reported to the hospital physician that she had moved in with her daughter because she had run out of funds to cover continued assisted living costs. The appellant had \$104,441.33 in the bank prior to transferring \$50,000.00 to her daughter in January, 2021. (Exhibit 11, p. 1). After the transfer, the appellant's funds were reduced to the extent that her ability to cover assisted living costs was more limited. Based on the appellant's age and medical conditions in January, 2021, long term care was a reasonable possibility, and it is not reasonable that the appellant believed she would receive the equivalent of \$50,000.00 by moving in with her daughter and son-in-law. In fact, she was only able to reside with them for four months. The appellant did not receive fair market value for the transfer of \$50,000.00 to her daughter.

A second argument might be that the appellant made the transfer of \$50,000.00 exclusively for a purpose other than to qualify for MassHealth. The appellant placed her house in a trust in 2012 and thus was engaging in estate planning as early as that time. The appellant suffered falls in 2016 that lead to the use of a walker and the need for assisted living. The appellant had a heart condition as early as 2018 and received treatment for lung cancer in 2019. Again, based on the appellant's age and medical conditions, the need for nursing facility services was a reasonable possibility in January, 2021. The appellant would need assets to cover her nursing facility expenses. It is understandable that the appellant would want to give money to her daughter, and the appellant had the right to spend her money in any way she so chose. However, the appellant chose to give away her assets knowing she would need such assets for any potential future nursing facility expenses. Having made the choice to give away assets, the appellant cannot now turn to MassHealth to cover nursing facility expenses that her resources might have otherwise covered. The facts do not support that the appellant's transfer of \$50,000.00 to her daughter was done *exclusively* for a purpose other than to qualify for MassHealth. (emphasis added).

With regard to the \$30,000.00 the appellant gave to her daughter on July 9, 2021, the appellant's representative noted that she paid \$11,053.63 towards clothing, personal care items, bedding, bathroom necessities, a lift recliner in 2018, bed linens, clock, teak bench, etc. in February and March, 2021 for the appellant. The appellant's representative noted further that she provided care at the rate of \$22.00 an hour from March 20, 2021 to August 20, 2021, including 27/7 nursing care, evaluation of the appellant's medical conditions, meal preparation, medication preparation, physical therapy with walker, laundry, assistance with showering, transportation to medical appointments, food, clothing, toiletries. The appellant's representative stated that the total amount for personal care and purchases was \$18,959.96. The appellant had her own funds, over \$100,000.00 in January, 2021, and records showed that she was paying for items herself. It is impossible to ascertain what items the appellant's representative purchased for herself and what was purchased for the appellant. Further, there appeared to be no expectation of the appellant's representative being reimbursed for things she purchased for her mother or else reimbursement would have been sought at the time of purchase. Instead it appears the appellant's daughter simply bought things for her mother out of love and affection.

With regard to reimbursement for personal care, there was no personal care contract itemizing the necessary care to be provided, hours, and wage. The appellant was no longer in the home as of July 28, 2021 and thus no personal care would have been provided after that date. As noted in the State Medicaid Manual, “while relatives and family members legitimately can be paid for care they provide to the individual, Medicaid/MassHealth presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value.” This presumption was not rebutted with tangible evidence such as personal care contract with payback arrangement.

The appellant’s representative stated that after moving in with her, the appellant asked how she and her spouse were doing financially and the appellant’s representative told her that things were tight in light of increased fees and utility costs and a \$4,000.00 assessment for breaking a budget plan. The appellant told her daughter she would give her \$30,000.00 to help because she had the money and was not using it. I determine that the \$30,000.00 transfer to the appellant’s daughter on July 9, 2021 was a gift and was not meant to be reimbursement for anything.

I understand that the appellant appreciated her children and wanted her children to have the money she gave to them, however when one is applying for public benefits unfortunately one cannot dispose of assets as a gift without suffering repercussions with regard to eligibility for such public benefits.

Because the appellant made disqualifying transfers totaling \$105,000.00, MassHealth correctly determined an ineligibility period of 256 days ($\$105,000/\$410 = 256$). MassHealth determined that the appellant was otherwise eligible for MassHealth on February 4, 2022 and thus the penalty period runs 256 days from that date. Counting forward 256 days from February 4, 2022 results in a penalty period ending October 18, 2022. Accordingly, the appellant’s penalty period is from February 4, 2022 to October 18, 2022 and her earliest possible MassHealth start date is October 19, 2022 if all other eligibility factors are met on that date. MassHealth’s action is upheld and the appeal is denied.

The appellant may cure the transfer pursuant to 130 CMR 520.019(K)(2)(b) below, within 60 days of this decision, or submit a request for a hardship to MassHealth pursuant to 130 CMR 520.019(L) below, within 15 days of the date of this decision.

Curing a Transfer. If the full value or a portion of the full value of the transferred resources is returned to the nursing-facility resident, the MassHealth agency will rescind or adjust the period of ineligibility and will apply the countable-assets rules at 130 CMR 520.007 and the countable-income rules at 130 CMR 520.009 to the returned resources in the determination of eligibility. The MassHealth agency will rescind or adjust the period of ineligibility as follows.

1. The MassHealth agency uses the original application date if the nursing-facility resident provides proof within 60 days after the date of the notice of the period of ineligibility that the transfer has been fully or partially cured. In the case of a partial cure, the MassHealth agency recalculates the period of ineligibility based on the transferred amount remaining after deducting the cured portion, beginning with the date of transfer

or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

2. If the nursing-facility resident provides proof later than the 60th day after the date of the notice of a period of ineligibility that the transfer has been fully or partially cured, the nursing-facility resident must reapply. The MassHealth agency recalculates the period of ineligibility based on the amount of the transfer remaining after the cure, beginning with the date of transfer or, for cures of transfers occurring on or after February 8, 2006, the later of the date of transfer or the date on which the individual would have otherwise been eligible.

(130 CMR 520.019(K)(2)(b)).

Where the MassHealth agency has issued a notice of the period of ineligibility due to a disqualifying transfer of resources, the nursing-facility resident may request a hardship waiver. For transfers occurring on or after February 8, 2006, nursing facilities may apply for a hardship waiver on behalf of a resident, with the consent of the nursing-facility resident or the resident's authorized representative. (130 CMR 520.019(L)(3)).

If the nursing-facility resident feels the imposition of a period of ineligibility would result in undue hardship, the nursing-facility resident must submit a written request for consideration of undue hardship and any supporting documentation to the MassHealth Enrollment Center listed on the notice of the period of ineligibility within 15 days after the date on the notice. Within 30 days after the date of the nursing-facility resident's request, the MassHealth agency will inform the nursing-facility resident in writing of the undue-hardship decision and of the right to a fair hearing. The MassHealth agency will extend this 30-day period if the MassHealth agency requests additional documentation or if extenuating circumstances as determined by the MassHealth agency require additional time. (130 CMR 520.019(L)(4)).

(130 CMR 520.019(L)(3), (4)).

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.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: MassHealth Representative: Justine Ferreira, Taunton MassHealth Enrollment CenterK
Appellant Rep.: [REDACTED]
[REDACTED]