

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	2203033
<b>Decision Date:</b>	6/28/2022	<b>Hearing Date:</b>	06/13/2022
<b>Hearing Officer:</b>	Sara E. McGrath		

**Appearances for Appellant:**



**Appearances for MassHealth:**

Eileen Smith, Chelsea MEC



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	Long-term care eligibility
<b>Decision Date:</b>	6/28/2022	<b>Hearing Date:</b>	06/13/2022
<b>MassHealth's Rep.:</b>	Eileen Smith	<b>Appellant's Rep.:</b>	
<b>Hearing Location:</b>	Board of Hearings (Remote)		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated March 14, 2022, MassHealth approved the appellant's application for MassHealth benefits with a coverage start date of March 2, 2022 (Exhibit 1). The notice informs the appellant that he is ineligible for benefits from January 19, 2022 through March 1, 2022 due to a disqualifying transfer of resources (Exhibit 1). The appellant filed a timely appeal on April 19, 2022 (Exhibit 1). The denial of assistance is a valid basis for appeal (130 CMR 610.032). On April 27, 2022, the Board of Hearings dismissed the request for hearing because of lack of proper authorization (Exhibit 3). The appellant submitted proper documentation; the Board then vacated the dismissal and scheduled the hearing (Exhibits 2 and 4).

### Action Taken by MassHealth

MassHealth denied the appellant's application from January 19, 2022 through March 1, 2022 due to a disqualifying transfer of resources.

### Issue

The issue on appeal is whether MassHealth was correct in finding a disqualifying transfer of resources.

## Summary of Evidence

The MassHealth representative appeared at hearing by telephone and testified in summary as follows: The appellant is over the age of 65 and is a resident of a skilled nursing facility. The appellant submitted a MassHealth long-term care application on May 19, 2021, seeking a coverage start date of February 5, 2021. On June 30, 2021, MassHealth denied the application for missing verifications; this denial was appealed and the May application date was ultimately preserved.<sup>1</sup> On November 2, 2021, MassHealth denied the application for excess assets; the assets were spent down and the appellant now seeks a coverage start date of January 19, 2022. On March 14, 2022, MassHealth approved the appellant's application but denied coverage from January 19 through March 1, 2022 due to disqualifying transfers of resources. Specifically, between December 2020 and December 2021, the appellant's spouse wrote various checks to the couple's granddaughter totaling \$17,000 (Exhibit 5, pp. 8-17). MassHealth calculated a 42-day penalty period, resulting in a coverage start date of March 2, 2022.<sup>2</sup>

The appellant's spouse appeared at hearing by telephone along with his attorney. The appellant's spouse submitted two letters stating that the checks were issued to help his granddaughter with rent expenses during a time that she was on unpaid maternity leave (Exhibits 6 and 7). The appellant's spouse explained that his granddaughter had two small children at the time, and was at risk of being evicted. He also noted that his granddaughter was ill at the time. He could not bear the thought of his great grandchildren being out on the street, and he wanted to make sure they had food and shelter. He stated that he was not thinking about Medicaid when he made these transfers.

The MassHealth representative responded and stated that if the appellant could submit documentation from the employer verifying the dates of the maternity leave, MassHealth would consider the transfers to be transactions for which the appellant received fair market value. The appellant's spouse declined and stated that he did not want to involve his granddaughter, as she has enough on her mind. He saw his granddaughter recently and she was crying. Further, the appellant's attorney clarified that the appellant did *not* receive fair market value for these transferred funds; they were gifts made for love and affection.

The appellant's spouse stated that his granddaughter's monthly rent at the time was \$2,000. He noted that she was on maternity leave for a long time. Her financial situation declined after a breakup. The appellant's attorney clarified that the couple had other assets at the time, which bolsters the argument that these small transfers were unrelated to an intent to qualify for Medicaid.

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<sup>1</sup> The MassHealth representative noted that during the verification appeal process, it was discovered that the couple owned an account with a balance of over \$200,000. This discovery led to the subsequent denial for excess assets.

<sup>2</sup> The appellant did not dispute the method by which MassHealth calculated the penalty period (\$17,000/\$410).

## **Findings of Fact**

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

1. The appellant is over the age of 65 and is a resident of a skilled nursing facility; she has a spouse who resides in the community.
2. Between December 2020 and December 2021, the appellant's spouse wrote 11 checks totaling \$17,000 to his granddaughter, some in the amount of \$1,000, and others in the amount of \$2,000.
3. The appellant's spouse explained that he wrote the checks to his granddaughter to assist with rent expenses during a time she was on unpaid maternity leave.
4. On May 19, 2021, the appellant submitted a MassHealth long-term care application, seeking a coverage start date of February 5, 2021; the appellant subsequently adjusted her coverage start date request to January 19, 2022.
5. On March 14, 2022, MassHealth approved the appellant's application but denied coverage from January 19 through March 1, 2022 due to disqualifying transfers of resources.
6. The appellant timely appealed the disqualifying transfer notice.

## **Analysis and Conclusions of Law**

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).<sup>3</sup> 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

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<sup>3</sup> The reference to 130 CMR 520.019(J) – which pertains to home equity loans and reverse mortgages and does not include any language about exemptions from transfer penalties – appears to be an error, a possible holdover from an earlier version of the regulations. The proper reference is likely 130 CMR 520.019(K), *Exempting Transfers from the Period of Ineligibility*. That provision provides an exemption from the penalty period where an applicant takes steps to reverse the actions that led to the disqualifying transfer finding (e.g., by revising a trust or by curing the transfer).

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 the 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)).

In addition to the permissible transfers described at 130 CMR 520.019(D), 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 the resources were transferred exclusively for a purpose other than to qualify for MassHealth, or the resident intended to dispose of the resource at either fair market value or for other valuable consideration (130 CMR 520.019(F)).

The appellant bears the burden of establishing his intent to the agency's satisfaction and, under federal law, must make a heightened evidentiary showing on this issue: "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" *Gauthier v. Director of Office of Medicaid*, 80 Mass. App. Ct. 777, 788-89 (2011), citing the State Medicaid Manual, Health Care Financing Administration Transmittal No. 64, s. 3258.10(C)(2).

In this case, MassHealth found that the appellant was ineligible for MassHealth long-term care coverage for 42 days because her spouse transferred resources for less than fair market value. Specifically, between December 2020 and December 2021, the appellant's spouse wrote various checks to the couple's granddaughter totaling \$17,000. The appellant has conceded that these resource transfers were gifts and that the couple did not receive fair market value for the transferred funds. Rather, the appellant's spouse argues that the transfers should be excused because at the time of the transfers, he was only thinking about the health and safety of his great grandchildren.

The appellant has not demonstrated that these resources were transferred exclusively for a purpose other than to qualify for MassHealth. The appellant's spouse provided testimony that he transferred these funds to assist with granddaughter and her children with rent and food expenses while the granddaughter was on unpaid maternity leave and at risk for eviction. Other than his testimony, however, no evidence has been offered to substantiate or support this story. Despite the opportunity to submit further evidence, the appellant's spouse declined to do so. Thus, the record does not include any other evidence to verify the granddaughter's financial situation, to verify that she was on unpaid maternity leave, to verify the amount of her rent, or to verify that she was at risk of being evicted. As set forth above, to excuse a transfer on the basis of intent the appellant must present "convincing evidence . . . as to the specific purpose for which the asset was transferred." Testimony from the individual who made the transfers, without more, does not satisfy the "convincing evidence" requirement and falls short of establishing that the transfers

were made exclusively for a purpose other than to qualify for MassHealth. It is the appellant's burden to show that MassHealth's determination was in error, and the spouse has not done so here.

The appeal is denied. The appellant has 30 days from the date of this decision to request a waiver of the period of disqualification due to undue hardship pursuant to 130 CMR 520.019(L).

### **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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Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Chelsea MEC

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